

UN special session on world economy

Rich, poor nations buckle down to work

'Mergers' and 'consolidations'

By MAT DEFENSOR

The requirement of 25% subscription to the authorized capital stock and 25% subscription to the corporation Code. The old Corporation Law, Act No. 1459, required 20% subscription of which 25% was to be paid.

According to the report in the *Business Day's* Aug. 27 issue, the commission will formulate guidelines on mergers and consolidations of corporations. The new law contains express provisions on mergers and consolidations, which were absent in the Corporation Law. The provisions on mergers under the old law referred only to railway corporations and to public service corporations. Unlike the new law, it outlined no procedures.

For mergers and consolidation to be effected under the old law, corporations have to go through the circuitous provisions of Sections 25-1/2, 17-1/2 and 18 and follow the procedure set by the Supreme Court in the case of Reyes v. Blouse, GR L-4420, May 19, 1952. While the words "merger" and "consolidation" are used interchangeably, they are not one and the same. In a merger, a corporation is extinguished and absorbed by the other that remains in existence. In a consolidation, both the original corporations cease to exist and a new one is created.

In both cases, the parties are called "constituent corporations." Under the new law, corporations have the express powers to merge and consolidate. An entire new title covering five sections is devoted to the subject.

In brief, the procedure to be followed in merging of corporations is as follows: The board of directors of each corporation which decide to merge or consolidate formulates and approves a plan of merger or consolidation. The plan contains all possible information relevant to the proposal.

The plan is then submitted for approval to the stockholders of the constituent corporations at separate meetings. The vote of stockholders owning at least 2/3 of the outstanding capital stock is necessary for the approval of the plan in the case of a stock corporation, and 2/3 of the members in the case of a non-stock corporation. The plan may be

amended by the board of directors but must be ratified by the stockholders or members by the same vote requirement.

Once the plan is approved, articles of merger or consolidation are executed by each of the constituent corporations, containing statement of the plan, the number of shares outstanding (or the members if non-stock) of each constituent corporation and the number of votes for or against the plan.

The articles are then submitted to the SEC for approval. If it approves, the SEC issues a certificate of merger or consolidation. In case the SEC believes that the proposed merger or consolidation is contrary to existing laws, it schedules a hearing for the constituent corporations to present their side.

Business & the law

Effects of valid merger or consolidation are provided for in Section 80 of the Corporation Code which states:

- "The constituent corporations become one single corporation, which shall be the corporation designated in the plan of merger or consolidation;
- "The separate existence of the corporations that merged or consolidated cases, except that of the surviving consolidated corporation which shall possess all the rights, privileges, immunities and powers, and shall be subject to all the duties and liabilities of a corporation organized under this code;
- "The surviving or consolidated corporation shall possess all the rights, privileges, immunities and franchises of each constituent corporation and all properties, real or personal and all debts, including subscriptions to shares and other choices of action and all other interests of or belonging to or due to each constituent corporation shall be taken or transferred to and vested in such surviving or consolidated corporation, without further act or deed;
- "The surviving or consolidated corporation shall be liable for all the obligations of each constituent corporation, as if such surviving or consolidated corporation had itself incurred such obligations. Any action pending, by or against any of the constituent corporations may be prosecuted by or against the surviving or consolidated corporation. No rights of credits or any lien shall be impaired by such merger or consolidation."

UNITED NATIONS, New York, Aug. 28 (AFP) — The special session of the UN General Assembly will today tackle in earnest the tricky task of reconciling the views of rich and poor countries on how to conduct their dialogue on the future of the world economy.

African and Asian delegates stressed last night that speeches by ministers of leading western countries since the opening of the session last Monday left little doubt that there is still a wide gap between the positions of the two sides.

"The industrial countries are only prepared to negotiate when they are under pressure," a Third World official said, in allusion to the recent easing of the world oil market situation.

However, foreign ministers of the European Economic Community at a formal EEC Council session on Wednesday reaffirmed the Community's resolve to play an active part in the talks, an EEC handbook said.

It said the ministers "reiterated their political will to do their utmost to ensure that the negotiations reach a successful conclusion that will contribute to the revival of the world economy and the restructuring of international economic relations on a more just and equitable basis."

The reaffirmation of the EEC's "political will" was seen as an encouraging sign in some Third World quarters here. But one official remarked that it remained to be seen what practical effects this would have.

African and Asian delegates have said privately that they expect the EEC to receive forthcoming from the United States or Japan, whose position they described as "ambiguous."

Commenting on Monday's speech by US Secretary of State Edmund Muskie, a North African diplomat said: "You can read it which way you want — they are in an electoral campaign."

