I. GENERAL PROVISIONS

CORPORATION
An artificial being created by operation of law having the right of succession, and the powers, attributes and properties expressly authorized by law and incident to its existence. (Sec. 2)

ATTIBUTES OF A CORPORATION
1. It is an artificial being.
2. It is created by operation of law.
3. It enjoys the right of succession.
4. It has the powers, attributes and properties expressly authorized by law or incident to its existence.

THEORIES ON THE FORMATION OF A CORPORATION:
1. Concession Theory - espouses that a corporation is an artificial creature without any existence until it has received the imprimatur of the state acting according to law, through the SEC. (Tayag vs. Benguet Consolidated, Inc., 26 SCRA 242)
2. Theory of corporate enterprise or economic unit - espouses that the corporation is not merely an artificial being, but more of an aggregation of persons doing business, or an underlying business unit. (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)
3. Genossenschaft Theory - treats a corporation as “ the reality of the group as a social and legal entity, independent of state recognition and concession”. (Tayag vs. Benguet Consolidated, Inc., 26 SCRA 242)

DOCTRINE OF SEPARATE PERSONALITY
A corporation has a juridical personality separate and distinct from that of its stockholders or members.

1. Liability for acts or contracts - obligations incurred by a corporation, acting through its authorized agents are its sole liabilities. (Creese vs. CA, 93 SCRA 483)
2. Right to bring actions - may bring civil and criminal actions in its own name in the same manner as natural persons. (Art. 46, Civil Code)
3. Right to acquire and possess property - property conveyed to or acquired by the corporation is in law the property of the corporation itself as a distinct legal entity and not that of the stockholders or members. (Art. 44(3), Civil Code)
4. Acquisition of court of jurisdiction - service of summons may be made on the president, general manager, corporate secretary, treasurer or in-house counsel. (Sec. 11, Rule 14, Rules of Court).
5. Changes in individual membership - remains unchanged and unaffected in its identity by changes in its individual membership. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)
6. Entitlement to constitutional guaranties:
a. Due process (Albert vs. University Publishing, 13 SCRA 84)
b. Equal protection of the law (Smith, Bell & Co. vs. Natividad, 40 Phil. 136)
c. Protection against unreasonable searches and seizures. (Stonehill vs. Diokno, 20 SCRA 383)
A corporation is not entitled to invoke the right against self-incrimination. (Bataan Shipyard vs. PCGG)
7. Liability for torts - a corporation is liable whenever a tortuous act is committed by an officer or agent under the express
direction or authority of the stockholders or members acting as a body, or, generally, from the directors as the governing body. (PNB vs. CA, 83 SCRA 237)

8. A corporation is not entitled to moral damages because it has no feelings, no emotions, no senses. (ABS-CBN vs. Court of Appeals)

9. Liability for Crimes – since a corporation is a mere legal fiction, it cannot be held liable for a crime committed by its officers, since it does not have the essential element of malice; in such case the responsible officers would be criminally liable. (People vs. Tan Boon Kong, 54 Phil. 607)

DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY

Requires the court to see through the protective shroud which exempts its stockholders from liabilities that they ordinarily would be subject to, or distinguishes a corporation from a seemingly separate one, were it not for the existing corporate fiction. (Lim vs. CA, 323 SCRA 102)

Rules: (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)
1. has only a res judicata effect
2. to prevent wrong or fraud and not available for other purposes
3. judicial prerogative only
4. must be with necessary and with factual basis

When directors and officers are unable to compensate a party for a personal obligation, it is far-fetched to allege that a corporation is perpetuating fraud or promoting injustice, and thereby could be held liable therefor by piercing the corporate veil. (Francisco Motors, Inc. vs. CA, G.R. No. 100812, June 25, 1999)

2. Alter Ego Cases - when the corporate entity is merely a farce since the corporation is an alter ego, business conduit or instrumentality of a person or another corporation.

Rules:
1. It applies because of the direct violation of a central corporate law principle of separating ownership from management.
2. If the stockholders do not respect the separate entity, others cannot also be expected to be bound by the separate juridical entity.
3. Applies even when there are no monetary claims sought to be enforced.

3. Equity cases - when piercing the corporate fiction is necessary to achieve justice or equity.

INSTRUMENTALITY / ALTER EGO RULE

Where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere instrumentality or adjunct of the other, the fiction of the corporate entity of the “instrumentality” may be disregarded.

Requisites:
1. There must be control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy, and business practice in respect to the transaction attacked so that the
corporate entity as to this
transaction had, at that time, no
separate mind, will or existence
of its own (control);
2. Such control must
have been used by the defendant
to commit fraud or wrong, to
perpetrate the violation of a
statutory or other positive duty,
or dishonest and unjust act in
contravention of plaintiff’s legal
rights (breach of duty); and
3. Such control and
breach of duty must proximately
cause the injury to the plaintiff.
(Concept Builders, Inc. vs. NLRC,
257 SCRA, 149)

<table>
<thead>
<tr>
<th>Partnership</th>
<th>Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Creation</td>
<td>Created by law or by operation of law</td>
</tr>
<tr>
<td>2. Number of incorporators</td>
<td>Requires at least five incorporators (except a corporation sole)</td>
</tr>
<tr>
<td>3. Commencement of juridical personality</td>
<td>Acquires juridical personality from the date of issuance of the certificate of incorporation by the Securities and Exchange Commission</td>
</tr>
<tr>
<td>4. Powers</td>
<td>Corporation can exercise only the powers expressly granted by law or implied from those granted or incident to its existence</td>
</tr>
<tr>
<td>5. Management</td>
<td>The power to do business and manage its affairs is vested in the board of directors or trustees</td>
</tr>
<tr>
<td>6. Effect of mismanagement</td>
<td>A partner as such can sue a co-partner who mismanages</td>
</tr>
</tbody>
</table>

A partner as such can sue a co-partner who mismanages. The suit against a member of the board of directors or trustees who mismanages must be in the name of the corporation.

7. Right of succession
- Partnership has no right of succession
- Corporation has right of succession

8. Extent of liability to third persons
- Partners are liable personally and subsidiarily (sometimes solidarily) for partnership debts to third persons
- Stockholders are liable only to the extent of the shares subscribed by them

9. Transferability of interest
- Partner cannot transfer his interest in the partnership so as to make the transferee a partner without the unanimous consent of all the existing partners because the partnership is based on the principle of delectus personarum
- Stockholder has generally the right to transfer his shares without prior consent of the other stockholders because corporation is not based on this principle

10. Term of existence
- Partnership may be established for any period of time stipulated by the partners
- Corporation may not be formed for a term in excess of 50 years extendible to not more than 50 years in any one instance

11. Firm name
- Limited partnership is required by law to add the word “Ltd.” To its name
- Corporation may adopt any name provided it is not the same as or similar to any registered firm name

12. Dissolution
- may be dissolved at any time by any or all of the partners
- can only be dissolved with the consent of the State

13. Governing Law
- governed by the Civil Code
- governed by the Corporation Code
ADVANTAGES VIS-À-VIS DISADVANTAGES OF A BUSINESS CORPORATION (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)

<table>
<thead>
<tr>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. has a legal capacity to act and contract as a distinct unit in its own name</td>
<td>1. complicated in formation and management</td>
</tr>
<tr>
<td>2. continuity of existence</td>
<td>2. high cost of formation and operations</td>
</tr>
<tr>
<td>3. its credit is strengthened by its continuity of existence</td>
<td>3. its credit is weakened by the limited liability feature</td>
</tr>
<tr>
<td>4. centralized management in the board of directors.</td>
<td>4. lack of personal element.</td>
</tr>
<tr>
<td>5. its creation, management, organization and dissolution are standardized as they are governed under one general incorporation law.</td>
<td>5. greater degree of governmental supervision</td>
</tr>
<tr>
<td>6. limited liability</td>
<td>6. management and control are separated from ownership.</td>
</tr>
<tr>
<td>7. shareholders are not the general agents of the business</td>
<td>7. Stockholders have little voice in the conduct of the business.</td>
</tr>
<tr>
<td>8. transferability of shares</td>
<td></td>
</tr>
</tbody>
</table>

The special right or privilege conferred upon an existing corporation to the business for which it was created. Example, use of the streets of a municipality to lay pipes or tracks, or operation of a messenger and express delivery service.

<table>
<thead>
<tr>
<th>PRIMARY</th>
<th>SECONDARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refers to the franchise of being or existing as a corporation</td>
<td>Refers to the exercise of rights. Example: right of eminent domain</td>
</tr>
<tr>
<td>Vested in the individuals who compose the corporation</td>
<td>Vested in the corporation after its incorporation and not upon the individuals who compose the corporation.</td>
</tr>
<tr>
<td>Cannot be sold or transferred because it is inseparable from the corporation itself.</td>
<td>May be sold or transferred; subject to sale on execution, subject to levy.</td>
</tr>
</tbody>
</table>

CLASSES OF CORPORATION
1. AS TO ORGANIZERS
   a. public - by State only; and
   b. private - by private persons alone or with the State.
2. AS TO FUNCTIONS
   a. public - government of a portion of the territory; and
   b. private - usually for profit-making
3. AS TO GOVERNING LAW
   a. public - Special Laws; and
   b. private - Law on Private Corporations
4. AS TO LEGAL STATUS
   a. De jure corporation - organized in accordance with the requirements of law.
   b. De facto corporation - organized with a colorable compliance with the requirements of a valid law. Its existence cannot be inquired collaterally. Such inquiry may be made by the Solicitor General in a quo warranto proceeding. (Sec. 20)
      • Requisites:
         1. The existence of a valid law under which it may be incorporated;
2. A bona fide attempt in good faith to incorporate under such law;
3. Actual use or exercise in good faith of corporate powers; and
4. Issuance of a certificate of incorporation by the SEC as a minimum requirement of continued good faith.

The only difference between a de facto corporation and a de jure corporation is that a de jure corporation can successfully resist a suit by a state brought to challenge its existence; a de facto corporation cannot sustain its right to exist.

c. Corporation by estoppel - group of persons that assumes to act as a corporation knowing it to be without authority to do so, and enters into a transaction with a third person on the strength of such appearance. It cannot be permitted to deny its existence in an action under said transaction. (Sec. 21) It is neither de jure nor de facto.

d. Corporation by prescription - one which has exercised corporate powers for an indefinite period without interference on the part of the sovereign power, e.g. Roman Catholic Church.

5. AS TO EXISTENCE OF SHARES OF STOCK
a. Stock corporation - a corporation (1) whose capital stock is divided into shares and (2) which is authorized to distribute to shareholders dividends or allotments of the surplus profits on the basis of the shares held. (Sec. 3)
b. Non-stock corporation - does not issue stocks nor distribute dividends to their members.

6. AS TO RELATIONSHIP OF MANAGEMENT AND CONTROL
a. Holding Corporation - it is one which controls another as a subsidiary by the power to elect management. It is one that holds stocks in other companies for purposes of control rather than for mere investment.
b. Subsidiary Corporation - one which is so related to another corporation that the majority of its directors can be elected directly or indirectly by such other corporation. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)
c. Affiliates - company which is subject to common control of a mother holding company and operated as part of the system.
d. Parent and Subsidiary Corporation - separate entities with power to contract with each other. The board of directors of the parent company determines its representatives to attend and vote in the stockholder’s meeting of its subsidiary. The stockholders of the parent company demand representation in the board meetings of its subsidiary.

7. AS TO PLACE OF INCORPORATION
a. Domestic corporation - a corporation formed, organized, or existing under Philippine laws.
b. Foreign corporation - a corporation formed, organized, or existing under any laws other than those of the Philippines. (Sec. 123)

ONE-MAN CORPORATION
A corporation wherein all or substantially all of the stocks is held directly or indirectly by one person. However, it should still follow the formal requirements of a corporation (e.g. number of incorporators, board of directors composed of stockholders owning shares in a nominal capacity) in order to validly enjoy the attributes of the corporation, so as to avoid the application of the doctrine of piercing the veil of corporate entity.

COMMERCIAL LAW COMMITTEE
- CHAIRPERSON: Garny Luisa Alegre  - ASST. CHAIRPERSON: Jayson O’S Ramos  - EDP: Beatrix I. Ramos  - SUBJECT HEADS:
  - Marichelle De Vera (Negotiable Instruments Law); Jose Fernando Llave (Insurance); Aldrich Del Rosario (Transportation Laws);
  - Shirley Mae Tabangcura, Bon Vincent Agustin (Corporation Law); Karl Steven Co (Special Laws); John Lemuel Gatdula (Banking Laws); Robespierre Cu (Law on Intellectual Property)
TESTS TO DETERMINE NATIONALITY OF CORPORATIONS
1. INCORPORATION TEST - determined by the state of incorporation, regardless of the nationality of the stockholders.
2. DOMICILE TEST - determined by the state where it is domiciled.

The domicile of a corporation is the place fixed by the law creating or recognizing it; in the absence thereof, it shall be understood to be the place where its legal representation is established or where it exercise its principal functions. (Art. 51, NCC)

3. CONTROL TEST - determined by the nationality of the controlling stockholders or members. This test is applied in times of war. Also known as the WARTIME TEST.

1. A corporation organized under the laws of the Philippines of which at least 60% of the outstanding capital stock entitled to vote is owned and held by Filipino citizens;
2. A foreign corporation licensed as doing business in the Philippines of which 100% of the outstanding capital stock entitled to vote is wholly owned by Filipinos; and

However, it provides that where a corporation and its non-Filipino stockholders own stocks in a SEC-registered enterprise, at least 60% of the capital stock outstanding and entitled to vote of both corporations and at least 60% of the members of the board of directors of both corporations must be Filipino citizens (double 60% rule).

NOTE: The law applies the control test both with respect to the ownership of shares entitled to vote and the membership in the board of directors.

OTHER COMPONENTS
a. Promoter - A person who, acting alone or with others, takes initiative in founding and organizing the business or enterprise of the issuer and receives consideration therefor.

He is an agent of the incorporators but not of the corporation.

Contracts by the promoter for and in behalf of a proposed corporation generally bind only him, subject to and to the extent of his representations, and not the corporation, unless and until signed the Articles and acknowledged the same before a notary public. They have no powers beyond those vested in them by the statute.

Qualifications:
1. natural person;
2. not less than 5 but not more than 15;
3. of legal age;
4. majority must be residents of the Philippines; and
5. must own or subscribe to at least one share.

(See 10)

GENERAL RULE: Only natural persons can be incorporators.

EXCEPTION: When otherwise allowed by law, e.g., Rural Banks Act of 1992, where incorporated cooperatives are allowed to be incorporators of rural banks. Note: However, it is undeniable that corporations can be corporators.

THE TESTS TO DETERMINE NATIONALITY OF CORPORATIONS ARE-

<table>
<thead>
<tr>
<th>INCORPORATORS</th>
<th>CORPORATORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>signatory to the Articles of</td>
<td>stockholder (stock corporation) or member (non-stock corporation)</td>
</tr>
<tr>
<td>Incorporation</td>
<td></td>
</tr>
<tr>
<td>fait accompli; accomplished</td>
<td>they may cease to be such if they subsequently lose their qualifications</td>
</tr>
<tr>
<td>fact (the Articles of</td>
<td></td>
</tr>
<tr>
<td>Incorporation cannot be</td>
<td></td>
</tr>
<tr>
<td>amended to replace them)</td>
<td></td>
</tr>
<tr>
<td>number is limited to 5-15</td>
<td>no restriction as to number</td>
</tr>
<tr>
<td>must have contractual capacity</td>
<td>may be such through a guardian</td>
</tr>
</tbody>
</table>

Note: However, it is undeniable that corporations can be corporators.

