

Is Reincorporation Without Prior Liquidation & Dissolution Allowable Under The Corporation Law?

By AMORSOLO V. MENDOZA

APPROXIMATELY, there are about 590 Agricultural Credit Cooperative Associations all over the Philippines. Most of the terms of corporate existence of these associations have expired. However, they desire to continue their operations after the lapse of their terms by reincorporating the associations for another period, without previous liquidation. The authority is based on Commerce Administrative Order No. 15, issued pursuant to Commonwealth Act 133, which amends Act 2508, regarding these Associations, and the pertinent provision of said order reads:

"In all cases of natural dissolution, (by expiration of term), the majority members of the association may, if they so desire, *reincorporate the association* for another period, by submitting new incorporation papers, without thereby suspending its operations."

The provision of Commonwealth Act No. 133 upon which authority to promulgate said order was based, provides:

"The Director of Commerce shall issue, with the approval of the Secretary of Agriculture and Commerce, the necessary orders and rules regarding the *manner in which they shall conduct their affairs* and keep their account books and records, the general manner of investing their funds of all kinds and disposing their property, and

the terms upon which they shall make loans to their members, and likewise the terms upon which they may receive loans and deposits from private or official persons or corporations."

"The opinions rendered and the rules promulgated by the Director of Commerce *in accordance with the preceding paragraph* shall be binding upon, and enforceable in, every Agricultural Credit Cooperative Association and its members and can only be reversed by any competent court upon action brought therein by any member.

Under the facts stated, may this kind of associations reincorporate after the expiration of their terms without prior liquidation? In American jurisdiction, the rule is that a corporation may reincorporate only when there is a law authorizing it. "Like incorporation in the first instance, the right to reincorporate or to reorganize into a new corporation must derive from the law of the corporation's existence, and based on statutory authorization." (15 Fletcher, *Cyclopedia of Corporations*, Par 7209, p 278) A corporation may reincorporate, under the American Law, by taking out a new charter in order to correct errors or defects in the original incorporation, or to enlarge the powers or limit the liabilities of the corporation or to lengthen or

revive the corporate life. In a sense reincorporation is but an amendment of the charter, and generally, under American statutes, there is no new corporation but the company is the same as before the reincorporation.

In our jurisdiction, there is no explicit provision in the Corporation Law, allowing reincorporation. As a matter of fact, there is a provision in the Corporation Law prohibiting the extension of corporate life beyond the term originally fixed in the articles of incorporation. Therefore if the object of reincorporation is to extend the term of the corporation, the same cannot be accomplished without violating said provision. The theory of our law is that after the lapse of corporate life, the corporation is ipso facto dissolved and that there must be liquidation and distribution of the assets remaining, if any. If reincorporation can be legally done under our law with the object of continuing the life of the corporation beyond its original term, the 50 years limitation of corporate existence in the Corporation Law, would be futile, and corporations would exist for any number of years.

The first question to be resolved, therefore, is whether Commerce Administrative Order No. 15 is sufficient authority to empower this kind of association to reincorporate.

It is to be observed that this order was promulgated pursuant to the provisions of Commonwealth Act 133, above quoted, and nowhere in said act is there a provision expressly authorizing the Director of Commerce to allow these associations to reincorporate. Apparently, the authority has been implied from the power of

the Director of Commerce to issue rules and orders to govern *the manner in which said associations shall conduct their affairs*. But it is doubtful if the manner of conducting corporate affairs is sufficiently broad to cover the authority to empower these associations to reincorporate "without thereby suspending their operations." The manner of conducting affairs refers to the internal methods of operations during the existence of the associations. That is to say, if the association is to exist for 50 years, the Director of Commerce may issue regulations within this period to govern the conduct of its affairs. It is clear that after the expiration of its term, the Director of Commerce has no more authority over it than if the corporation has never existed in the first instance. The Director of Commerce may, of course, have the authority to issue rules to govern the manner of liquidating the affairs of the association after the expiration of its term, because this refers to the manner of conducting the affairs of the association. But we believe, he has no power to authorize the association to continue operations after the lapse of corporate term by reincorporating the association, for this does not concern the manner of conducting the affairs of the association. Hence, it is doubtful if said provision in Commerce Administrative Order No. 15, has sufficient basis to stand on. There is no other provision of said Act 133, which even slightly refers to reincorporation, and there is the rule that *inclusio unius est exclusio alterius*.

Granting, nevertheless, that Commonwealth Act No. 133, is broad enough to authorize said provision in Administrative Order

No. 15 will this stand against the rule prohibiting the extension of corporate existence? We doubt it seriously. An administrative regulation altho proceeding from the authority of law cannot, we believe, be in conflict with the mandate of the Corporation Law. The extension of corporate life is something beyond the realm of administrative regulation but must spring from the authority of positive legislation. Therefore, even with Commerce Administrative Order No. 15, this kind of associations has no sufficient authority to reincorporate after the expiration of their terms.

The second question to be resolved is whether even granting that reincorporation is proper for this kind of association in view of Administrative Order No. 15 of the Bureau of Commerce, is there an adequate method to effect such reincorporation which purports to merely continue the old corporation? We believe there is none. When one reincorporates a corporation, he will have to submit new articles of incorporation. He cannot merely amend the term of the old corporation for this is expressly prohibited by Sec. 18 of the Corporation Law. Therefore, he will have to prepare new incorporation papers drawn in accordance with Secs. 6 and 7 of the Corporation Law, as amended. And it is clear that when new articles of incorporation are submitted for registration to the Securities and Exchange Commission, the incorporators are, thereby forming a new

corporation. As a matter of fact, it is doubtful if what is said to be incorporation can be legally performed without forming a new corporation. After the expiration of the term of a corporation, it is dissolved ipso facto, and when new articles of incorporation are submitted to the Securities and Exchange Commission, there is no revival or renewal of the old corporation, but the creation of a new and distinct corporation.

The provision, therefore, of said Commerce Administrative Order No. 15, cannot be interpreted to mean that the association may extend its corporation life beyond its original term by reincorporation. It should be intended to mean that said associations may, upon the expiration of their terms, form new corporations with the assets and liabilities of the old entities, by submitting new incorporation papers. This may be accomplished by forming new corporations upon the expiration of the terms of the associations and conveying all the assets and liabilities of the old to the new corporations, thru proper deeds of transfers, in consideration of shares of the new corporation to be issued to the stockholders of the old association. Unanimity among the stockholders to form and join the new corporation, should, if possible, be secured. However, if any stockholder refuses to join the new corporation, he should be paid the present value of his shares, and at all events, as against a dissenting minority, the transaction should be fair and free from frauds.