



## NOTICE

**TO:** ALL INTERESTED PARTIES

**SUBJECT:** DRAFT MEMORANDUM CIRCULAR ON THE GUIDELINES ON CORPORATE DISSOLUTION

The public is invited to submit their comments, feedbacks and inputs on the draft Memorandum Circular on the Guidelines on Corporate Dissolution **on or before 22 April 2021 (Thursday)**.

It is requested that comments/inputs be emailed to Atty. Eunice G. Dalisay-Salazar at [egdsalazar@sec.gov.ph](mailto:egdsalazar@sec.gov.ph) with the subject head "MC on Guidelines on Corporate Dissolution" using the template provided.

Issued on 12 April 2021.



**MEMORANDUM CIRCULAR NO. \_\_\_\_\_**  
**Series of 2021.**

**TO : ALL CONCERNED**

**SUBJECT : Guidelines on Corporate Dissolution**

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**Whereas**, Sections 133 to 138 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines (“RCC”), provides for the classification, requirements and procedure of corporate dissolution;

**Whereas**, under Section 6(h) of the RCC, holders of nonvoting shares shall nevertheless be entitled to vote on the dissolution of the corporation; and

**Whereas**, under Section 50 of the RCC, notice of stockholders’ or members’ meetings shall be sent through the means of communication provided in the by-laws, which notice shall state the time, place and purpose of the meetings. Each notice of meeting shall further be accompanied by the following:

- (a) The agenda for the meeting;
- (b) A proxy form which shall be submitted to the corporate secretary within a reasonable time prior to the meeting;
- (c) When attendance, participation, and voting are allowed by remote communication or in absentia, the requirements and procedures to be followed when a stockholder or member elects either option; and
- (d) When the meeting is for the election of directors or trustees, the requirements and procedure for nomination and election.

**NOW THEREFORE**, in order to consolidate the procedure on corporate dissolution, the Commission hereby promulgates the following requirements and guidelines for corporate dissolution:

**A. Voluntary dissolution where no creditors are affected under Section 134 of the Revised Corporation Code.**

**Section 1. Verified Request for Dissolution.** - The voluntary dissolution of a corporation, where none of its creditors are affected, shall be initiated by filing a **verified request** for dissolution, signed by a duly authorized representative, with the Company Registration and Monitoring Department or SEC Extension Office, stating:

- a. The corporate name, SEC Registration Number, and mailing address of the principal office of the corporation;



- b. The complete name, position in the corporate structure of the corporation, and mailing address of the authorized representative of the corporation;
- c. That the corporation requests for the dissolution of the corporation, and that the dissolution does not prejudice the rights of any creditor having a claim against it;
- d. The reason for the dissolution;
- e. The form, manner, and time when the notices were given; Provided that, at least twenty (20) days prior to the meeting, notice shall be given to each shareholder or member of record personally, by registered mail, or by any means authorized under its by-laws, regardless of whether or not they are entitled to vote at the meeting, in the manner provided in Section 50 of the RCC; Provided, further, that the notice shall state the time and place of the meeting; Provided, further, that the notice shall be published **once prior to the date of the meeting** in a newspaper published in the place where the principal office of said corporation is located, or if no newspaper is published in such place, in a newspaper of general circulation in the Philippines; Provided, further, that the notice shall state that the purpose of the meeting is to vote on the dissolution of the corporation, and shall be accompanied by the following:
  - i. The agenda for the meeting;
  - ii. A proxy form; and
  - iii. The requirements and procedures to be followed for attendance, participation, and voting by remote communication or in absentia, if applicable.
- f. Names of the stockholders and directors, or members and trustees, who approved the dissolution; Provided, that the **majority** of the directors or trustees, and at least **majority** of the outstanding capital stock **including the holders of non-voting shares** or **majority** of the members voted for the dissolution of the corporation;
- g. That the abovementioned stockholders and directors, or members and trustees, are the duly elected directors or trustees, and the stockholders or members of record as of the date of the meeting;
- h. That there is no pending case involving intra-corporate dispute;
- i. The date, place, and time of the meeting in which the vote was made; and
- j. Details of publication, such as:



- i. Name of the newspaper;
- ii. Complete name of the publisher;
- iii. Mailing address of the principal office of the publisher;
- iv. Area of circulation of the newspaper;
- v. Date/s when the notice was published; and
- vi. Contents of the notice as published.