COMPOSITION OF A CORPORATION

a. Corporators - those who compose a corporation, whether as stockholders or members
b. Incorporators - They are those mentioned in the Articles of Incorporation as originally forming and composing the corporation, having

2005 CENTRALIZED BAR OPERATIONS EXECUTIVE COMMITTEE AND SUBJECT

CHAIRPERSONS
Marcel Abarentos (Over-all Chairperson), Ronald Jalmanzar (Over-all Vice Chair), Yolanda Tolentino (VC-Acads), Jennifer Ang (VC-Secretariat), Joy Inductivo (VC-Finance), Elaine Masukat (VC-EDP), Anna Margarita Eres (VC-Logistics) Jonathan

Jinky Ann Uy (Remedial Law), Jackie Lou Bautista (Legal Ethics)
after these contracts are ratified, expressly or impliedly, by its Board of Directors/Trustees.
b. Subscriber - persons who have agreed to take and pay for original, unissued shares of a corporation formed or to be formed.
c. Underwriter - a person who guarantees on a firm commitment and/or declared best effort basis the distribution and sale of securities of any kind by another company. (Sec. 3 R.A. 8799)

CLASSIFICATION OF SHARES
1. COMMON SHARES
   The basic class of stock ordinarily and usually issued without extraordinary rights and privileges, and the owners thereof are entitled to a pro rata share in the profits of the corporation and in its assets upon dissolution and, likewise, in the management of its affairs without preference or advantage whatsoever.
2. PREFERRED SHARES
   Those issued with par value, and preferences either with respect to (a) assets after dissolution, (b) distribution of dividends, or both, and other preferences.
   **Limitations:**
   a. If deprived of voting rights, it shall still be entitled to vote on matters enumerated in Section 6 paragraph 6.
   b. Preference must not be violative of the Code.
   c. May be issued only with a stated par value.
   d. The board of directors may fix the terms and conditions only when so authorized by the articles of incorporation and such terms and conditions shall be effective upon filing a certificate thereof with the SEC.
3. REDEEMABLE SHARES
   Those which permit the issuing corporation to redeem or purchase its own shares.
   **Limitations:**
   a. Redeemable shares may be issued only when expressly provided for in the articles of incorporation;
   b. The terms and conditions affecting said shares must be stated both in the articles of incorporation and in the certificates of stock representing such shares;
   c. Redeemable shares may be redeemed, regardless of the existence of unrestricted retained earnings (Sec. 8), provided that the corporation has, after such redemption, sufficient assets in its books to cover debts and liabilities inclusive of capital stock.
4. TREASURY SHARES
   Shares that have been earlier issued as fully paid and have thereafter been acquired by the corporation by purchase, donation, and redemption or through some lawful means. (Sec. 9)
   **If purchased from stockholders:** The transaction in effect is a return to the stockholders of the value of their investment in the company and a reversion of the shares to the corporation. The corporation must have surplus profits with which to buy the shares so that the transaction will not cause an impairment of the capital.
   **If acquired by donation from the stockholders:** The act would amount to a surrender of their stock without getting back their investments that are instead, voluntarily given to the corporation.
   Treasury shares need not be sold at par or issued value but may be sold at the best price obtainable, provided it is reasonable. When treasury shares are sold below its par or issued value, there can be no watering of stock because such watering contemplates an original issuance of shares.
   Treasury shares have no voting rights as long as they remain in treasury (uncalled and subject to reissue).
   **Reason:** A corporation cannot in any proper sense be a stockholder in itself and equal distribution of voting rights will be effectively lost.
   Neither are treasury shares entitled to dividends or assets because dividends cannot be declared by a corporation to itself.
5. FOUNDERS' SHARE
   Shares issued to organizers and promoters of a corporation in
consideration of some supposed right or property.

Shares classified as such in the articles of incorporation which may be given special preference in voting rights and dividend payments. But if an exclusive right to vote and be voted for as director is granted, this privilege is subject to approval by the SEC, and cannot exceed 5 years from the date of approval.

6. VOTING SHARES

Shares with a right to vote.

7. NON-VOTING SHARES

Shares without right to vote.

The law only authorizes the denial of voting rights in the case of redeemable shares and preferred shares, provided that there shall always be a class or series of shares which have complete voting rights.

These redeemable and preferred shares, when such voting rights are denied, shall nevertheless be entitled to vote on the following fundamental matters: Key: A²S²MID

a. amendment of Articles of Incorporation
b. adoption and amendment of by-laws;
c. sale or disposition of all or substantially all of corporate property;
d. incurring, creating or increasing bonded indebtedness;
e. increase or decrease of capital stock
f. merger or consolidation of capital stock
g. investments of corporate funds in another corporation or another business purpose; and
h. corporate dissolution

8. ESCROW STOCK

Deposited with a third person to be delivered to a stockholder or his assign after complying with certain conditions, usually payment of full subscription price.

9. OVER-ISSUED STOCK

Stock issued in excess of the authorized capital stock. It is also known as spurious stock. Its issuance is considered null and void.

10. WATERED STOCK

A stock issued not in exchange for its equivalent either in cash, property, share, stock dividends, or services.

“Water” in the stock represents the difference between the fair market value at the time of the issuance of the stock and the par or issued value of said stock. Both par and no par stocks can thus be watered stocks.

It includes stocks:
a. Issued without consideration.
b. Issued as fully paid when the corporation has received a lesser sum of money than its par or issued value.
c. Issued for a consideration other than actual cash, the fair valuation of which is less than its par or issued value.
d. Issued as stock dividend when there are no sufficient retained earnings to justify it.

11. PAR VALUE SHARES

Shares with a value fixed in the certificates of stock and the articles of incorporation.

12. NO PAR VALUE SHARES

Shares having no par value but have issued value stated in the certificate or articles of incorporation.

Limitations:
a. No par value shares cannot have an issued price of less than P5.00;
b. The entire consideration for its issuance constitutes capital so that no part of it should be distributed as dividends;
c. They cannot be issued as preferred stocks;
d. They cannot be issued by banks, trust companies, insurance companies, public utilities and building and loan association;
e. The articles of incorporation must state the fact that it issued no par value shares as well as the number of said shares;
f. Once issued, they are deemed fully paid and non-assessable. (Sec. 6)

13. STREET CERTIFICATE

A stock certificate endorsed by the registered holder in blank and transferee
can command its transfer to his name from the issuing corporation.

14. CONVERTIBLE SHARE
A share that is changeable by the stockholder from one class to another at a certain price and within a certain period.

15. FRACTIONAL SHARE
A share with a value of less than one full share.

DOCTRINE OF EQUALITY OF SHARES
Where the articles of incorporation do not provide for any distinction of the shares of stock, all shares issued by the corporation are presumed to be equal and enjoy the same rights and privileges and are also subject to the same liabilities. (Sec. 6)

DEFINITION OF TERMS:
1. CAPITAL STOCK OR LEGAL STOCK OR STATED CAPITAL - The amount fixed in the corporate charter to be subscribed and paid in cash, kind or property at the organization of the corporation or afterwards and upon which the corporation is to conduct its operation.
2. CAPITAL - The value of the actual property or estate of the corporation whether in money or property. Its net worth (or stockholder’s equity) is its assets less liabilities.
3. AUTHORIZED CAPITAL STOCK - The capital stock divided into shares with par values. Par value stocks are required in the case of corporations issuing preferred shares, as well as in the case of banks, trust companies, insurance companies, building and loan associations, and public utilities. It is the total amount in the charter, which may be raised by the corporation for its operations.
4. SUBSCRIBED CAPITAL STOCK - The total amount of the capital stock subscribed whether fully paid or not.
5. OUTSTANDING CAPITAL STOCK - The portion of the capital stock issued to subscribers except treasury stocks.
6. STATED CAPITAL - The capital stock divided into no par value shares.
7. PAID-UP CAPITAL - The amount paid by the stockholders on subscriptions from unissued shares of the corporation.

II. INCORPORATION AND ORGANIZATION

STEPS IN THE CREATION OF A CORPORATION

a. PROMOTION - a number of business operations peculiar to the commercial world by which a company is generally brought into existence. (18 Am. Jur. 2d 647, cited in de Leon p. 116)
b. INCORPORATION
Steps:
1. Drafting and execution of Articles of Incorporation by the incorporators and other documents required for registration of the corporation
2. Filing with the SEC of the articles of incorporation
3. Payment of filing and publication fees
4. Issuance by the SEC of the certificate of incorporation

c. FORMAL ORGANIZATION AND COMMENCEMENT OF THE TRANSACTION OF BUSINESS
These are conditions subsequent, which may be satisfied by substantial compliance in order that a corporation may legally continue as such.

Formal organization:
1. Adoption of By-Laws and filing of the same with the SEC;
2. Election of board of directors/trustees, and officers;
3. Establishment of principal office;
4. Providing for subscription and payment of capital stock.

TERM OF CORPORATE EXISTENCE

Limitations:

a. The term shall not exceed 50 years in any one instance.
b. The amendment is effected before the expiration of corporate term, for after dissolution by expiration of the corporate term there is no more corporate life to extend.
c. The extension cannot be made earlier than 5 years prior to the expiration date unless there are justifiable reasons as determined by the SEC.

CAPITAL STOCK REQUIREMENT

General Rule: No minimum authorized capital stock as long as the paid-up capital is not less than P5,000.00

Except:

a. as provided for by special law
1. Domestic Insurance Corporations - P500T capital stock; 50% subscribed and the balance payable in 12 months.
2. Private Development Banks
   - P4M for class A
   - P2M for class B
   - P1M for class C
3. Investment Companies - paid up at least P500T
4. Savings and Loan Corporation - to be fixed by the Monetary Board, but not less than P100T
5. Financing Companies
   Paid up: - P2M for Metro Manila
   - P1M for Cities
   - P500T for others
b. provided that at least 25% of the authorized capital stock has been subscribed and at least 25% of the total subscription must be paid-up

FILIPINO PERCENTAGE OWNERSHIP REQUIREMENT

NO FOREIGN EQUITY

1. Mass Media except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 04 May 1994)
   2. Practice of all professions
      a) Engineering
      b) Medicine and Allied Professions
      c) Accountancy
      d) Architecture
      e) Criminology
      f) Chemistry
      g) Customs Brokerage
      h) Environmental Planning
      i) Forestry
      j) Geology
      k) Interior Design
      l) Landscape Architecture
      m) Law
      n) Librarianship
      o) Marine Deck Officers
      p) Marine Engine Officers
      q) Master Plumbing
      r) Sugar Technology
      s) Social Work
t) Teaching
u) Agriculture
v) Fisheries
3. Retail trade enterprises with paid-up capital of less than US$2,500,000 (Sec. 5 of RA 8762)
4. Cooperatives (Ch. III, Art. 26 of RA 6938)
5. Private Security Agencies (Sec. 4 of RA 5-487)
6. Small-scale Mining (Sec. 3 of RA 7076)
7. Utilization of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons (Art. XII, Sec. 2 of the Constitution)
8. Ownership, operation and management of cockpits (Sec. 5 of PD 449)
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution)
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines)
11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA 7183)

Up to Twenty Percent (20%) Foreign Equity

12. Private radio communications network (RA 3846)

Up to Twenty-Five Percent (25%) Foreign Equity

13. Private recruitment, whether for local or overseas employment (Art. 27 of PD 442)
14. Contracts for the construction and repair of locally-funded public works (Sec. 1 of CA 541, LOI 630) except:
   a) infrastructure/development projects covered in RA 7718; and

2005 CENTRALIZED BAR OPERATIONS EXECUTIVE COMMITTEE AND SUBJECT CHAIRPERSONS

Maricel Abarentos (Over-all Chairperson), Ronald Jalmanzar (Over-all Vice Chair), Yolanda Tolentino (VC-Acads), Jennifer Ang (VC-Secretariat), Joy Inductivo (VC-Finance), Elaine Masukat (VC-EDP), Anna Margarita Eres (VC-Logistics) Jonathan Mangundayao (Political Law), Francis Benedict Reotutar (Labor Law), Romuald Padilla (Civil Law), Charmaine Torres (Taxation Law), Mark David Martinez (Criminal Law), Garny Luisa Alegre (Commercial Law), Jinky Ann Uy (Remedial Law), Jackie Lou Bautista (Legal Ethics)
b) projects which are foreign funded or assisted and required to undergo international competitive bidding (Sec. 2a of RA 7718)

15. Contracts for the construction of defense-related structures (Sec. 1 of CA 541)

Up to Thirty Percent (30%) Foreign Equity

16. Advertising (Art. XVI, Sec. 11 of the Constitution)

Up to Forty Percent (40%) Foreign Equity

17. Exploration, development and utilization of natural resources (Art. XII, Sec. 2 of the Constitution)

18. Ownership of private lands (Art. XII, Sec. 7 of the Constitution; Ch. 5, Sec. 22 of CA 141; Sec. 4 of RA 9182)

19. Operation and management of public utilities (Art. XII, Sec. 11 of the Constitution; Sec. 16 of CA 146)

20. Ownership/establishment and administration of educational institutions (Art. XIV, Sec. 4 of the Constitution)

21. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof (Sec. 5 of PD 194; Sec. 15 of RA 8762)

22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Sec. 1 of RA 5183)

23. Project Proponent and Facility Operator of a BOT project requiring a public utilities franchise (Art. XII, Sec. 11 of the Constitution; Sec. 2a of RA 7718)

24. Operation of deep sea commercial fishing vessels (Sec. 27 of RA 8550)

25. Adjustment Companies (Sec. 323 of PD 612 as amended by PD 1814)

26. Ownership of condominium units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation (Sec. 5 of RA 4726)

Up to Sixty Percent (60%) Foreign Equity

27. Financing companies regulated by the Securities and Exchange Commission (Sec. 6 of RA 5980 as amended by RA 8556)

28. Investment houses regulated by the SEC (Sec. 5 of PD 129 as amended by RA 8366)

ARTICLES OF INCORPORATION (AI)

The document prepared by the persons establishing a corporation and filed with the SEC containing the matters required by the Code.

Significance:
1. The issuance of a certificate of incorporation signals the birth of the corporation’s juridical personality;
2. It is an essential requirement for the existence of a corporation, even a de facto one.

Contents: (Sec. 14)
1. name of corporation;
2. purpose/s, indicating the primary and secondary purposes;
3. place of principal office;
4. term of existence;
5. names, citizenship and residences of incorporators;
6. number, names, citizenship and residences of directors or trustees;
7. names, nationalities, and residences of the persons who shall act as directors or trustees until the first regular ones are elected and qualified;
8. if a stock corporation, the amount of its authorized capital stock, number of shares and in case the shares are par value shares, the par value of each share;
9. names, residences, number of shares, and the amounts subscribed and paid by each of the original subscribers which shall not be less than 25% of authorized capital stock;
10. if non-stock, the amount of capital, the names, residences, and amount

COMMERCIAL LAW COMMITTEE

- CHAIRPERSON: Garny Luisa Alegre • ASSOC. CHAIRPERSON: Jayson O’S Ramos • EDP: Beatrix I. Ramos • SUBJECT HEADS:
  - Marichelle De Vera (Negotiable Instruments Law); Jose Fernando Llave (Insurance); Aldrich Del Rosario (Transportation Laws);
  - Shirley Mae Tabangcura, Bon Vincent Agustin (Corporation Law); Karl Steven Co (Special Laws); John Lemuel Gatdula (Banking Laws); Robespierre Co (Law on Intellectual Property)
paid by each contributor, which shall not be less than 25% of total subscription;
11. name of treasurer elected by subscribers; and
12. if the corporation engages in a nationalized industry, a statement that no transfer of stock will be allowed if it will reduce the stock ownership of Filipinos to a percentage below the required legal minimum.

