



9 March 2022

## **SEC LAYS DOWN RULES ON DISSOLUTION OF CORPORATIONS**

The Securities and Exchange Commission (SEC) has released the standard procedures for the voluntary and involuntary dissolution of corporations, effective March 9.

The Commission on February 15 issued SEC Memorandum Circular No. 5, Series of 2022, providing the [Guidelines on Corporate Dissolution under Sections 134, 136 and 138 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines \(RCC\)](#).

Sections 134, 136, and 138 of the RCC govern the voluntary dissolution where no creditor is affected, dissolution through the shortening of a corporation's corporate term, and involuntary dissolution, respectively.

Under the newly issued guidelines, the dissolution of corporations shall pass through the SEC Company Registration and Monitoring Department (CRMD) or the SEC Extension Offices (EOs).

### **Voluntary dissolution**

In instances where no creditors are affected, corporations may apply for voluntary dissolution with the CRMD or the EO whose territorial jurisdiction includes the principal office address of the corporation.

A corporation seeking voluntary dissolution shall submit a verified request signed by its duly authorized representatives containing the corporate name, SEC registration number, principal office, a statement requesting for the dissolution, and reason for the dissolution.

The verified request must also contain the notice given to the corporation's shareholders/members 20 days prior to the meeting where the vote on its dissolution occurred; the names of stockholders and directors, or members and trustees, who approved the dissolution; and a statement that the corporation has no pending case involving intra-corporate dispute, among others.

The corporation must submit the verified request together with a notarized copy of the board resolution or directors' or trustees' certificate authorizing the dissolution and designating an authorized representative to file the verified request.

Supporting documents for the verified request also include the latest due General Information Sheet (GIS); audited financial statement (AFS) as of last fiscal year, where

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applicable; a tax clearance certificate from the Bureau of Internal Revenue (BIR); notarized secretary's certificate of no pending case involving intra-corporate dispute; and clearance or favorable recommendation from other SEC departments or from the appropriate regulatory agency, when necessary.

The president and treasurer of the corporation must also submit an affidavit stating that the dissolution is not prejudicial to the interest of its creditors, and there is no opposition from any creditors from the time of publication of the dissolution notice up to its filing with the Commission.

The SEC will not approve applications for dissolution from banks, banking and quasi-banking institutions, preneed, insurance and trust companies, non-stock savings and loan associations, pawnshops, and other financial intermediaries, unless accompanied by a favorable recommendation of the appropriate government agency.

Any incorporator, director, trustee, shareholder, or member of the corporation may submit a withdrawal of the request for dissolution within 15 days from the SEC's receipt of the verified request. Should there be no such request within the said period, the Commission shall approve and issue the Certificate of Dissolution to the corporation. The dissolution shall take effect only upon the issuance of the said certificate.

### **Dissolution by shortening corporate term**

Meanwhile, a corporation may proceed with voluntary dissolution by amending its articles of incorporation to shorten its corporate term.

For amendments to the corporate term made more than one year from its proposed expiration, corporations must submit to the CRMD Corporate and Partnership Registration Division or the concerned EO a notarized directors' certificate attesting the approval of by majority of the board and ratified by at least two-thirds of the stockholders representing the outstanding capital stock, including holders of non-voting shares/members and the amended articles of incorporation, among others.

Should the proposed expiration of the corporate term be made less than one year from the amendment, the application must be made with the Financial Analysis and Audit Division of the CRMD or the concerned EO.

In such cases, a corporation must also submit its AFS as of last fiscal year, where applicable; an affidavit by the president and treasurer stating that the dissolution is not prejudicial to the interest of the creditors, and that there is no opposition from any creditors from the time of publication of the notice of the dissolution up to its filing with the Commission; and BIR tax clearance certificate, among others.



The 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 of a certificate of dissolution by the SEC.

### **Involuntary dissolution**

The Commission may *motu proprio*, or upon filing of a verified complaint by any interested party, dissolve a corporation for non-use of their corporate charter and continuous inoperation, as provided under Section 21 of the RCC; upon receipt of a lawful court order dissolving the corporation; and upon finding by final judgment that it procured its incorporation through fraud.

A corporation may also be dissolved by the SEC upon finding by final judgement that it 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; if they were found to have committed or aided in such acts; and if they repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

Additionally, the Commission may revoke the certificate of registration of a corporation if it committed fraud in the procurement of such certificate, and if it failed to file or register its financial statements, GIS, and stock and transfer book or membership book for at least five years, pursuant to Section 6(i) of Presidential Decree No. 902-A.

Interested parties who want to file for a corporation's dissolution must submit to the CRMD and EO a verified complaint or petition; certificate against forum shopping; secretary's certificate authorizing the filing of the complaint, if filed by the corporation; and affidavits and other documentary evidence to support the claim.

The SEC will follow the provisions on investigation proceedings and administrative actions under its 2016 Rules of Procedure in instances where the dissolution was commenced by the Commission *motu proprio*.

Meanwhile, the provisions on adjudicative actions under the Commission's 2006 Rules of Procedure shall be applied in involuntary dissolution instituted through a verified complaint or petition.

The assets after payment of liabilities of a corporation dissolved by final judgment shall be forfeited in favor of the national government, upon petition by the SEC with the appropriate court. Such forfeiture shall be without prejudice to the rights of innocent stockholders and employees for services rendered, and to the application of other penalties or sanctions under the RCC.

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