

LAW ON CORPORATION

TITLE XIV DISSOLUTION

CORPORATION CODE OF THE PHILIPPINES
Sec. 117-122



What are the various methods of dissolving corporations?

Sec. 117. *Methods of dissolution.* – A corporation formed or organized under the provisions of this Code may be dissolved voluntarily or involuntarily.

Voluntary

Requirements where no creditors are affected.

Sec. 118. *Voluntary dissolution where no creditors are affected.* – If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members of a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, after sending such notice to each stockholder or member either by registered mail or by personal delivery at least thirty (30) days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities and Exchange Commission shall thereupon issue the certificate of dissolution.

-When a corporation is contemplating dissolution, it must submit tax return on the income earned by it from the beginning of the year up to the date of its dissolution and pay the corresponding tax due. BPI v. Court of Appeals, 363 SCRA 840 (2001).

Requirements where creditors are affected

Sec. 119. *Voluntary dissolution where creditors are affected.* – Where the dissolution of a corporation may prejudice the rights of any creditor, the petition for dissolution shall be filed with the Securities and Exchange Commission. The petition shall be signed by a majority of its board of directors or trustees or other officers having the management of its affairs, verified by its president or secretary or one of its directors or trustees, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by the affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members at a meeting of its stockholders or members called for that purpose.

If the petition is sufficient in form and substance, the Commission shall, by an order reciting the purpose of the petition, fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) days nor more than sixty (60) days after the entry of the order. Before such date, a copy of the order shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation published in the municipality or city where the principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

Upon five (5) days' notice, given after the date on which the right to file objections as fixed in the order has expired, the Commission shall proceed to hear the petition and try any issue made by the objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation.

Sec. 120. *Dissolution by shortening corporate term.* – A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation of the expiration of the shortened term, as the case may be, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation.

SEC requirements on shortening corporate term

1. Amended article of incorporation shortening its corporate term in accordance with Section 16 of the Code.
2. A director's certificate signed by at least a majority of the directors/trustees and attested by the secretary, certified under oath, stating that the amended articles of incorporation is a true and correct copy as amended by the stockholders representing at least 2/3 of the outstanding capital stock or at least 2/3 of the members in case of non-stock corporations.
3. A certification that no creditor shall be prejudiced by the dissolution.
4. A list of creditors, if any.
5. Consent of the creditors with regard to the dissolution.
6. Affidavit of stockholders/directors/ officers/members regarding any valid claim against the corporation.
7. Latest balance sheet which must be earlier than the date of the meeting of the stockholders approving the amendment of the articles of incorporation.
8. Notice of dissolution.
9. Tax clearance from the BIR.
10. Affidavit of the publisher anent the publication of the notice of the dissolution once a week for three (3) consecutive weeks in two (2) newspapers of general circulation in the Philippines.

The SEC may appoint a receiver to collect such assets and pay the debts of the corporation. It has been held that where corporate directors are guilty of a breach of trust and intracorporate remedy is futile, the minority stockholders may resort to the courts for appropriate relief and, incidentally, as for the appointment of a receiver for the protection of their rights.

Section 121. *Involuntary dissolution.* – A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on the grounds provided by existing laws, rules and regulations.

Rules of Court provides that a *quo warranto* proceedings may be brought against a corporation:

1. When it has offended against a provision of an Act for its creation or renewal.
2. When it has forfeited its privileges and franchises by non-user.
3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, or franchises.
4. When it has misused a right, privilege, or franchise conferred upon it by law, or when it has exercised a right, privilege or franchise in contravention of law.

Section 122. *Corporate liquidation.* – Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

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Section 122. Corporate liquidation. – Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

Methods of Liquidation

1. Liquidation by the directors themselves.
2. Liquidation by a duly appointed receiver.
3. Liquidation by trustees to whom the board of directors had conveyed the corporate assets.

Rules of corporate recovery

The SEC approved the Rules of Procedure on Corporate recovery effective on January 15, 2000.

1. It governs the rules on definition of terms
2. Common provisions
3. Suspension of payments
4. Rehabilitation
5. Dissolution and liquidation

A corporation that has a pending action and which cannot be terminated within the three-year period after dissolution is authorized to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the three-year period.

Distribution of Assets

Distribution among the shareholders of the assets in winding up, formal or informal may be made only to the prior claim of creditors and after all debts have been paid or provided for. This is sometimes expressed in terms of the *trust fund doctrine*.

Liquidation	Rehabilitation
<ul style="list-style-type: none">- Connotes a winding up or settling with creditors and debtors.- It is a winding up of a corporation so that assets are distributed to those entitled to receive them.- It is the process of reducing assets to cash, discharging liabilities and dividing surplus or loss.	<ul style="list-style-type: none">- Connotes a reopening of reorganization.- Contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation in its former position of successful operation and solvency.