AMENDMENT OF ARTICLES OF INCORPORATION

Limitations:
1. The amendment of any provision or matters stated in the articles of incorporation is not allowed when it will be contrary to the provisions or requirement prescribed by the Code or by special law or changes any provision in the articles of incorporation stating an accomplished fact
2. It must be for legitimate purposes
3. It must be approved by the required vote of the board of directors or trustees and the stockholders or members
4. The original articles and amended articles together must contain all provisions required by law to be set out in the articles of incorporation
5. Such articles, as amended, must be indicated by underscoring the changes made, and a copy thereof duly certified under oath by the corporate secretary and a majority of the directors or trustees stating that the amendments have been duly approved by the required vote of the stockholders or members must be submitted to the SEC
6. The amendments shall take effect only upon their approval by the SEC
7. If the corporation is governed by special law, the amendments must be accompanied by a favorable recommendation of the appropriate government agency.

NON-AMENDABLE FACTS IN THE ARTICLES OF INCORPORATION

Those matters referring to facts existing as of the date of the incorporation such as:
1. Names of incorporators;
2. Names of original subscribers to the capital stock of the corporation and their subscribed and paid up capital;
3. Treasurer elected by the original subscribers;
4. Members who contributed to the initial capital of a non-stock corporation;
5. Date and place of execution of the articles of incorporation;
6. Witnesses to the signing and acknowledgment of the articles.

GROUNDS FOR REJECTION OF ARTICLES OF INCORPORATION OR AMENDMENT THERETO

1. The articles or its amendment is not substantially in accordance with the form prescribed
2. The purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations
3. The Treasurer’s Affidavit concerning the amount of capital stock subscribed and/or paid is false
4. The required percentage of ownership of the capital stock to be owned by Filipino citizens has not been complied with

GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE OF REGISTRATION (Pres. Decree No. 902-A)

1. Fraud in procuring its certificate of incorporation
2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of, or damage to, the general public
3. Refusal to comply with or defiance of a lawful order of the SEC restraining the commission of acts which would amount to a grave violation of its franchise
4. Continuous inoperation for a period of at least 5 years
5. Failure to file the by-laws within the required period
6. Failure to file required reports

III. BOARD OF DIRECTORS/TRUSTEES

Qualifications:

Chairpersons
Maricel Abarentos (Over-all Chairperson), Ronald Jalmanzar (Over-all Vice Chair), Yolanda Tolentino (VC-Acads), Jennifer Ang (VC-Secretariat), Joy Inductivo (VC-Finance), Elaine Masukat (VC-EDP), Anna Margarita Eres (VC-Logistics) Jonathan Mangundayao (Political Law), Francis Benedict Reotutar (Labor Law), Romuald Padilla (Civil Law), Charmaine Torres (Taxation Law), Mark David Martinez (Criminal Law), Garny Luisa Alegre (Commercial Law), Jinky Ann Uy (Remedial Law), Jackie Lou Bautista (Legal Ethics)
1. For a stock corporation, ownership of at least 1 share capital stock of the corporation in his own name, and if he ceases to own at least one share in his own name, he automatically ceases to be a director. (Sec. 23) For a non-stock corporation, only members of the corporation can be elected to seat in the Board of Trustees.

In order to be eligible as a director, what is material is the legal title to, not beneficial ownership of the stocks appearing on the books of the corporation.

2. A majority of the directors/trustees must be residents of the Philippines. (Sec. 23)

3. He must not have been convicted by final judgment of an offense punishable by imprisonment for a period exceeding 6 years or a violation of the Corporation Code, committed within five years from the date of his election. (Sec. 27)

4. Only natural persons can be elected directors/trustees.

In case of corporate stockholders or members, their representation in the board can be achieved by making their individual representatives trustees of the shares or membership to make them stockholders/members of record.

5. Other qualifications as may be prescribed in the by-laws of the corporation.

6. Must be of legal age

CORPORATE OFFICERS
1. President - must be a director;
2. Treasurer - may or may not be a director; as a matter of sound corporate practice, must be a resident
3. Secretary - need not be a director unless required by the by-laws; must be a resident and citizen of the Philippines; and
4. Such other officers as may be provided in the by-laws.

CORPORATE OFFICER CORPORATE EMPLOYEE

<table>
<thead>
<tr>
<th>Position is provided for in the by-laws or under the Corporation Code</th>
<th>Employed by the action of the managing officer of the corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>RTC has jurisdiction</td>
<td>NLRC has jurisdiction</td>
</tr>
</tbody>
</table>

BOARD OF DIRECTORS/TRUSTEES AS REPOSITORY OF CORPORATE POWERS

GENERAL RULE: The corporate powers of the corporation shall be exercised, all business conducted and all property of such corporation controlled and held by the board of directors or trustees. (Sec. 23)

EXCEPTIONS:

1. In case of an Executive Committee duly authorized in the by-laws;
2. In case of a contracted manager which may be an individual, a partnership, or another corporation. Note: In case the contracted manager is another corporation, the special rule in Sec. 44 applies.
3. In case of close corporations, the stockholders may manage the business of the corporation instead by a board of directors, if the articles of incorporation so provide.

The power to purchase real property is vested in the board of directors or trustees. While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction. A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or by its by-laws. (Spouses Constantine Firme vs. Bukal Enterprises and Development Corporation, G.R. No. 146608, October 23, 2003)

LIMITATIONS ON POWERS OF BOARD OR DIRECTORS/TRUSTEES

1. Limitations imposed by the Constitution, statutes, articles of incorporation or by-laws.
2. Cannot perform constituent or those involving fundamental changes in the corporation requiring the approval of stockholders or members.
3. Cannot exercise powers not possessed by the corporation. \(\text{(The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)}\)

**NATURE OF POWERS OF BOARD OF DIRECTORS/TRUSTEES** \(\text{(The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)}\)

a. Under the Theory of Original Power, the powers of the board of directors or trustees are **ORIGINAL** and **UNDELEGATED**. The stockholders or members do not confer, nor can they revoke those powers.

b. They are **DERIVATIVE** only in the sense of being received from the State in the act of incorporation.

**BUSINESS JUDGMENT RULE**

A resolution or transaction pursued within the corporate powers and business operations of the corporation, and passed in good faith by the board of directors, is valid and binding, and generally the courts have no authority to review the same and substitute their own judgment, even when the exercise of such power may cause losses to the corporation or decrease the profits of a department. \(\text{(Philippine Corporate Law, Cesar Villanueva, 2001 ed.)}\)

**Consequences:**

a. Resolutions and transactions entered into by the Board within the powers of the corporation cannot be reversed by the courts not even on the behest of the stockholders.

b. Directors and officers acting within such business judgment cannot be held personally liable for such acts. \(\text{(Philippine Corporate Law, Cesar Villanueva, 2001 ed.)}\)

**THREE-FOLD DUTIES OF DIRECTORS:** \(\text{(Philippine Corporate Law, Cesar Villanueva, 2001 ed.)}\)

1. **Duty of Obedience**

   To direct the affairs of the corporation only in accordance with the purposes for which it was organized.

   **Legal Basis:** The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws (Sec. 25)

2. **Duty of Diligence**

   **Legal Basis:** Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons (Sec. 31)

3. **Duty of Loyalty**

   **Legal Basis:** Directors or trustees who acquire any pecuniary or personal interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom. (Sec. 31)

   When a director or trustee attempts to acquire or acquires in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence as to which equity imposes a liability upon him to deal in his own behalf, he shall be liable as trustee for the corporation and must account for all the profits which otherwise would have accrued to the corporation (Sec. 31, 2nd par.)

   Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits which should belong to the corporation, he must account to the latter for all such profits by refunding the same (Sec. 34)

**ELECTION OF DIRECTORS/TRUSTEES**

**Limitations:**

a. At any meeting of stockholder or members called for the election of directors or trustees, there must be present either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock or majority of the members entitled to vote.

b. The election must be by ballot if requested by any voting member or stockholder.
c. A stockholder cannot be deprived in the articles of incorporation or in the by-laws of his statutory right to use any of the methods of voting in the election of directors.
d. No delinquent stock shall be voted.
e. The candidates receiving the highest number of votes shall be declared elected.

METHODS OF VOTING
a. Straight Voting - every stockholder may vote such number of shares for as many persons as there are directors to be elected.
b. Cumulative voting for one candidate - a stockholder is allowed to concentrate his votes and give one candidate, as many votes as the number of directors to be elected multiplied by the number of his shares shall equal.
c. Cumulative voting by distribution - a stockholder may cumulate his shares by multiplying the number of his shares by the number of directors to be elected and distribute the same among as many candidates as he shall see fit.

LIMITATIONS ON THE STOCKHOLDER’S RIGHT TO VOTE
1. Where the articles of incorporation provides for classification of shares pursuant to Sec. 6, non-voting shares are not entitled to vote except as provided for in the last paragraph of Sec. 6.
2. Preferred or redeemable shares may be deprived of the right to vote unless otherwise provided in the Code.
3. Fractional shares of stock cannot be voted.
4. Treasury shares have no voting rights as long as they remain in the treasury.
5. Holders of stock declared delinquent by the board of directors for unpaid subscription are not entitled to vote or to a representation at any stockholder’s meeting.
6. A transferee of stock cannot vote if his transfer is not registered in the stock and transfer book of the corporation.

REMOVAL OF DIRECTORS/TRUSTEES
Limitations:

a. Vote of the stockholders representing at least 2/3 of the outstanding capital stock 2/3 of the members entitled to vote
b. At a regular or special meeting after proper notice is given
c. Removal may be with or without cause.
d. A minority director elected through cumulative voting cannot be removed without cause. (Sec. 28)

EXTENT OF POWERS OR AUTHORITY OF CORPORATE OFFICERS
1. The authority which he has by virtue of his office;
2. The authority which is expressly conferred upon him or is incidental to the effectualness of such express authority;
3. As to third persons dealing with him without notice of any restriction thereof, the authority which the corporation holds the officer out as possessing or is estopped to deny.
4. The nature of the corporate business must also be taken into consideration; and
5. The nature act of an officer though originally unauthorized, may become upon the corporation by a subsequent ratification. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)

It is a familiar doctrine that if a corporation knowingly permits one of it officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent’s authority. (LapuLapu Foundation Inc., vs. Court of Appeals, et al., G.R. No. 126006, January 29, 2004, Callejo, J.)

PERSONAL LIABILITY OF DIRECTORS
1. Willfully and knowingly voting for and assenting to patently unlawful acts of the corporation; (Sec. 31)
2. Gross negligence or bad faith in directing the affairs of the corporation; (Sec. 31)
3. Acquiring any personal or pecuniary interest in conflict of duty; (Sec. 31)
4. Consenting to the issuance of watered stocks, or, having knowledge thereof, failing to file objections with the secretary; (Sec. 65)
5. Agreeing or stipulating in a contract to hold himself liable with the corporation; or
6. By virtue of a specific provision of law

<table>
<thead>
<tr>
<th>DOCTRINE OF LIMITED LIABILITY</th>
<th>DOCTRINE OF IMMUNITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shields the corporators from corporate liability beyond their agreed contribution to the capital or shareholding in the corporation.</td>
<td>Protects a person acting for and in behalf of the corporation from being personally liable for his authorized actions</td>
</tr>
</tbody>
</table>

REMEDIES IN CASE OF MISMANAGEMENT
1. Receivership;
2. Injunction, if the act has not yet been done;
3. Dissolution if the abuse amounts to a ground for quo warranto but the Solicitor General refuses to act; and
4. Derivative suit or complaint filed with SEC.

SPECIAL RULES ON CONTRACTS ENTERED INTO BY DIRECTORS/TRUSTEES OR OFFICERS:
1. **Doctrine of Corporate Opportunity**
   Unless his act is ratified, a director shall refund to the corporation all the profits he realizes on a business opportunity which:
   1. The corporation is financially able to undertake;
   2. From its nature, is in line with corporations business and is of practical advantage to it; and
   3. The corporation has an interest or a reasonable expectancy.
   The rule shall be applied notwithstanding the fact that the director risked his own funds in the venture. (Sec. 34)

2. **Contracts of self-dealing directors**
   Contracts which are entered into by the corporation with one or more of its own directors/trustees, or officers. (Sec. 32)
   They are voidable, unless:
   a) The presence of such director/trustee in the board meeting approving the contract was not necessary to constitute a quorum for such meeting;
   b) The vote of such director/trustee in the board meeting approving the contract was not necessary for the approval of the contract;
   c) The contract is fair and reasonable under the circumstances;
   d) In the case of an officer, there was previous authorization by the board of directors.

Although not all said conditions are present, the corporation may elect not to attack or question the validity of the contract, without prejudice, however, to the liability of the director/trustee for damages under Sec. 31.

Where any of the first two conditions is absent, said contract must be ratified by the vote of the stockholders representing at least 2/3 of the outstanding capital stock or 2/3 of the members in a meeting called for the purpose, provided that full disclosure of the adverse interest of the director/trustee involved is made at such meeting. (Sec. 32)

3. **Contracts of interlocking directors**
   Contracts entered into between corporations with interlocking directors (interest of said directors is “substantial”, i.e. exceeding 20% of the outstanding capital stock).
   They are valid, provided that:
   a. The contract is not fraudulent; and
   b. The contract is fair and reasonable under the circumstances.
If the interlocking director’s interest in one corporation or corporations is “nominal” (not exceeding 20% of the outstanding capital stock), then all the conditions prescribed in Sec. 32 on self-dealing directors must be present with respect to the corporation in which he has nominal interest. (Sec. 33)

COMPENSATION OF DIRECTORS OR TRUSTEES
General Rule: They shall be entitled to reasonable per diems only
Except:
a. when their compensation is fixed in the by-laws
b. when granted by the vote of stockholders representing at least a majority of the outstanding capital stock at a regular or special meeting
c. when they are also officers of the corporation

EXECUTIVE COMMITTEE
A body created by the by-laws and composed of some members of the board which, subject to the statutory limitations, has all the authority of the board to the extent provided in the board resolution or by-laws. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)

Must be provided for in the by-laws and composed of not less than 3 members of the board appointed by the board.

May act by a majority vote of all of its members.

Limitations on the Powers of the Executive Committee (Sec. 35)
It cannot act on the following:
1. Matters needing stockholder approval;
2. Filling up of board vacancies;
3. Amendment, repeal or adoption of by-laws;
4. Amendment or repeal of any resolution of the Board which by its express terms is not amendable or repealable; and
5. Cash dividend declaration.