**Section 2. Verification and Certification Against Forum Shopping.** - The Verified Request for Dissolution shall contain an affidavit and certification duly signed by the authorized representative of the corporation, which shall allege the following attestations:

- a. The allegations in the Verified Request for Dissolution are true and correct based on his or her personal knowledge, or based on authentic documents;
- b. That he/she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein;
- c. If there is such other pending action or claim, a complete statement of the present status thereof; and
- d. If he/she should thereafter learn that the same or similar action or claim has been filed or is pending, he/she shall report that fact within five (5) calendar days therefrom to the Company Registration and Monitoring Department, or the appropriate SEC Extension Office, of the Commission;

**Section 3. Supporting Documents.** -The following shall be filed with the Verified Request for Dissolution:

- a. A copy of the resolution authorizing the dissolution, certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation;
- b. Affidavit of Publication of the Notice of Meeting;
- c. Proof of authority of the corporation's representative to file the verified request for dissolution;
- d. Latest General Information Sheet (GIS);
- e. Audited Financial Statements (AFS) as of last fiscal year, *except*:
  1. *Where the applicant has ceased operations of at least one (1) year, it shall submit:*
    1. AFS as of the last year of operation; and



2. Affidavit of non-operation and assumption certified under oath by the President/Chairman.
2. *Where the applicant has no operation since incorporation, it shall submit:*
  1. Balance Sheet certified under oath by the Treasurer and President;
  2. Affidavit of Non-Operation certified under oath by the President and Treasurer;
  3. Certificate of Non-Registration issued by the BIR;
3. *Where the applicant is a stock corporation with paid-up of less than P50,000.00, it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.*
4. *Where the applicant is a non-stock corporation with gross receipts of less than P100,000.00 or total assets of less than P500,000.00, it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.*
- f. Affidavit executed under oath by the President and Treasurer that:
  1. That the dissolution is not prejudicial to the interest of the creditors; and
  2. There is no opposition from any creditors from the time of the last publication of the notice of dissolution up to the filing of the dissolution with the Commission;
- g. Monitoring Clearance;
- h. Bureau of Internal Revenue (BIR) Tax Clearance Certificate;
- i. Notarized Secretary's Certificate of no pending case involving intra-corporate dispute;
- j. Favorable recommendation from the appropriate regulatory agency, when necessary.

**Section 4. Approval and Issuance of Certificate.** – Within fifteen (15) days from receipt of the Verified Request for Dissolution including complete and correct supporting documents and in the absence of any withdrawal within said period, the Commission shall approve the request and issue the **Certificate of Dissolution**. The dissolution shall take effect only upon the issuance by the Commission of a Certificate of Dissolution.

**B. Voluntary dissolution where creditors are affected under Section 135 of the Revised Corporation Code.**

The voluntary dissolution where creditors are affected under Section 135 of the RCC shall be initiated by filing a **verified petition** with the Office of the General Counsel.



- C. Dissolution by Shortening Corporate Term under Section 136 of the Revised Corporation Code.** - A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of the RCC.

**Section 1. Documentary Requirements.**- The following must be submitted to the Corporate and Partnership Registration Division or SEC Extension Office:

- A. *For amendment to shorten corporate term where the proposed expiration of the corporate term is more than one year from approval of the application for amendment.* -
1. Cover Sheet;
  2. Directors' Certificate, attesting that the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock stock **including the holders of non-voting shares**/members of the corporation;
  3. Amended Articles of Incorporation;
  4. Monitoring Clearance;
  5. Notarized Secretary's Certificate of no pending case involving intra-corporate dispute;
  6. Clearance/Favorable recommendation from the appropriate regulatory agency, when necessary.
- B. *For amendment to shorten corporate term where the proposed expiration of the corporate term is one year or less than one year, from approval of the application for amendment.*-
1. Cover Sheet;
  2. Directors' Certificate, attesting that the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock stock **including the holders of non-voting shares**/members of the corporation;
  3. Amended Articles of Incorporation;
  4. Audited Financial Statements (AFS) as of last fiscal year, *except:*
    - a. *Where the applicant has ceased operations of at least one (1) year, it shall submit:*
      1. AFS as of the last year of operation; and
      2. Affidavit of non-operation and assumption certified under oath by the President/Chairman.
    - b. *Where the applicant has no operation since incorporation, it shall submit:*
      2. Balance Sheet certified under oath by the Treasurer and President;
      3. Affidavit of Non-Operation certified under oath by the President and Treasurer;
      4. Certificate of Non-Registration issued by the BIR;



- c. Where the applicant is a stock corporation with paid-up of less than P50,000.00, it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.
  - d. Where the applicant is a non-stock corporation with gross receipts of less than P100,000.00 or total assets of less than P500,000.00, it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.
5. Affidavit executed under oath by the President and Treasurer that:
    - a. That the dissolution is not prejudicial to the interest of the creditors; and
    - b. There is no opposition from any creditors from the time of the last publication of the notice of dissolution up to the filing of the dissolution with the Commission;
  6. Bureau of Internal Revenue (BIR) Tax Clearance Certificate; and
  7. Monitoring Clearance;
  8. Notarized Secretary's Certificate of no pending case involving intra-corporate dispute; and
  9. Clearance/Favorable recommendation from the appropriate regulatory agency.

**Section 2. Effectivity of Dissolution.-** Upon the expiration of the shortened term, as stated in the approved amended articles of incorporation, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation. Dissolution shall automatically take effect on the day following the last day of the corporate term stated in the amended articles of incorporation, without the need for the issuance by the Commission of a certificate of dissolution.

#### **D. Involuntary Dissolution under Section 138 of the Revised Corporation Code.**

**Section 1. Grounds and How Initiated.** –Under Section 138 of the RCC, the Commission may *motu proprio*, or upon filing of a *verified complaint* by any interested party, dissolve a corporation based on the following:

- a. Non-use of corporate charter as provided under Section 21 of the RCC;
- b. Continuous inoperation of a corporation as provided under Section 21 of the RCC;
- c. Upon receipt of a lawful court order dissolving the corporation;
- d. Upon finding by final judgment that the corporation procured its incorporation through fraud;
- e. Upon finding by final judgment that the corporation:
  - i. Was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices;



- ii. Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew; and
- iii. Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

Involuntary dissolution likewise includes revocation of certificate of registration on the grounds provided for in Section 6 (l) of P.D. 902-A which falls within the jurisdiction of the following Departments/SEC Extension Office:

A. Company Registration and Monitoring Department and SEC Extension office

1. Fraud in the procurement of certificate of registration;
2. Failure to file or register any of the following for a period of at least five (5) years: 1.) Financial Statements; b.) General Information Sheet; and c.) Stock and Transfer Book or Membership Book.

B. Enforcement and Investor Protection Department:

1. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
2. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;

**Section 2. Documentary Requirements.-** For verified complaints filed by interested parties based on the grounds stated in Section 138 of the RCC and those which are based on grounds under Section 6 (l) of P.D. 902-A, that falls within the jurisdiction of Company Registration and Monitoring Department and SEC Extension Office, the following must be submitted:

- a. Complaint;
- b. Verification;
- c. Certificate against Forum Shopping;
- d. Secretary's Certificate authorizing the filing of the complaint, if filed by a corporation; and
- e. Affidavits and other documentary evidence to support the claim.

**Section 3. Applicable Rules-** – The provisions on Investigation proceedings and administrative actions under Part II of The 2016 Rules of Procedure of the Securities and Exchange Commission, and the amendments thereto, shall be applied to involuntary dissolution of corporations commenced by the Commission motu proprio.