AD HOC COMMITTEE. While ministers of the 153 UN member-countries are continuing their general debate on a speech-making marathon — an ad hoc committee chaired by Michel Dupuy of Canada, one of the architects of the 1975-77 Paris North-South dialogue, will get down to brass tacks this morning.

The committee will seek to break the deadlock between industrial and developing countries on the procedure and vice-presidents, Bogdan

agenda of the proposed global economic negotiations. And it will try to bridge differences over major points of an international development strategy that would lay down objectives for Third World economic and social development over the next ten years. The committee's Yugoslav and Pakistani members, Bogdan

Crorjic and Niaz Naik, will chair two working groups dealing respectively with the global negotiations and the development strategy.

The assembly's three groups would press ahead with their work in a bid to report back to the assembly next Tuesday, three days before the scheduled final sitting.

Amendments — income tax

Individuals

The filing of individual income tax returns, Section 46 (e) of the National Internal Revenue Code, now provides:

"When to file — The return of the following individuals shall be filed on or before the eighteenth day of March of each year, covering income of the preceding taxable year:

"(a) Residents of the Philippines, whether citizens or aliens whose income have been derived solely from salaries, wages, interests, dividends, allowances, commissions, bonuses, fees, pensions, or any combination thereof.

"(b) The return of all other individuals mentioned above, including non-resident citizens shall be filed on or before the fifteenth day of April of each year covering income of the preceding taxable year."

Corporate Returns

Section 46(b) now reads as follows:

"(b) Fiscal year of corporations — Every corporation (other than partnerships, no matter how created or organized) may designate the last day of any month in the year as the day of the closing of its fiscal year, and shall be entitled to have the tax payable by it computed upon the basis of the net income as so ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated the closing of its fiscal year to the Commissioner of Internal Revenue at any time not less than 30 days prior to the 15th day of April of the year in which its return would be filed or made upon the basis of the calendar year."

Payment & assessment

The provision on the payment and assessment of income tax was amended to read as follows:

"Sec. 51. Payment and assessment of income tax — (a) Payment of the tax imposed by this Title shall be paid at the time the return is filed. Such tax shall be paid by the person subject thereto. If the return is filed after the time prescribed by law (including cases in which an extension of time for filing has been granted under section 47 of this Code), there shall be paid at the time of such filing the tax or installment of the tax which is payable on or before such time if the return had been filed within the time prescribed by law, and the remaining tax interest shall be payable on or before such time at which, and in the amount in which, it would have been payable if the return had been so filed, subject to the payment of interest at 20% per annum from the original due date.

In the case of tramp vessels, the provisions regarding the husbanding agents, and in their absence, the captains thereof are required to file the return herein provided to pay the tax due thereon before their departure. Upon failure of the said agents or captains to file the return as required by law, the Bureau of Customs is hereby authorized to hold the vessel and prevent its departure until proof of payment of the tax is presented and a sufficient bond is filed to answer for the tax due.

(2) Installment payment — When the tax due by the taxpayer exceeds P2,000, the taxpayer other than a corporation taxable under Section 24, self-employed individuals who

may be required to pay estimated income tax under Chapter X, and the withholding agents required to deduct and withhold the tax under Section 53 and 54, all of this Title, may elect to pay the tax in two equal instalments, in which case, the amount of the tax assessed at the time the return is filed and the second instalment, on or before the 18th day of July following the closing of the calendar year, if any instalment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid becomes due and payable together with the delinquency penalty.

(4) Interest on deficiency — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner and shall be collected as a part of the tax at the rate of 20% per annum from the original due date prescribed for the payment of the tax, (or, if the tax is paid in instalment from the date prescribed for the payment of the tax, the date when the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on the

deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

"(e) Addition to the tax in case of nonpayment — (1) Tax shown on the return. — Where the amount determined by the taxpayer as the tax imposed by this Title or any installment thereof, or the amount of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of 20% per annum from the date prescribed for its payment until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

(2) Deficiency — Where a deficiency, or any interest assessed in connection therewith under paragraph (e) of this section, is assessed in addition to the taxes provided for in Section 72 of this Code is not paid in full within 30 days from the date of assessment, or if the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount as part of the tax interest at the rate of 20% per annum from the date of such notice and demand until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

(3) Surcharge — If any amount of tax shown on the return is not paid in full by the date prescribed for its payment under paragraph (a) of this Section, or any amount of deficiency, and any interest assessed thereon, is not paid in full within the period prescribed in the assessment notice and demand required under paragraph (b) of this Section, there shall be collected in addition to the interest prescribed herein in the amount of the tax, as a part of the tax a surcharge of 10% of the amount of tax unpaid.

(Presidential Decree No. 1708)

Tax Talk

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