IV. POWERS OF THE CORPORATION
1. Express Powers - granted by law, Corporation Code, and its Articles of Incorporation or Charter
2. Inherent/Incidental Powers - not expressly stated but are deemed to be within the capacity of corporate entities
3. Implied/Necessary Powers - exists as a necessary consequence of the exercise of the express powers of the corporation or the pursuit of its purposes as provided for in the Charter

Classification:
1. Acts in the usual course of business
2. Acts to protect debts owing to the corporation
3. Acts which involve embarking in a different business usually to collect debts out of profits
4. Acts to protect or aid employees

GENERAL POWERS AND CAPACITY (Sec. 36)
1. To sue and be sued;
2. Of succession;
3. To adopt and use of corporate seal;
4. To amend its Articles of Incorporation;
5. To adopt its by-laws;
6. For stock corporations: issue and sell stocks to subscribers and treasury stocks; for non-stock corporations: admit members;
7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and deal with real and personal property, securities and bonds
8. To enter into merger or consolidation;
9. To make reasonable donations for public welfare, hospital, charitable, cultural, scientific, civic or similar purposes, provided that no donation is given to any (i) political party, (ii) candidate and (iii) partisan political activity.
10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees.

11. To exercise other powers essential or necessary to carry out its purposes.

SPECIAL/SPECIFIC POWERS (Secs. 37-44)

1. Power to extend or shorten corporate term;
2. Increase or decrease corporate stock;
3. Incur, create, or increase bonded indebtedness;
4. Sell, dispose, lease, encumber all or substantially all of corporate assets;
5. Purchase or acquire own shares provided:
   a. there is an unrestricted retained earnings, and
   b. it is for a legitimate purpose.
6. Invest corporate funds in another corporation or business for other purpose other than primary purpose;
7. Power to declare dividends out of unrestricted retained earnings;
8. Enter into management contract with another corporation (not with an individual or a partnership-within general powers) whereby one corporation undertakes to manage all or substantially all of the business of the other corporation for a period not longer than 5 years for any one term.

CORPORATE ACTS (see ANNEX for procedure and requisites)

1. Power to extend or shorten corporate term
   May be used as means to voluntarily dissolve a corporation
2. Power to increase or decrease capital stock

WAYS OF INCREASING/DECREASING THE CAPITAL STOCK

a. By increasing/decreasing the number of shares and retaining the par value;
b. By increasing/decreasing the par value of existing shares without increasing/decreasing the number of shares;
c. By increasing/decreasing the number of shares and increasing/decreasing the par value.

TOOLS AVAILABLE TO THE STOCKHOLDERS TO REPLENISH CAPITAL

a. Additional subscription to shares of stock of the corporation by stockholders or by investors;
b. Advances by the stockholders to the corporation;
c. Payment of unpaid subscription by the stockholders; and
   d. Loans from third persons.
3. Incur, create or increase bonded indebtedness
   Corporate bond - an obligation to pay a definite sum of money at a future time at fixed rate of interest.

<table>
<thead>
<tr>
<th>BONDED INDEBTEDNESS</th>
<th>DEBENTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured by a mortgage on corporate property. (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)</td>
<td>Serial obligations or notes issued on the basis of the general credit of the corporation. Hence, they are not bonded indebtedness</td>
</tr>
</tbody>
</table>

4. Sell, dispose, lease, encumber all or substantially all of corporate assets:
   No ratificatory vote needed:
   a. If it is necessary in the usual and regular course of business
   b. If the proceeds of the sale or other disposition of such property and assets be appropriated for the conduct of the remaining business
5. Power to acquire own shares
   Instances:
   a. To eliminate fractional shares out of stock dividends
   b. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale and to purchase delinquent shares sold during said sale
   c. To pay dissenting stockholders
   d. To acquire treasury shares
   e. Redeemable shares regardless of existence of retained earnings
   f. To effect a decrease of capital stock

2005 CENTRALIZED BAR OPERATIONS EXECUTIVE COMMITTEE AND SUBJECT CHAIRPERSONS

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g. In close corporations, when there is a deadlock in the management of the business

Note: In letters a-c, there must be unrestricted retained earnings

6. Invest corporate funds in another corporation or business for other purpose other than primary purpose

The other purposes for which the funds may be invested must be among those enumerated as secondary purposes and must further comply with the requirements of Section 42.

7. Power to declare dividends out of unrestricted retained earnings

RETAINED EARNINGS = ASSETS - LIABILITIES AND LEGAL CAPITAL

“UNRESTRICTED” - if the retained earnings have not been reserved or set aside by the board of directors for some corporate purpose

DIVIDENDS

Corporate profits set aside, declared, and ordered to be paid by the directors for distribution among shareholders at a fixed time.

Forms:

a. Cash
b. Property
c. Stock

While cash dividends due on delinquent shares can be applied to the payment of the unpaid balance, stock dividends cannot be applied as payment for unpaid subscription.

The right to dividends is based on duly recorded stockholdings; accordingly, the corporation is prohibited from entitling thereto anyone else.

General Rule: Stock corporations are prohibited from retaining surplus profits in excess of 100% of their paid-in capital stock

Except:

a. When justified by definite corporate expansion projects approved by the board of directors
b. When the corporation is prohibited under any loan agreement with any financial institution or creditor from declaring dividends without its/his consent and such consent has not yet been secured

c. When it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is a need for special reserve for probable contingencies.

Sources of dividends:

GENERAL RULE: Dividends can only be declared and paid out of actual and bona fide unrestricted retained earnings.

SPECIAL RULES:

a. Where a corporation sold its real property, which is not being used for business, at a gain, the income derived therefrom may be availed of for dividend distribution.

b. Increase in the value of a fixed asset as a result of its revaluation is not retained earning. However, increase in the value of fixed assets as a result of revaluation (“Revaluation surplus”) may be declared as cash or stock dividends provided that the company:

(i) Has sufficient income from operations from which the depreciation on the appraisal increase was charged
(ii) Has no deficit at the time the depreciation on the appraisal increase was charged to operations; and
(iii) Such depreciation on appraisal increase previously charged to operations has not been impaired by losses.

c. Dividends can be declared out of the amount received in excess of the par value of shares (“paid-in surplus”) when:

(i) That they be declared only as stock dividends and not cash;
(ii) No creditors are prejudiced; and
(iii) There is no impairment of capital.

Note that unlike par value shares, when no par value shares are sold at a premium, the entire consideration paid is considered capital; hence the same cannot be declared as dividends.

d. Reduction surplus can be a source of dividends. Rule on paid-in surplus is applicable.

e. No dividends can be declared out of capital except only in two instances: 1) liquidating dividends; and 2) dividends

COMMERCIAL LAW COMMITTEE

• CHAIRPERSON: Garny Luisa Alegre • ASST. CHAIRPERSON: Jayson O’S Ramos • EDP: Beatrix I. Ramos • SUBJECT HEADS:

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Shirley Mae Tabangcura, Bon Vincent Agustin (Corporation Law); Karl Steven Co (Special Laws); John Lemuel Gatdula (Banking Laws); Robespierre Co (Law on Intellectual Property)
from investments in wasting asset corporation.

It permits corporations solely or principally engaged in the exploitation of “wasting assets” to distribute the net proceeds derived from exploitation of their holdings such as mines, oil wells, patents and leaseholds, without allowance or deduction for depletion.

f. Profits realized from sale of treasury shares are part of capital and cannot be declared as cash or stock dividend as purchase and sale of such shares are regarded as contractions and expansions of paid-in capital.

g. Money cannot be borrowed for the payment of dividends because indebtedness is not a retained earning of the corporation.
h. Corporate earnings which have not yet been received even though they consist in money which is due, cannot be included in the profits out of which dividends may be paid.

<table>
<thead>
<tr>
<th>CASH DIVIDENDS</th>
<th>STOCK DIVIDENDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Involves a disbursement to the stockholders of accumulated earnings</td>
<td>1. Does not involve any disbursement</td>
</tr>
<tr>
<td>2. When declared and paid becomes the absolute property of the stockholder and cannot be reached by creditors of the corporation in the absence of fraud</td>
<td>2. Since it is still part of corporate property, may be reached by corporate creditors</td>
</tr>
<tr>
<td>3. Declared only by the board of directors at its discretion</td>
<td>3. Declared by the board with the concurrence of the stockholders representing at least 2/3 of the outstanding capital stock at a regular/special meeting</td>
</tr>
<tr>
<td>4. Does not increase the corporate capital</td>
<td>4. Corporate capital is increased</td>
</tr>
<tr>
<td>5. Its declaration creates a debt from the corporation to each of its stockholders</td>
<td>5. No debt is created by its declaration</td>
</tr>
</tbody>
</table>

TRUST FUND DOCTRINE (TFD)

The subscribed capital stock of the corporation is a trust fund for the payment of debts of the corporation which the creditors have the right to look up to satisfy their credits, and which the corporation may not dissipate. The creditors may sue the stockholders directly for the latter’s unpaid subscription.

**Application of the TFD:**

1. Where the corporation has distributed its capital among the stockholders without providing for the payment of creditors;
2. Where it had released the subscribers to the capital stock from their subscriptions;
3. Where it has transferred the corporate property in fraud of its creditors; and
4. Where the corporation is insolvent.

**Coverage of the TFD:**

1. If the corporation is solvent, the TFD extends to the capital stock represented by the corporation’s legal capital.
2. If the corporation is insolvent, the TFD extends to the capital stock of the corporation as well as all of its property and assets.

**Exceptions to the TFD:**

1. Redemption of redeemable shares (Sec. 8)
2. In close corporation, when there should be a deadlock and the SEC orders the payment of the appraised value of the stockholder’s share. (Sec. 104)

8. Power to enter into management contract

<table>
<thead>
<tr>
<th>EXECUTIVE COMMITTEE</th>
<th>MANAGEMENT CONTRACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Its creation must be provided for in the by-laws</td>
<td>1. Express power of a corporation</td>
</tr>
<tr>
<td>2. A governing body which functions as the board itself. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)</td>
<td>2. Management company must always be subject to the superior power of the board to give specific directions from time to time or to recall the...</td>
</tr>
</tbody>
</table>
ULTRA VIRES (“beyond powers”) ACT

An act which is beyond the conferred powers of a corporation or the purposes or objects for which it is created as defined by the law of its organization. (Republic vs. Acoje Mining Co., Inc. 7 SCRA 361)

An act done by a corporation outside of the express and implied powers vested in it by its charter and by the law. (Bar Review Materials in Commercial Law, Jorge Miravite, 2002 ed.)

Types: (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)
1. Acts done beyond the powers of the corporation as provided in the law or its articles of incorporation;
2. Acts or contracts entered into in behalf of a corporation by persons who have no corporate authority (Note: This is technically ultra vires acts of officers and not of the corporation); and
3. Acts or contracts, which are per se illegal as being contrary to law.

An ultra vires act may be that of:
- The corporation;
- The Board of Directors; and
- The corporate officers.

Effects of ultra vires acts on:
- Executed contract - courts will not set aside or interfere with such contracts;
- Executory contracts - no enforcement even at the suit of either party (void and unenforceable);
- Part executed and part executory - principle of “no unjust enrichment at expense of another” shall apply; and
- d. Executory contracts apparently authorized but ultra vires - the principle of estoppel shall apply.

ULTRA VIRES ACTS AND ILLEGAL ACTS

Ultra vires (“beyond powers”) refers only to an act outside or beyond corporate powers, including those that may ostensibly be within such powers but are, by general or special laws, either prohibited or declared illegal. It is in this context that the Code has used the term.

<table>
<thead>
<tr>
<th>ULTRA VIRES ACTS</th>
<th>ILLEGAL ACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not necessarily unlawful, but outside the powers of the corporation</td>
<td>Unlawful; against law, morals, public policy, and public order</td>
</tr>
<tr>
<td>Can be ratified</td>
<td>Cannot be ratified</td>
</tr>
<tr>
<td>Can bind the parties if wholly or partly executed</td>
<td>Cannot bind the parties</td>
</tr>
</tbody>
</table>

TEST whether or not a corporation may perform an act: consider the logical and necessary relation between the act questioned and the corporate purpose expressed by law or in the charter. If the act is lawful in itself and not prohibited, and is done for the purpose of serving corporate ends, and reasonably contributes to the promotion of those ends in a substantial and not in a remote and fanciful sense. (Montelibano vs. Bacolod-Murcia Milling Co., Inc., 5 SCRA 36)

REMEDIES IN CASE OF ULTRA VIRES ACTS

1. State
   a. Obtain a judgment of forfeiture; or
   b. The SEC may suspend or revoke the certificate of registration
2. Stockholders
   a. Injunction; or
   b. Derivative suit
3. Creditors
   a. Nullification of contract in fraud of creditors

V. BY-LAWS

Rules of action adopted by a corporation for its internal government and for the regulation of conduct and prescribe the rights and duties of its stockholders or members towards itself
and among themselves in reference to the management of its affairs.

Functions:
- Supplement the articles of incorporation
- Provide for details not important enough to be stated in the articles of incorporation
- Continuing rule for the government of the corporation and the individuals composing it
- Define the rights and duties of corporate officers and directors/trustees and of stockholders/members towards the corporation and among themselves
- Source of authority for corporate officers and agents of the corporation

Requisites for validity:
- Must not be contrary to law nor with the Corporation Code
- Must not be contrary to morals and public policy;
- Must not impair obligations and contracts;
- Must be general and uniform;
- Must be consistent with the charter or articles of incorporation; and
- Must be reasonable, not arbitrary or oppressive.

Binding effect:
- As to members and corporation
- They have the force of contract between the members themselves.
- They are binding only upon the corporation and on its members and those having direction, management and control of its affairs.
- As to third persons
- They are not bound to know the by-laws which are merely provisions for the government of a corporation and notice to them will not be presumed.

Contents of By-laws
- Time, place and manner of calling and conducting regular or special meetings of the stockholder or members
- The required quorum in meeting of stockholders or members and the manner of voting therein
- The form for proxies of stockholders and members and the manner of voting them
- The qualification, duties and compensation of directors or trustees, officers and employees
- Time for holding the annual election of directors or trustees and the mode or manner of giving notice thereof
- Manner of election or appointment and the term of office of all officers other than directors or trustees
- Penalties for violation of the by-laws
- In case of stock corporations, the manner of issuing certificates
- Such other matters as may be necessary for the proper or convenient transaction of its corporate business and affairs

<table>
<thead>
<tr>
<th>ARTICLES OF INCORPORATION</th>
<th>BY-LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition precedent in the acquisition of corporate existence;</td>
<td>Condition subsequent; its absence merely furnishes a ground for the revocation of the franchise</td>
</tr>
<tr>
<td>Essentially a contract between the corporation and the stockholders/members; between the stockholders/member inter se, and between the corporation and the State;</td>
<td>For the internal government of the corporation but has the force of a contract between the corporation and the stockholders/members, and between the stockholders and members;</td>
</tr>
<tr>
<td>Executed before incorporation</td>
<td>May be executed after incorporation. Sec. 46 allows the filing of the by-laws simultaneously with the Articles of Incorporation</td>
</tr>
<tr>
<td>Amended by a majority of the directors/trustees and stockholders representing 2/3 of the outstanding stock or a majority</td>
<td>May be amended by a majority vote of the BOD and majority vote of outstanding capital stock or a majority</td>
</tr>
</tbody>
</table>

Chairpersons
Maricel Abarentos (Over-all Chairperson), Ronald Jalmanzar (Over-all Vice Chair), Yolanda Tolentino (VC-Acads), Jennifer Ang (VC-Secretariat), Joy Inductivo (VC-Finance), Elaine Masukat (VC-EDP), Anna Margarita Eres (VC-Logistics) Jonathan Mangundayao (Political Law), Francis Benedict Reotutar (Labor Law), Romuald Padilla (Civil Law), Charmaine Torres (Taxation Law), Mark David Martinez (Criminal Law), Garny Luisa Alegre (Commercial Law), Jinky Ann Uy (Remedial Law), Jackie Lou Bautista (Legal Ethics)
VI. MEETINGS

STOCKHOLDERS/MEMBERS MEETING

WHEN:
1. REGULAR - held on the date fixed in the by-laws or if not fixed on any date in April; and
2. SPECIAL - held at any time deemed necessary or as so provided in the by-laws.