On the other hand, the provisions on adjudicative action on Part III of The 2016 Rules of Procedure of the Securities and Exchange Commission and the amendments





thereto, shall be applied for the involuntary dissolution of corporations filed by any interested party thru verified complaint.

**Section 4. Forfeiture of Assets.** – If a corporation is ordered dissolved by final judgment pursuant to the grounds set forth in subparagraph (e) of Section 1 hereof, its assets, after payment of liabilities, shall, upon petition of the Commission with the appropriate court, be forfeited in favor of the national government. Such forfeiture shall be without prejudice to the rights of innocent stockholders and employees for services rendered, and to the application of other penalty or sanction under the RCC of other laws.

**Section 5. Notice to and Coordination with Other Regulatory Agencies.** – The Commission shall give reasonable notice to, and coordinate with, the appropriate regulatory agency prior to the involuntary dissolution of companies under their special regulatory jurisdiction.

**E. Withdrawal of Request and Petition for Dissolution filed in accordance to Section 134 and Section 135 of the Revised Corporation Code.**

**Section 1. Withdrawal of Request for Dissolution.** – Within fifteen (15) days from receipt by the Commission of the Verified Request for Dissolution, a withdrawal of the said request may be made in writing, duly verified by any incorporator, director, trustee, shareholder, or member, and signed by the majority of the directors or trustees, and at least majority of the outstanding capital stock or majority of the members who voted for the dissolution of the corporation.

**Section 2. Investigation on Withdrawal of Request for Dissolution.** - Upon receipt of a Verified Withdrawal of Request for Dissolution, the Commission shall withhold action on the request for dissolution and shall, after investigation:

- f. Make a pronouncement that the request for dissolution is deemed withdrawn;
- g. Direct a joint meeting of the board of directors or trustees and the stockholders or members for the purpose of ascertaining whether to proceed with dissolution; or
- h. Issue such other orders as it may deem appropriate.

**Section 3. Withdrawal of Petition for Dissolution.** – Prior to the publication of the order setting the deadline for filing objections to the Petition for Dissolution, a motion to withdraw the said Petition may be filed with the Commission. The Motion to Withdraw the Petition for Dissolution shall be duly verified by any incorporator,



director, trustee, shareholder, or member, and signed by the majority of the directors or trustees, and at least two-thirds (2/3) of the outstanding capital stock, or at least two-thirds (2/3) of the members.

**Section 4. Change in the Ownership, Membership, and/or Composition of the Board.** – If there has been a change in the ownership, membership, and/or composition of the board of directors or trustees prior to the filing of the Withdrawal of Request/Petition for Dissolution, sufficient documentary evidence of such change must be filed together with, and attached to, the Withdrawal of Request/Petition for Dissolution.

**Section 5. Verification of Withdrawal.** - The Verified Withdrawal of Request for Dissolution, or Motion to Withdraw Petition for Dissolution, shall contain an affidavit duly signed by any incorporator, director, trustee, shareholder, or member, which shall allege the following attestations:

- a. The allegations in the Verified Withdrawal of Request for Dissolution, or Motion to Withdraw Petition for Dissolution, are true and correct based on his or her personal knowledge, or based on authentic documents;
- b. The Verified Withdrawal of Request for Dissolution, or Motion to Withdraw Petition for Dissolution, is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation;
- c. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after reasonable opportunity for discovery;

#### **F. Other Provisions.**

**Section 1. Favorable Recommendation.** – No application for dissolution of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAs, pawnshops, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

**Section 2. Number of Commission-Bound Papers.** – The number of Commission-bound papers that a party desires, or is required, to file shall be one (1) original (properly marked) and three (3) copies. For involuntary dissolution filed thru verified complaint, filing fees shall be assessed and paid by the applicant upon submission of complete documentary requirements.



Republic of the Philippines  
Department of Finance  
**Securities and Exchange Commission**

**Section 3.** The SEC Rules of Procedure, and other relevant rules and regulations promulgated by the Commission shall be complied with as far as practicable.

This Memorandum Circular shall take effect immediately after its publication.

\_\_\_\_\_ January 2021, Pasay City.

**EMILIO B. AQUINO**  
**Chairperson**