WHERE:
In the city or municipality where the principal office of the corporation is located, and if practicable, in the principal office of the corporation.

However, in the case of non-stock corporations, the by-laws may provide that meetings may be held at any place even outside the principal place of the corporation. (Sec. 93)

BOARD MEETING (Sec. 53)

WHEN:
1. REGULAR - held monthly, unless otherwise provided in the by-laws; and
2. SPECIAL - held at any time upon the call of the president.

WHERE:
May be held anywhere in or outside of the Philippines.

PROXY

Limitations:
a. It must be in writing and signed by the stockholder or member (as principal) and filed before the scheduled meeting with the corporate secretary, and given to another person (as agent) authorizing such person to exercise the voting rights of the former.
b. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended.
c. No proxy shall be valid and effective for a longer period than five years at any one time. (Sec. 58)

The right to vote by proxy may be exercised in any of the following instances:
1. Election of the board of directors or trustees;
2. Voting in case of joint ownership of stock;
3. Voting by trustee under voting trust agreement;
4. Pledge or mortgage of shares;
5. As provided for in its by-laws.

Note: Stockholders or members may attend and vote in their meetings by proxy (Sec. 58); directors cannot do so. Directors must always act in person. (Sec. 25).

EXTENT OF AUTHORITY

a. GENERAL PROXY - confers a general discretionary power to attend and vote at annual meeting.
b. LIMITED PROXY - restrict the authority to vote to specified matters only and may direct the manner in which the vote shall be cast

VOTING TRUST

An agreement whereby one or more stockholders transfer their shares of stocks to a trustee, who thereby acquires for a period of time the voting rights (and/or any other rights) over such shares; and in return, trust certificates are given to the stockholder/s, which are transferable like stock certificates, subject, however, to the trust agreement.

Limitations:
a. Cannot be entered into for a period exceeding 5 years at any one time except when it is a condition in a loan agreement or for the purpose of circumventing the law against monopolies and illegal combinations
b. The agreement must not be used for purposes of fraud
c. It must be in writing and notarized and specify the terms and conditions thereof.
d. A certified copy of the agreement must be filed with the corporation and with the SEC.

e. The agreement shall be subject to examination by any stockholder of the corporation.

f. Unless expressly renewed, all rights granted in the agreement shall automatically expire at the end of the agreed period.

VOTING TRUSTS

<table>
<thead>
<tr>
<th>VOTING TRUSTS</th>
<th>PROXY</th>
</tr>
</thead>
<tbody>
<tr>
<td>The trustee votes as owner rather than as mere agent.</td>
<td>The proxy holder votes as agent.</td>
</tr>
<tr>
<td>The trust may vote in person or by proxy unless the agreement provides otherwise.</td>
<td>The proxy must vote in person.</td>
</tr>
<tr>
<td>Trustee acquires legal title to the shares of the transferring stockholder.</td>
<td>Proxy has no legal title to the shares of the principal.</td>
</tr>
<tr>
<td>The agreement must be notarized.</td>
<td>Proxy need not be notarized.</td>
</tr>
<tr>
<td>The agreement is irrevocable.</td>
<td>Revocable anytime except one with interest.</td>
</tr>
<tr>
<td>Trustee is not limited to act at any particular meeting.</td>
<td>Proxy can only act at a specified stockholder’s meeting (if not continuing).</td>
</tr>
<tr>
<td>A trustee can vote and exercise all the rights of the stockholder even when the latter is present.</td>
<td>A proxy can only vote in the absence of the owners of the stock.</td>
</tr>
</tbody>
</table>

An agreement must not exceed 5 years at any one time except when the same is made a condition of a loan.

The voting right is divorced from the ownership of stocks.

VIll. STOCKS AND STOCKHOLDERS

SUBSCRIPTION CONTRACT - any contract for the acquisition of unissued stock in an existing corporation or a corporation still to be formed shall be deemed a subscription. (Sec. 60)

The subscribed shares need not be paid in full in order that the subscription may be valid. The subscription contract is a consensual contract that is perfected upon the meeting of the minds of the parties. The name of the subscriber is recorded in the stock and transfer book, and from that time, such subscriber becomes a stockholder of record entitled to all the rights of a stockholder. Until the stocks are fully paid, it continues to be a subsisting liability that is legally enforceable.

In Ong Yong, et.al., vs. David Tiu, the Court did not allow the rescission of the Pre-Subscription agreement since the action was filed by the Tius in their personal capacities. It ruled that it was the corporation who had the legal personality to file the suit, it being the real party in interest.

UNDERWRITING AGREEMENT

An agreement between a corporation and a third person, termed the “underwriter”, by which the latter agrees, for a certain compensation, to take a stipulated amount of stocks or bonds, specified in the underwriting agreement, if such securities are not taken by those to whom they are first offered.

UNDERWRITING AGREEMENT

<table>
<thead>
<tr>
<th>UNDERWRITING AGREEMENT</th>
<th>STOCK SUBSCRIPTION AGREEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>The signers obligate themselves to take the shares of stock which cannot be sold.</td>
<td>The obligation of the signer to the purchasers and to the public is absolute.</td>
</tr>
<tr>
<td>Underwriters are given commission.</td>
<td>There is no commission.</td>
</tr>
<tr>
<td>The signer can refuse to become a stockholder/members of the company.</td>
<td>He becomes a stockholder of the company and is liable to pay the amount due on the stock.</td>
</tr>
</tbody>
</table>

STOCK OPTION

A privilege granted to a party to subscribe to a certain portion of the

CHIEF EXECUTIVES

Maricel Abarentos (Over-all Chairperson), Ronald Jalmanzar (Over-all Vice Chair), Yolanda Tolentino (VC-Acads), Jennifer Ang (VC-Secretariat), Joy Inductivo (VC-Finance), Elaine Masukat (VC-EDP), Anna Margarita Eres (VC-Logistics) Jonathan Mangundayao (Political Law), Francis Benedict Reotutar (Labor Law), Romuald Padilla (Civil Law), Charmaine Torres (Taxation Law), Mark David Martinez (Criminal Law), Garny Luisa Alegre (Commercial Law), Jinky Ann Uy (Remedial Law), Jackie Lou Bautista (Legal Ethics)
unissued capital stock of a corporation within a certain period and under the terms and conditions of the grant exercisable by the grantee at any time within the period granted.

WARRANT

A type of security which entitles the holder the right to subscribe to, the unissued capital stock of a corporation or to purchase issued shares in the future, evidenced by a Warrant Certificate, whether detachable or not, which may be sold or offered for sale to the public.

PRE-INCORPORATION SUBSCRIPTION AGREEMENTS (PISA)

Subscription of shares of stock of a corporation still to be formed shall be irrevocable for a period of at least 6 months from date of subscription, unless:

1. All of the other subscribers consent to the revocation;
2. The incorporation of said corporation fails to materialize with said period or within a longer period as may be stipulated in the contract of subscription; provided that no pre-incorporation subscription may be revoked after the submission of the articles of incorporation to the SEC. (Sec. 61)

MODES OF ISSUANCE OF SHARES

a. By subscription before and after incorporation to original, unissued stock
b. By sale of treasury stock after incorporation for money, property or service
c. By subscription to new issues of stock in case of an increase in the capital stock
d. By making a stock dividend

VALID CONSIDERATIONS IN SUBSCRIPTION AGREEMENT (Sec. 62)

1. Cash actually received;
2. Property, tangible or intangible, actually received AND necessary or convenient for its use and lawful purposes;
   Requisites;
3. Necessary or proper in carrying on the corporate business
4. Ascertainable pecuniary value
5. Capable of being transferred and applied to payment of debts
6. Labor or services actually rendered to the corporation;
7. Previously incurred corporate indebtedness;
8. Amounts transferred from unrestricted retained earning to stated capital,
9. Outstanding shares in exchange for stocks in the event of reclassification or conversion.

Note: Shares of stock shall not be issued in exchange for promissory notes or future services. Note that there is no prohibition on the use of checks, bills or notes in payment of the “cash” consideration.

SHARES OF STOCK

Interest or right which owner has in the management of the corporation, and its surplus profits, and, on dissolution, in all of its assets remaining after the payment of its debt.

CERTIFICATE OF STOCK

The document evidencing the ownership of shares of stocks by a stockholder and the full payment of its issue or subscription price.

It is not essential to the ownership and/or existence of the share of stock.

Where the certificate of stock reflects a greater volume of shares than the actual number of shares issued or to be issued, the following rules may be considered:

1. To the extent that there is an overissue, the excess issuance (over the authorized capital stock or the stated capital) shall be void as being ultra vires.
2. If there is no overissue, but no payment has been made to cover the par or stated value of the excess shares, the latter would constitute “watered” stocks.
3. If there is no overissue and watering of stocks, the corporation
may be bound to honor the certificate (if duly signed and released by its authorized officers) in the hands of a holder in good faith, reserving a right of recourse that an aggrieved party may pursue against the culpable or unjustly enriched party.

EFFECTS OF UNREGISTERED TRANSFER OF SHARES
a. It is valid and binding as between the transferor and the transferee
b. It is invalid as to the corporation except when notice is given to the corporation for purposes of registration
c. It is invalid as against corporate creditors and the transferee is still liable to the corporation
d. It is invalid as to the attaching or executing creditors of the transferor, as well as subsequent purchasers in good faith without notice of the transfer.

ISSUANCE OF CERTIFICATE OF STOCK
No certificate of stock shall be issued until the full amount of the subscription is paid. Basis: Doctrine of Individuality of Subscription that espouses that the subscription is one, entire, indivisible, and whole contract, which cannot be divided into portions. (SEC Opinion)

COLLECTION OF UNPAID SUBSCRIPTION
1. Voluntary payment
   a. Upon the date specified in the subscription contract
   b. Upon call by the Board of Directors
2. Involuntary payment
   a. Extra-judicial
      i. Delinquency sale
      ii. Application of dividends
   b. Judicial action

Note: The prescriptive period in case of subscription of shares begins to run only from the time the board of directors declares that the balance are due and payable. It does not begin to run from
the date of the subscription. (Garcia vs. Suarez, 67 Phil. 441)

**DELINQUENCY**

1. If the subscription contract fixes the date for payment, failure to pay on such date shall render the entire balance due and payable with interest. Thirty days therefrom, if still unpaid, the shares become delinquent, as of the due date, and subject to sale, unless the board declares otherwise.

2. If no date is fixed in the subscription contract, the board of directors can make the call for payment, and specify the due date. The notice of call is mandatory. The failure to pay on such date shall render the entire balance due and payable with interest. Thirty days therefrom, if still unpaid, the shares become delinquent, as of the date of call, and subject to sale, unless the board declares otherwise. (Sec. 67)

**Effect:**

*A. Upon the stockholder*

1. Accelerates the entire amount of the unpaid subscription;
2. Subjects the shares to interest, expenses and costs;
3. Disenfranchises the shares from any right that inheres to a shareholder, except the right to dividends (but which shall be applied to any amount due on said shares or, in the case of stock dividends, to be withheld by the corporation until full payment of the delinquent shares. (Sec. 43)

*B. Upon the director owning delinquent shares*

1. He can continue serving in that capacity unless and until said shares are totally bidded away, he continues to be the owner thereof and in the interim he is not disqualified.
2. A delinquent stockholder seeking to be elected as director may not be a candidate for, nor be duly elected to, the board.

**PROCEDURE FOR THE SALE OF DELINQUENT STOCKS (Sec. 68)**

1. Call by resolution demanding payment of the balance. However, if the contract of subscription prescribes the date of payment, no call is necessary.
2. Notice of the board resolution given to the stockholders by the corporate secretary, either personally or by registered mail. Publication of notice of call is not required.
3. Failure of the stockholder to pay within a grace period of 30 days from the date specified in the contract of subscription or in the call, the stocks shall be declared delinquent and shall be subject to sale.
4. Notice of delinquency served on the subscribers either personally or registered mail and publication in a newspaper of general circulation in the province or the city where principal office is located for once a week for 2 consecutive weeks. Notice shall state the amount due on each subscription plus accrued interest, and the date, time and place of the sale which shall not be less than 30 days nor more than 60 days from the date the stocks become delinquent.
5. Sale of the delinquent shares at public auction.

**HIGHEST BIDDER IN A DELINQUENCY SALE**

*a. The person participating in the delinquency sale who offers to pay the full amount of the balance of the subscription together with the accrued interest, costs*
of advertisement and expenses of sale, for the smallest number of shares. In other words, the amount of the bid does not vary but only the number of shares to be bought changes and determines the highest bidder.

b. If there is no bidder as mentioned above, the corporation may bid for the same, and the total amount due shall be credited as paid in full in the books of the corporation. Such shares shall be considered as treasury shares.

PROCEDURE FOR ISSUANCE OF NEW CERTIFICATE OF STOCK IN LIEU OF LOST, STOLEN OR DESTROYED ONES (Sec. 73)

1. Filing with the corporation an affidavit in triplicate by the registered owner setting forth the circumstances as to how the certificate was lost, stolen or destroyed, the number of shares, serial number of the certificate and the name of the corporation that issued the same.

2. Publication of notice of loss by the corporation in a newspaper of general circulation in the place of the principal office, once a week for 3 consecutive weeks.

3. After the lapse of 1 year from the date of the last publication, if no contest has been presented, the corporation shall cancel in its books the certificate of stock, which has been lost, stolen or destroyed, and issue in lieu thereof a new certificate of stock.

However, if the registered owner files a bond or other securities as may be necessary to the board, the new certificate of stock may be issued even before the expiration of one (1) year period.

The prescribed procedure does not apply to a case where the certificates are in the company’s possession when mislaid which thereby obligates the corporation, not the stockholder, to suffer the consequences. (SEC Opinion)

RIGHTS OF STOCKHOLDERS (Pandect of Commercial Law and Jurisprudence, Justice Jose Vitug, 1997 ed.)

1. MANAGERIAL RIGHTS

a. Voting rights; and

b. Right to remove directors

2. PROPRIETARY RIGHTS

a. Right to dividends;

b. Right to issuance of stock certificate for fully paid shares;

c. Proportionate participation in the distribution of assets in liquidation;

d. Right to transfer of stocks in corporate books;

e. Right to recover stocks unlawfully sold for delinquent payment of subscription

f. Preemptive right

PREEMPTIVE RIGHT OF STOCKHOLDERS

It is the shareholders’ preferential right to subscribe to all issues or dispositions of shares of any class in proportion to their present stockholdings.

Purpose: to enable the shareholder to retain his proportionate control in the corporation and to retain his equity in the surplus.

Extends to treasury shares in case of their reissuance.

If the shares preferentially offered to a stockholder are not subscribed or purchased by him, it does not follow that said shares shall again be re-offered on a pro rata basis to stockholders who already exercised their preemptive rights. There is no preemptive right with respect to the share to be re-offered.

In case additional issues of originally authorized shares:

☐ GENERAL RULE: There is no preemptive right. This is on the theory that when a corporation at its inception offers its first shares, it is presumed to have offered all of those which it is authorized to issue.

☐ EXCEPTION: When a corporation at its inception offers only a specified portion of its authorized capital stock for subscription. If subsequently, it offers the remaining unsubscribed portion, there would be preemptive right as to the remaining portion thus offered for subscription.

When pre-emptive right not available:

a. When denied by the article of incorporation

b. Shares requiring stock offering or minimum stock ownership by the public
c. Shares to be issued in good faith with the approval of the stockholders representing 2/3 of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.

PRE-EMPTIVE RIGHT vis-à-vis RIGHT OF FIRST REFUSAL (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)

<table>
<thead>
<tr>
<th>PRE-EMPTIVE RIGHT</th>
<th>RIGHT OF FIRST REFUSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>May be exercised even when there is no express provision of law</td>
<td>Arises only by virtue of contractual stipulations but is also granted under the provisions on Close Corporation</td>
</tr>
<tr>
<td>Pertains to unsubscribed portion of the authorized capital stock. A right that may be claimed against the corporation</td>
<td>Exercisable against another stockholder of the corporation of his shares of stock</td>
</tr>
</tbody>
</table>

3. REMEDIAL RIGHTS

a. Individual suit - a suit instituted by a shareholder for his own behalf against the corporation;

b. Representative suit - a suit filed by a shareholder in his behalf and in behalf likewise of other stockholders similarly situated and with a common cause against the corporation; and

c. Derivative suit - a suit filed in behalf of the corporation by its shareholders (not creditors whose remedies are merely subsidiary such as accion subrogatoria and accion pauliana) upon a cause of action belonging to the corporation, but not duly pursued by it, against any person or against the directors, officers and/or controlling shareholders of the corporation.

Requisites:
(i) An existing cause of action in favor of the corporation
(ii) The stockholder/member must first make a demand upon the corporation or the management to sue unless such a demand would be futile
(iii) The stockholder/member must be such at the time of the objectionable acts or transactions unless the transactions are continuously injurious
(iv) The action must be brought in the name of the corporation

The number of shares of the stockholder is immaterial since he is not suing in his own behalf

Note: The mere trustee of shares registered in his name cannot file a derivative suit for he is not a stockholder in his own right. (Bitong vs. CA, 292 SCRA 304)

LIABILITIES OF STOCKHOLDERS

a. Liability to the corporation for unpaid subscription
b. Liability to the corporation for interest on unpaid subscription
c. Liability to creditors of the corporation on the unpaid subscription
d. Liability for watered stock
e. Liability for dividends unlawfully paid
f. Liability for failure to create corporation

VIII. CORPORATE BOOKS AND RECORDS

INSPECTION RIGHTS

Limitations:
(a) The right must be exercised during reasonable hours on business days;
(b) The person demanding the right has not improperly used any information obtained through any previous examination of the books and records of the corporation; and
(c) The demand is made in good faith or for a legitimate purpose. (Sec. 74)

The right extends, in consonance with equity, good faith, and fair dealing, to a foreign subsidiary wholly-owned by the corporation.

Books required to be kept by the corporation:
1. Book of Minutes
   a. minutes of stockholder or members meetings; and
b. minutes of board meetings.
2. Book of all business transactions;

Corporate records required by the SEC to be kept and/or registered:
1. Books of Account;
2. List of Stockholders or Members;

IX. MERGER AND CONSOLIDATION

<table>
<thead>
<tr>
<th>MERGER</th>
<th>CONSOLIDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business.</td>
<td>The union of two or more existing corporations to form a new corporation called the consolidated corporation.</td>
</tr>
</tbody>
</table>

PROCEDURE:

a. The board of directors or trustees of each corporation shall approve a plan of merger or consolidation
b. The plan shall be submitted for approval by the stockholders or members of each of such corporation at separate corporate meetings duly called for the purpose
c. The articles of merger or consolidation shall be executed by each of the constituent corporations
d. Submission to the SEC for approval
e. The SEC may or may not conduct a hearing
f. Issuance of certificate of merger or consolidation by the SEC

EFFECTS OF MERGER OR CONSOLIDATION (Sec. 80)

1. The constituent corporations shall become a single corporation which, in case of merger shall be the surviving corporation and, in the case of consolidation, shall be the consolidated corporation;
2. The separate existence of the constituent corporation shall cease, except that of the surviving corporation;
3. The surviving or consolidated corporation shall possess all rights, privileges, immunities and powers and subject to all the duties and liabilities of a corporation;
4. The surviving or consolidated corporation shall thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations;
5. All property, real or personal, and all receivables due to, and all other interest of each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed;
6. The surviving or consolidated corporation shall be responsible for all the liabilities and obligations of each of the constituent corporations;
7. Any claim, action or proceeding pending by or against any of the constituent corporations may be prosecuted by or against the surviving or consolidated corporations; and
8. The rights of the creditors or lien upon the property of any of each constituent corporation shall not be impaired by such merger or consolidation.

GENERAL RULE: When one corporation buys all the shares of another corporation, this will not operate to dissolve the other corporation and the two corporations still maintaining their separate corporate entities, one will not answer for the debts of the other.

EXCEPTIONS AS TO NON-ASSUMPTION OF LIABILITIES:

1. If there is an express assumption of liabilities;
2. If there is a consolidation or merger;
3. If the purchase was in fraud of creditors; and
4. If the purchaser is merely a continuation of the seller.

DE FACTO MERGER

One corporation acquiring all or substantially all of the properties of another corporation in exchange for shares of stock of the acquiring corporation. The acquiring corporation would end-up with the business enterprise of the selling corporation whereas the latter would end up with basically its remaining assets being the
shares of stock of the acquiring corporation and may then distribute it as liquidating dividend to its stockholders. (*Philippine Corporate Law, Cesar Villanueva, 2001 ed.*)

**MERGER and CONSOLIDATION**

<table>
<thead>
<tr>
<th>MERGER and CONSOLIDATION</th>
<th>SALE OF ASSETS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sale of assets is always involved</td>
<td>1. merger/consolidation is not always involved</td>
</tr>
<tr>
<td>2. There is automatic assumption of liabilities</td>
<td>2. Purchasing corporation is not generally liable for the debts and liabilities of the selling corporation</td>
</tr>
<tr>
<td>3. There is continuance of the enterprise and of the stockholders</td>
<td>3. The selling corporation ordinarily contemplates a liquidation of the enterprise</td>
</tr>
<tr>
<td>4. Title to the assets are transferred by operation of law</td>
<td>4. Transfer of title is by virtue of contract</td>
</tr>
<tr>
<td>5. The constituent corporations are automatically dissolved</td>
<td>5. The selling corporation is not dissolved by the mere transfer of all its property</td>
</tr>
</tbody>
</table>

**TYPES OF ACQUISITIONS** (*Philippine Corporate Law, Cesar Villanueva, 2001 ed.*)

a. “ASSETS-ONLY” LEVEL

The purchaser is interested only in the raw assets and properties of the business. He is not interested in the entity of the corporate owner of the assets nor of the goodwill and other factors relating to the business itself.

The transferee would not be liable for the debts and liabilities of his transferor since there is no privity of contract over debt obligations between the transferee and the transferor’s creditors.

b. “BUSINESS-ENTERPRISE” LEVEL

The transferee merely continues the same business of the transferor since he obtains the earning capability of the venture.

The transferee is liable for the debts and liabilities of the transferor.

c. “EQUITY” LEVEL

The purchaser takes control and ownership of the business by purchasing the shareholdings of the corporate owner. What the purchaser actually purchased is the ability to elect the members of the board of the corporation who run the business.

**APPRAISAL RIGHT**

**APPRAISAL RIGHTS**

The right to withdraw from the corporation and demand payment of the fair value of his shares after dissenting from certain corporate acts involving fundamental changes in corporate structure, namely: Key: ASIM

1. An amendment to the articles that has the effect of a) changing or restricting the rights of shareholders or of authorizing preferences over those of outstanding shares, or b) changing the term of corporate existence;
2. Sale, encumbrance or other dispositions of all or substantially all of the corporate property or assets. (Sec. 81)
3. Merger or consolidations; and
4. Investment of corporate funds in another corporation or in a purpose other than the primary purpose; (Sec. 42)

Other instances when right available:

5. When a corporation invest its funds in another corporation or business for any purpose other than its primary purpose.

6. In a close corporation, a stockholder for any reason compel the corporation to purchase his shares when the corporation has sufficient assets in its books to cover its debts and liabilities exclusive of capital stock.

**PROCEDURE**

a. The dissenting stockholder shall make a written demand on the corporation within 30 days after the date on which the vote was taken for the payment of the fair value of his shares. Failure to do so, shall be deemed a waiver of his a waiver of his appraisal right.

b. If the proposed corporate action is implemented or effected, the
corporation shall pay to such stockholder, upon surrender of the corresponding certificate of stock within 10 days after demanding payment of his shares

b. Upon payment of the agreed or awarded price, the stockholder shall transfer his shares to the corporation

Limitations on the Exercise of Appraisal Right
1. Any of the instances provided for by law for the exercise of the right must be present.
2. The dissenting stockholder must have voted against the proposed corporate action.
3. The stockholder must make a written demand within 30 days from the date that the vote was taken.
4. The price must be based on the fair value of the shares as of the day prior to the date in which the vote was taken.
5. Payment of the shares must be made only out of the unrestricted retained earnings of the corporation.
6. Upon payment, the stockholder must transfer his shares to the corporation.

Effect of the Exercise of the Right:

a. All rights accruing to the such shares shall be suspended

b. The dissenting stockholder shall be entitled to receive payment of the fair value of his shares as agreed upon between him and the corporation or as determined by the appraisers chosen by them.

General Rule: A dissenting stockholder who demands payment of his shares is no longer allowed to withdraw from his decision

Except when:
1. The corporation consents to the withdrawal
2. The proposed corporate action is abandoned or rescinded by the corporation
3. The proposed corporate action is disapproved by the SEC where its approval is necessary

4. The Commission determines that such stockholder is not entitled to appraisal right.

XI. Non-Stock Corporation

A corporation organized for an eleemosynary purpose, and no part of whose income is, during its existence, distributable as dividends to its members, trustees, or officers, subject to the provisions of the Corporation Code on dissolution. (Sec. 87)

Any profit which it may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which it was organized.

Eleemosynary purposes: charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural. (Sec. 88)

They are governed by the same rules established for stock corporations, whenever pertinent, subject, however, to a number of special features.

Rules on Conversion (SEC Opinion)

1. Stock to non-stock corporation
   Conversion may be made by mere amendment of the articles of incorporation.

2. Non-stock to stock corporation
   The corporation must first be dissolved; mere amendment of the articles of incorporation would not suffice because the conversion would change the corporate nature from non-profit to monetary gain.

   The conversion without dissolving it first would be tantamount to distribution of its assets or income to its members inasmuch as after its conversion, the asset of the non-stock corporation would now be treated as payment to the subscriptions of the members who will now become stockholders of the corporation.

Rights of Members
1. To be entitled to 1 vote unless otherwise provided in the articles or by-laws
2. To vote by proxy unless otherwise provided in the articles or by-laws
3. To transfer membership if allowed by the articles or by-laws
4. To be elected as trustee

<table>
<thead>
<tr>
<th>STOCK</th>
<th>NON-STOCK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has capital stock divided into shares and with authority to distribute dividends to its stockholders.</td>
<td>Does not have shares and may not distribute profits to its members.</td>
</tr>
<tr>
<td>Stockholders may transfer their shares.</td>
<td>Members cannot transfer their membership unless allowed by the articles or by-laws.</td>
</tr>
<tr>
<td>Cumulative voting is available in the election of directors.</td>
<td>Cumulative voting not available unless otherwise provided in the articles or by-laws.</td>
</tr>
<tr>
<td>Directors cannot exceed 15 in number.</td>
<td>Trustees may exceed 15 in number.</td>
</tr>
<tr>
<td>The term of a director is 1 year.</td>
<td>The term of a trustee is 3 years; 1/3 of the Board shall be elected annually.</td>
</tr>
<tr>
<td>Stockholders may vote by proxy.</td>
<td>Members may be deprived of the right to vote by proxy in the articles or by-laws.</td>
</tr>
<tr>
<td>Officers are elected by the Board of Directors.</td>
<td>Officers may be directly elected by the members unless otherwise provided in the articles or by-laws.</td>
</tr>
<tr>
<td>Stockholders and directors must act in a meeting, except where a mere written assent is sufficient or a formal meeting unnecessary.</td>
<td>Members may be allowed by the by-laws to vote by mail or other similar means.</td>
</tr>
</tbody>
</table>

RULES FOR DISTRIBUTION OF ASSETS IN CASE OF DISSOLUTION (SEC. 94)
1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged or adequate provision shall be made therefor.
2. Assets held by the corporation upon a condition requiring return, transfer or conveyance, and which condition occurs by reason of dissolution, shall be returned, transferred or conveyed in accordance with such requirements.
3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, benevolent, educational or similar purposes but not held upon a condition requiring return, transfer or conveyance by reason of dissolution, shall be transferred or conveyed to one or more corporations, societies or organizations engaged in activities in the Philippines substantially similar to those of the dissolving corporation pursuant to a plan of distribution.
4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws.
5. In any other case, assets may be distributed to such persons, societies, organizations or corporations, whether or not organized for profit, as may be specified in a plan of distribution.

   The plan of distribution shall be approved by a majority vote of the board of trustees and by 2/3 of the members having voting rights at a meeting.

XII. CLOSE CORPORATION
A special kind of stock corporation:
1. whose articles of incorporation should provide that:
   a. the number of stockholders shall not exceed 20;
   b. issued stocks are subject to transfer restrictions, with a right of preemption in favor of the stockholders or the corporation; and
   c. the corporation shall not be listed in the stock exchange or its stocks should not be publicly offered; AND
2. whose at least 2/3 of the voting stocks or voting rights should not be owned or controlled by another corporation which is not a close corporation. (Sec. 96)

Characteristics:

COMMERCIAL LAW COMMITTEE
- CHAIRPERSON: Garny Luisa Alegre
- ASSISTANT CHAIRPERSON: Jayson O'S Ramos
- EDP: Beatrix I. Ramos
- SUBJECT HEADS:
  - Marichelle De Vera (Negotiable Instruments Law); Jose Fernando Llave (Insurance); Aldrich Del Rosario (Transportation Laws);
  - Shirley Mae Tabangcura, Bon Vincent Agustin (Corporation Law); Karl Steven Co (Special Laws); John Lemuel Gatdula (Banking Laws); Robespierre Co (Law on Intellectual Property)
1. Stockholders may act as directors without need of election and therefore are liable as directors;
2. Stockholders who are involved in the management of the corporation are liable in the same manner as directors are.
3. Quorum may be greater than mere majority;
4. Transfers of stocks to others, which would increase the number of stockholders to more than the maximum are invalid;
5. Corporate actuations may be binding even without a formal board meeting, if the stockholder had knowledge or ratified the informal action of the others;
6. Preemptive right extends to all stock issues;
7. Deadlocks in board are settled by the SEC, on the written petition by any stockholder; and
8. Stockholder may withdraw and avail of his right of appraisal.

Note: Special rules are provided for close corporations because it is essentially an incorporated partnership. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)

The following cannot be a close corporation:
- mining companies;
- oil companies;
- stock exchanges;
- banks;
- insurance companies;
- public utilities;
- education institutions;
- other corporations declared to be vested with public interest. (Sec. 96)

<table>
<thead>
<tr>
<th>ORDINARY STOCK CORPORATION</th>
<th>CLOSE CORPORATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Its articles of incorporation need only contain the general matters enumerated in Sec. 14 of the Code.</td>
<td>Its articles must contain the special matters prescribed by Sec. 97, aside from the general matters in Sec. 14. Failure to do so precludes a de jure close corporation status.</td>
</tr>
<tr>
<td>Its status as an ordinary stock corporation is not affected by the ownership of its voting stock or voting rights.</td>
<td>2/3 of its voting stock or voting rights must not be owned or controlled by another corporation which is not a close corporation.</td>
</tr>
<tr>
<td>Its articles cannot classify its directors.</td>
<td>Its articles may classify its directors.</td>
</tr>
<tr>
<td>Business of the corporation is managed by the board of directors.</td>
<td>Business of the corporation may be managed by the stockholders if the articles so provide, but they are liable as directors.</td>
</tr>
<tr>
<td>The corporate officers and employees are elected by a majority vote of all the members of the board of directors.</td>
<td>Its articles may provide that any or all of the corporate officers or employees may be elected or appointed by the stockholders.</td>
</tr>
<tr>
<td>The pre-emptive right is subject to the exceptions found in Sec. 39.</td>
<td>The pre-emptive right is subject to no exceptions unless denied in the articles.</td>
</tr>
<tr>
<td>The appraisal right may be exercised and compelled against the corporation by a stockholder for any reason.</td>
<td>In case of an arbitration of an intra-corporate deadlock by the SEC, the corporation may be ordered to purchase its own shares from the stockholders regardless of the availability of unrestricted retained earnings.</td>
</tr>
</tbody>
</table>

Arbitration of intra-corporate deadlock by the SEC is a remedial case in the directors or stockholders are so
POWERS OF THE SEC IN CASE OF DEADLOCK IN CLOSE CORPORATIONS

1. Cancel or alter any provision in the articles of incorporation or bylaws.
2. Cancel, alter or enjoin any resolution of the corporation.
3. Direct or prohibit any act of the corporation.
4. Require the purchase at their fair value of shares of any stockholder either by any stockholder or by the corporation regardless of the availability of unrestricted retained earnings.
5. Appoint a provisional director.
6. Dissolve the corporation.
7. Granting such other relief as the circumstances may warrant.

XIII. SPECIAL CORPORATIONS

1. EDUCATIONAL CORPORATION

A stock or non-stock corporation organized to provide facilities for teaching or instruction.

A favorable recommendation of the DECS is essential for the approval of its articles and by-laws.

It is primarily governed by special laws and suppletorily by the provisions of the Code.

<table>
<thead>
<tr>
<th>NON-STOCK EDUCATIONAL CORPORATION</th>
<th>EDUCATIONAL CORPORATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A non-stock corporation</td>
<td>A special corporation which may a stock or non-stock</td>
</tr>
<tr>
<td>Governed by the provisions on non-stock corporations and suppletorily by the provisions on stock corporations</td>
<td>Governed by special laws and by the general provisions of the Corporation Code</td>
</tr>
<tr>
<td>The number of board of trustees may be more than 15</td>
<td>The number of the board of trustees should not be less than 5 but not more than 15</td>
</tr>
<tr>
<td>The term of office of the board of trustees shall be 3 years</td>
<td>The term of office of the board of trustees shall be 5 years</td>
</tr>
</tbody>
</table>

2. RELIGIOUS CORPORATION

A corporation composed entirely of spiritual persons and which is organized for the furtherance of a religion or for perpetuating the rights of the church or for the administration of church or religious work or property. It is different from an ordinary non-stock corporation organized for religious purposes.

Kinds:

A) CORPORATION SOLE

- A special form of corporation, usually associated with the clergy, consisting of one person only and his successors, who is incorporated by law to give some legal capacities and advantages; and

B) RELIGIOUS SOCIETIES

- A non-stock corporation governed by a board but with religious purposes. It is incorporated by an aggregate of persons, e.g. religious order, diocese, synod, sect, etc.

XIV. DISSOLUTION AND WINDING UP (LIQUIDATION)

DISSOLUTION

Extinguishment of the franchise of a corporation and the termination of its corporate existence.

Modes:

1. Voluntary
   a) Application for dissolution with the SEC
      i. Where no creditors are affected
      ii. Where creditors are affected
   b) Shortening of the corporate term by amending the articles of incorporation.

2. Involuntary
   a) Expiration of the corporate term;
   b) Failure to organize and commence business within 2 years from the date of issuance of the certificate of incorporation (Note: However, the SEC has opined that the dissolution in this case is not automatic. The corporation continues to exist as such, notwithstanding its non-
operational status until the SEC orders its dissolution after notice and hearing.)

c) Legislative dissolution;
d) Quo warranto suit against a de facto corporation;
e) Minority stockholders’ suit for dissolution on justifiable grounds; or
f) SEC dissolution, upon complaint and after notice and hearing, on the following grounds:

i. The corporation was illegally organized;
ii. Continuous inactivity (subsequent to incorporation, organization and commencement of business) for at least 5 years;
iii. Serious dissension in the corporation; or
iv. Commission by the corporation of illegal or ultra vires acts or violations of the Code.

EFFECTS OF DISSOLUTION

a. Transfer of legal title to corporate property to the stockholders who become co-owners thereof
b. Continuation of corporate business merely as an association without juridical personality
c. Conveyance by the stockholders of their respective shareholdings toward the creation of a new corporation to continue the business of the old
d. Reincorporation of the dissolved corporation by refilling new articles of incorporation and by-laws
e. The corporation continues as a body corporate for 3 years for purposes of winding up
f. Cessation of corporate existence for all purposes upon the expiration of the winding up period of 3 years. (The Corporation Code of the Philippines Annotated, Hector de Leon, 2002 ed.)

LIQUIDATION

The process by which all the assets of the corporation are converted into liquid assets (cash) in order to facilitate the payment of obligations to creditors, and the remaining balance, if any, is to be distributed to the stockholders or members.

Methods:
1. By the corporation itself through its board of directors/trustees;
2. By a trustee to whom the corporate assets have been conveyed; and
3. By a management committee or rehabilitation receiver appointed by the SEC.

Note: The 3-year period of liquidation does not apply to Methods 2 and 3 as long as the trustee or the receiver is appointed within the said period.

The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors alike (see Sec. 145).

The word “trustee” as sued in the corporation statute must be understood in its general concept which could include the counsel to whom was entrusted the prosecution of the suit filed by the corporation. (Spouses Gelano vs. CA)

LIQUIDATION REHABILITATION

<table>
<thead>
<tr>
<th>Liquidation</th>
<th>Rehabilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connotes a winding up or settling with creditors and debtors</td>
<td>Connotes a reopening or reorganization</td>
</tr>
<tr>
<td>Winding up process so that assets may be distributed to those entitled</td>
<td>Contemplates a continuance of corporate life in an effort to restore the corporation to its former successful operation</td>
</tr>
</tbody>
</table>

XV. FOREIGN CORPORATION

A corporation formed, organized or existing under any law other than those of the Philippines, and whose laws allow Filipino citizens and corporations to do business in its own country or state. (Sec. 123)

The definition espouses the incorporation test and the reciprocity rule and is significant for licensing purposes.

It is not permitted to “transact or do business in the Philippines” until it has secured a license for that purpose from the SEC and a certificate of authority.
RESIDENT AGENT

An individual, who must be of good moral character and of sound financial standing, residing in the Philippines, or a domestic corporation lawfully transacting business in the Philippines, designated in a written power of attorney by a foreign corporation authorized to do business in the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against the foreign corporation. (Sec. 127-128)

CONTENTS FOR APPLICATION OF LICENSE

1. Date and term of incorporation
2. The address of the principal office in the country of incorporation
3. The name and address of resident agent
4. The place in the Philippines where it intends to operate
5. The specific purpose or purposes
6. The names and addresses of the present directors and officers of the corporation
7. A statement of its authorized capital stock
8. A statement of its outstanding capital stock
9. A statement of the amount actually paid in
10. Such additional information as may be necessary to enable the SEC to determine whether such corporation is entitled to license

GROUND FOR REVOCATION OF LICENSE

1. Failure to file annual reports required by the Code;
2. Failure to appoint and maintain a resident agent;
3. Failure to inform the SEC of the change of residence of the resident agent;
4. Failure to submit copy of amended articles or by-laws or articles of merger or consolidation;
5. A misrepresentation in material matters in reports;
6. Failure to pay taxes, imposts and assessments;
7. Engage in business unauthorized by SEC;
8. Acting as dummy of a foreign corporation; and
9. Not licensed to do business in the Philippines. (Sec. 134)

TEST OF “DOING OR TRANSACTING BUSINESS IN THE PHILIPPINES”:

The Corporation Code does not define the phrase “doing or transacting business.”

A. Jurisprudential Tests (Philippine Corporate Law, Cesar Villanueva, 2001 ed.)

1. Twin characterization test
   a) Whether the foreign corporation is maintaining or continuing in the Philippines the body or substance of the business for which it was organized or whether it has substantially retired from it and turned it over another (Substance Test); and
   b) Whether there is continuity of commercial dealings and arrangements, contemplating to some extent the performance of acts or works or the exercise of some functions normally incident to and in progressive prosecution of, the purpose and object of its organization (Continuity Test).

2. Contract Test
   Whether the contracts entered into by the foreign corporation, or by an agent acting under the control and direction of the foreign corporation, are consummated in the Philippines.

B. Statutory Tests

1. Foreign Investment Act of 1991 (R.A. No. 7042)

Acts constituting “doing business”:
   a) Soliciting orders, service contracts, opening offices, whether called “liaison” offices or branches;
   b) Appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country
for a period or periods totaling 180 days or more;

c) Participating in the management, supervision or control of any domestic business, firm or entity or corporation in the Philippines; and

d) Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose of the business organization.

2. Implementing Rules of R.A. No. 7042

Acts not constituting “doing business”:

a) Mere investment as a shareholder in a domestic corporation and/or the exercise of rights as such investor;

b) Appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;

c) Publication of a general advertisement through any print or broadcast media;

d) Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

e) Consignment by the foreign corporation of equipment with a local company to be used in the processing of products for export;

f) Collecting information in the Philippines; and

g) Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis.

C. Jurisprudential Rules

1. Doctrine of Isolated Transactions

Foreign corporations, even unlicensed ones, can sue or be sued on a transaction or series of transactions set apart from their common business in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of business transaction. (Eriks Pte.Ltd vs. CA, 267 SCRA 567)

2. In Pari Delicto Rule

In the case of Top-Weld Manufacturing vs. ECED, S.A., the Court denied the relief prayed for by petitioner when it ruled that the very purpose of the law was circumvented and evaded when the petitioner entered into the said agreements despite the prohibition contained in the questioned law. The parties were considered as being in pari delicto because they equally violated R.A. 5455

3. Estoppel Rule

A party is estopped from questioning the capacity of a foreign corporation to institute an action in our courts where it had obtained benefits from its dealings with such foreign corporations and thereafter committed a breach or sought to renege on its obligations. (European Resources vs. Ingnieburo)

EFFECTS OF LACK OF LICENSE

A. On suits

1. Foreign corporation doing business in the Philippines:

   a) may not sue or intervene in any action in any court or administrative agency of the Philippines; but

   b) may be sued on any valid cause of action recognized in the Philippines (under the doctrine of quasi-estoppel by acceptance of benefits). (Sec. 133)

2. Foreign corporation not doing business in the Philippines:

   a) Generally, it may not sue and be sued in any court or administrative agency of the Philippines;

   b) However, it may sue and be sued for isolated transactions, as well as for those which are casual or incidental thereto.

B. On contracts

The contracts contemplated are those that satisfy the “contract test” or those
that make a foreign corporation as one “doing business in the Philippines.”

**GENERAL RULE:** The contracts are unenforceable. They are enforceable only upon securing a license.

**EXCEPTION:** However, the contracts are null and void if they are contrary to law, morals, good customs, public order and public policy.

**INSTANCES WHEN A FOREIGN CORPORATION MAY SUE IN THE PHILIPPINES WHETHER OR NOT LICENSED TO DO BUSINESS THEREAT**
1. To seek redress for an isolated business transaction;
2. To protect its corporate reputation, name, and goodwill;
3. To enforce a right not arising out of a business transaction, e.g. tort that occurred in the Philippines;
4. When the parties have contractually stipulated that Philippines is the venue of actions; and
5. When the party sued is barred by the principle of estoppel and/or principle of unjust enrichment from questioning the capacity of the foreign corporation.

**SECURITIES AND EXCHANGE COMMISSION REORGANIZATION DECREE (P.D. No. 902-A)**

**ORIGINAL AND EXCLUSIVE JURISDICTION OF THE RTC (SEC. 5 in relation to Sec. 5.2 OF RA 8799):**
1. Fraudulent devices and schemes employed by directors detrimental to the public interest and to other firms;
2. Intra-corporate disputes;
3. Disputes with the state in relation to their franchise and right to exist as such;
4. Controversies in election, appointment of directors or trustees;
5. Petition to be declared in a state of suspension of payments;
6. Petition for rehabilitation; and
7. Appointment of rehabilitation receiver or management committee (provisional remedies).

**GROUNDS FOR SUSPENSION OR CANCELLATION OF CERTIFICATE OF REGISTRATION (SEC. 6[LI])**
1. Fraud in procuring registration;
2. Serious misrepresentation as to objectives of corporation;
3. Refusal to comply with lawful order of SEC;
4. Continuous inoperation for at least 5 years;
5. Failure to file by-laws within required period;
6. Failure to file reports; and
7. Others similar grounds.

**INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION (effective December 15, 2000)**

**CORPORATE REHABILITATION**
A process to try to conserve and administer the corporation’s assets in the hope that it may eventually be able to return from financial stress to solvency.
Nature: in rem, summary, and non-adversarial.

Applicability: These Rules apply to petitions for rehabilitation filed by corporations, partnerships and associations pursuant to P.D. 902-A.

Steps:
1. Filing verified petition with the appropriate RTC by:
   a. corporate debtor who foresees the impossibility of meeting its debts when they respectively fall due; or
   b. creditors holding at least 25% of the debtor’s total liabilities;
2. The following shall be annexed to the petition:
   a. audited financial statements at end of its last fiscal year;
   b. interim financial statement;
   c. schedule of debts and liabilities;
   d. inventory of assets;
   e. rehabilitation plan;
   f. schedule of payments and disposition of assets effected within 3 months preceding the filing of the petition;
   g. schedule of cash flow for the last 3 months’
   h. statement of possible claims;
   i. affidavit of general financial condition;
   j. at least 3 nominations for rehabilitation receiver;
   k. certificate under oath that directors and stockholders have irrevocably approved/consented to all actions/matters necessary under the rehabilitation plan.
3. The court shall issue the stay order not later than 5 days from the filing of the petition, which among others, shall:
   a. appoint a rehabilitation receiver;
   b. stay all actions for claims against the debtor, which shall cover both secured and unsecured creditors;
   c. set an initial hearing for the petition (not earlier than 45 days but not later than 60 days from filing of the petition); and
   d. direct the creditors to file their verified comment or opposition not later than 10 days before the initial hearing; their failure to do so would bar them from any participating in the proceedings.
4. Publication of the stay order in a newspaper of general circulation once a week for 2 consecutive weeks;
5. Referral of rehabilitation plan to rehabilitation receiver;
6. Meetings between corporate debtor with creditors. Discussions on the rehabilitation plan;
7. Submission of final rehabilitation plan to the RTC for approval;
8. The petition shall be dismissed (which results into the automatic lifting of the stay order unless RTC ordered otherwise) if no rehabilitation plan is approved after 180 days from initial hearing;
9. Approval or disapproval of the rehabilitation plan by RTC.

REHABILITATION RECEIVER
A person appointed by the RTC, in behalf of all the parties for the purpose of preserving and conserving the property and preventing its possible destruction or dissipation, if it were left in the possession of any of the parties.

He acts in a fiduciary capacity and with impartiality towards all interested.

He does not take over the management and control of the debtor, but shall closely oversee and monitor the operations of the debtor during the pendency of the proceedings. (Bar Review Materials in Commercial Law, Jorge Miravite, 2002 ed.)

POWERS AND FUNCTIONS OF MANAGEMENT COMMITTEE OR REHABILITATION RECEIVER (Sec. 6[d], P.D. 902-A)
1. To take custody of, and control over, all the existing assets and property of such entities under management;
2. To evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations;
3. To determine the best way to salvage and protect the interest of the investors and creditors;
4. To study, review and evaluate the feasibility of continuing operations and structure and rehabilitate such entities if determined to be feasible by the RTC;
5. To report and be responsible to the RTC until dissolved; and
6. May overrule or revoke the actions of the previous management and board of directors of the entity under management, notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

Mere disagreement among stockholders as to the affairs of the corporation would not in itself suffice as a ground for the appointment of a management committee. At least where there is no imminent danger of loss of corporate property or of any other injury to stockholders, management of corporate business should not be wrested away from duly elected officers, who are prima facie entitled to administer the affairs of the corporation, and placed in the hands of the management committee. However, where the dissension among stockholders is such that the corporation cannot successfully carry on its corporate functions the appointment of a management committee becomes imperative. (Ramon Jacinto and Jaime Colayco vs. First Women’s Credit Corporation, G.R. No. 154049, August 28, 2003)

RA 8799 effectively amended Sec. 5 of PD 902-A, jurisdiction over intra-corporate disputes is now vested in the RTCs. However, while Sec. 5 was amended, there is no repeal of Sec. 6 thereof declaring that the fraudulent acts or schemes, which the SEC shall exclusively investigate and prosecute, are those in violation of any law or rules and regulations administered and enforced by the SEC alone. The filing of civil/intra-corporate case before SEC does not preclude the simultaneous and concomitant filing of a criminal action before the regular courts; such that a fraudulent act may give rise to liability for violation of the rules and regulations of the SEC cognizable by the SEC itself, as well as criminal liability for violation of the Revised Penal Code cognizable by the regular courts, both charges to be filed and proceeded independently, and may be simultaneously with the other. (Fabia vs. CA, G.R. No. 132684. September 11, 2002.)

**Automatic Stay**
Effect of appointment of a management committee or rehabilitation receiver

All actions for claims against the corporation shall be suspended accordingly.

Purpose/justification: To enable the management committee or the rehabilitation receiver to effectively exercise its powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. (Rubberworld v. NLRC)

No definite duration; deemed to apply during the entire period that the corporate debtor is under management committee or the rehabilitation receiver. (BF Homes v. CA)

**SECURITIES REGULATION CODE (SRC)**  
(R.A. No. 8799)

**PURPOSES:**
1. To establish a socially conscious, free market that regulates itself
2. To encourage the widest participation of ownership in enterprises
3. To enhance the democratization of wealth
4. To promote the development of the capital market
5. To protect investors
6. To ensure full and fair disclosure about securities
7. To minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market. (Sec. 2)

FEATURES WHICH ARE INTENDED TO PROTECT THE INVESTING PUBLIC
1. All securities are required to be registered before they can be sold to the public (Section 8);
2. Rejection and revocation of registration of securities (Section 13);
3. Regulation of pre-need plans. (Section 16);
4. Protection of shareholder interests (Section 19);
5. Prohibition on fraud, manipulation and insider trading (Sections 24, 25, 26 and 27);
6. Regulations of Securities Market Professionals (Section 28);
7. Revocation, refusal or suspension of registration of brokers, dealers and salesmen and associated persons (Section 29);
8. Restrictions on “over-the-counter” markets (Section 32);
9. Self-regulation of associations of securities brokers, dealers and other securities related organizations (Section 29);
10. Registration of clearing agencies (Section 42);
11. Limitations on margin trading or the amount of credit that may be extended on any security (Section 49)
12. Civil liabilities arising from false statement in the registration statement (Section 56)
13. Civil liabilities arising from false statements or omissions in the prospectus, communications and reports (Section 57)
14. Protection against manipulation of security prices, manipulative and deceptive devices (Section 59), fraud in pre-need plans and commodities futures contracts (Section 60), fraudulent transactions (Section 58), and insider trading (Section 61);
15. Establishment of trust funds to compensate investors for extraordinary losses or damage they may suffer due to business failure or fraud or mismanagement of the persons with whom they transact (Section 36.5(a)).

POWERS AND FUNCTIONS OF THE SEC
1. Supervision over corporations, partnerships, and grantees of primary franchise;
2. Approve, reject registration statements/licensing applications;
3. Suspend, revoke, after notice and hearing primary franchise on grounds;
4. Regulate/supervise activities of persons to ensure compliance;
5. Supervise monitor, suspend or take over, exchanges, clearing agencies and SROs;
6. Recommend policies, advise, propose legislation to Congress on securities market;
7. Prepare, approve, amend or repeal rules, regulations, issue opinions
8. Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government as well as any private institution, corporation, firm, association or person in the implementation of its powers;
9. Issue cease and desist orders to prevent fraud or injury;
10. Punish for contempt of the Commission;
11. Compel the officers of any registered corporation or association to call meetings of stockholders or members;
12. Issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Commission; and
13. Exercise such other powers as may be provided by law which are necessary or incidental to the carrying out its express powers. (Sec. 5)

SECURITIES
Shares, participation or interest in a corporation or in a commercial enterprise or profit-making ventures and evidenced by a certificate, contract, instrument whether written or electronic in character. (Sec. 3)

Kinds:
1. Shares of stocks, bonds, debentures, notes, evidence of indebtedness, asset-backed securities;
2. Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription
3. Fractional undivided interests in oil, gas, or other mineral rights;
4. Derivatives like options and warrants;
5. Certificates of assignments and participation, trust certificates, voting trust certificates or similar instruments;
6. Proprietary or non-proprietary membership certificates in corporations;
7. Other instruments as may in the future be determined by the SEC. (Sec. 3)

Classes:
1. Exempt securities and securities covered by exempt transactions; and
2. Securities that are not exempt or the sale of which is not an exempt transaction.

DERIVATIVE
A financial instrument, including options and warrants, whose value depends on the interest in or performance of an underlying security, but which does not require any investment of principal in the underlying security.

Kinds:
1. OPTIONS - contracts that give the buyer the right, but not the obligation, to buy or sell an underlying security at a predetermined price, called the exercise or strike price, on or before a predetermined date, called the expiry date, which can only be extended in accordance with Exchange rules.
2. WARRANTS - rights to subscribe or purchase new shares or existing shares in a company, on or before a predetermined date, called the expiry date, which can only be extended in accordance with Exchange rules. Warrants generally have a longer exercise period than options. (SRC Rule 3.1-1)

REGISTRATION OF SECURITIES
General rule: A registration statement duly filed and approved by the SEC is necessary before securities may be sold and offered for sale or distribution within the Philippines. Prior to any sale, information on the securities, in such form and substance prescribed by the SEC, shall be made available to each prospective purchaser. (Sec. 8)

Exceptions:
1. Exempt securities; and
2. Exempt transactions.

EXEMPT SECURITIES (Sec. 9)
1. Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled by and acting as an instrumentality of said Government.
2. Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision or agency thereof on the basis of reciprocity.
3. Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.
4. Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.

5. Any security issued by a bank except its own shares of stock.

6. Any securities added by the SEC by rule or regulation after public hearing.

**EXEMPT TRANSACTIONS** (Sec. 10)

1. Judicial sale by executor, administrator, guardian/receiver in insolvency or bankruptcy.
2. Sale of pledged or mortgaged security to liquidate a bona fide debt.
3. Sale on isolated transactions by owner.
4. Distribution of stock dividends.
5. Sale of capital stock exclusively to stockholders where no commission is paid.
6. The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage are sold to a single purchaser at a single sale.
7. Issuance of security in exchange of any security from same issuer pursuant to right of conversion.
8. Broker’s transactions
9. Pre-incorporation subscription and subscription pursuant to an increase of the ACS.
10. Exchange of securities by issuer with existing security holders exclusively
11. Sale to less than 20 persons during any 12-month period
12. Sale of securities to banks, registered investment house, insurance companies, pension fund or retirement plan maintained by the government or other persons authorized by the BSP to engage in trust functions.

**TENDER OFFER**

A publicly announced intention by a person acting alone or in concert with other persons to acquire equity securities of a “public company.”

It is *mandatory* to make a tender offer for equity shares of a public company in an amount equal to the number of shares that the person intends to acquire in the following circumstances:

a. The person intends to acquire 15% or more of the equity shares of a public company pursuant to an agreement made between or among the person and one or more sellers;

b. The person intends to acquire 30% or more of the equity shares of a public company within a period of 12 months; or

c. The person intends to acquire shares that would result in ownership of more than 50% of the equity shares of a public company. (SRC Rule 19)

Tender offer is made:

1. By filing with the SEC a declaration to make a tender offer;

2. By furnishing the issuer or the originator of the security a statement containing such information required under Sec. 17 of the SRC:
   i. Annual Report (includes balance sheet, profit and loss statement);
   and
   ii. Periodical reports for interim fiscal periods; and

3. By publishing all requests or invitations for tender, or materials, making a tender offer or requesting or inviting letters of such a security.

**PUBLIC COMPANY**

1. Any corporation with a class of equity securities listed on an Exchange; or

2. Any corporation with assets in excess of P50M and having 200 or more holders, at least 200 of which are holding at least 100 shares of a class of its equity securities.

**UNLAWFUL ACTS**

1. For any beneficial owner, director, or officer to sell any security if the seller or his principal does not own or does not deliver it within 20 days from sale. (Sec. 23.3)

2. Manipulation of security prices. (Sec. 24.1)
3. Employment of manipulative or deceptive device or contrivance in connection with purchase and sale of authorities. Execution of “short sale”, “stop-loss order” not in accordance with SEC rules. (Sec. 24.2)
4. For any member of Exchange directly or indirectly endorse or guarantee the performance of any “put”, “call”, “straddle”, “option” or “privilege” in relation to any security registered. (Sec. 25)
5. Fraudulent transactions in the sale of securities. (Sec.26)
6. Insider trading (Sec. 27)
7. For an insider to communicate material non-public information about the issuer or security. (Sec. 27.3)
8. Unlawful Tender Offer. (Sec 27.4)
9. Use of Extensive Credit. (Sec 48.1)

DEFINITION OF TERMS:
1. SHORT SALE - A contract for sale of shares of stock which the seller does not own, or certificates which are not within his control, so as to be available for delivery at the time when delivery must be made.
2. STOP-LOSS ORDER - The direction by a customer to his broker that if the commodity touches the price named, the broker shall close the trade at the best available price.
3. PUT - An option that, in consideration of a premium paid, gives the purchaser the right to make the seller take from him a given number of shares of a named stock between a given time at a stipulated price which is usually below the prevailing market price of the stock at the time the “put” is purchased.
4. CALL - An option that, in consideration of a premium paid, entitles the buyer the right to compel the seller to deliver to him a certain number of shares within a given time at a stipulated price which is usually higher than the prevailing market price at the time the “call” is bought. “Call” is the reverse of “put.”
5. STRADDLE - The double privilege of a “put” and a “call,” and secures to the holder the right to demand of the seller at a certain price within a certain time a certain number of shares of specified stock, or to require him to take, at the price within the same time, the same shares of stock.
6. WASH SALE - The operation of simultaneously buying and selling the same stock. It is any transaction in any security which involves no change in the beneficial ownership thereof. It is the reverse of “MATCHED ORDERS” wherein there is a change in the ownership of the securities.
7. SHORT SWING TRANSACTION - One where a person buys securities and sells the same within a period of six months.
8. FLOOR TRADER - A professional trader in securities who acts for himself and not for the account of others, hence, receives no commission at all.
9. HYPE AND DUMP - Engaging in buying activity at increasingly higher prices and then selling securities in the market at higher securities.
10. BOILER ROOM SALES - The use of high-pressure sales tactics to promote purchases and sales of securities.
11. “OVER THE COUNTER TRANSACTION” - Transactions which are not made at the stock exchange, but directly between the broker and the customer.
12. “OVER-THE-COUNTER” MARKET - A market created other than a registered stock exchange for both the purchase and sale of any security.

INSIDER TRADING
The selling or buying of a security by an insider while in possession of material non-public information with respect to the issuer or the security. It is considered unlawful unless:
1. The insider proves that the information was not gained from such relationship, or
2. If the other party selling to or buying from the insider (or his agent) is identified, the insider proves:
   a. that he disclosed the information to the other party, or
   b. that he had reason to believe that the other party otherwise is also in possession of the information. (Sec. 27.1)
INSIDER
A person who, with respect to a particular security, may be any of the following:
1. The issuer;
2. The director or officer of, or a person controlling the issuer;
3. A person whose relationship or former relationship to the issuer gives him access to material information about the issuer or the security that is not generally available to the public;
4. A government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public;
5. A person who learns such information by a communication from any of the foregoing insiders. (Sec. 3.8)

MATERIAL NON-PUBLIC INFORMATION
(formerly Fact of Special Significance)
a. Information about the issuer or the security which has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or
b. Information about the issuer or the security which would be considered by a reasonable person important under the circumstances in determining his course of action to buy, sell or hold security. (Sec. 27.2)

MARGIN TRADING
A kind of trading that allows a broker to advance for the customer/investor part of the purchase price of a security and to keep it as a collateral for such advance.

The credit extended must be for an amount not greater than whichever is higher of:
1. 65% of current market price of the security
2. 100% of the lowest market price of security during the preceding 36 calendar months, but not greater than 75% of the current market price. (Sec. 48)

Margin
Sum of money, or its equivalent, placed in the hands of a broker by principal or persons on whose account the purchase is to be made, as a security to the former against losses to which he may be exposed by a subsequent depression in the market value of the stock.

Margin Call
Demand made by the broker on the investor to deposit money or securities with the broker when a purchase is made or when the investor’s equity in a margin account falls below a minimum standard set by the exchange or broker.