

Corporate Law Legal Reference Guide

1. General Governing Law

The basic law governing corporations in the Philippines is the Revised Corporation Code (Republic Act No 11232) The Revised Corporation Code became effective on February 23, 2019, introducing fresh and progressive concepts aimed at improving the ease of doing business in the country, promoting good corporate governance, and providing protection to corporations, investors, and consumers alike, amid a fast-evolving business landscape.¹

a. History – Corporation Code and Revised Corporation Code

The Corporation Code of the Philippines (B.P. No. 68) took effect on May 1, 1980 and served as the primary legislation to govern transactions relating to Corporate Law in the Philippines for 40 years, until 2019, when the Revised Corporation Code took it effect. The old Corporation Code contained provisions which embodied prevailing principles and doctrines with the aim of providing definite guidance and stability for the years to come. It clarified the obligations of corporate directors and officers, expressed in statutory language established principles and doctrines, provided a chapter on close corporations, among many other insertions.²

Subsequent to the commencement of the Corporation Code in 1980, several developments in jurisprudence and principles of law were established and adopted by our regulators. In order to supply the necessary guidelines and lay the groundwork for existing and prospective corporations and practitioners alike, as well as to aptly regulate the transactions related to Corporation Law for the foreseeable future, the Revised Corporation Code was passed into law in 2019.

The Revised Corporation Code introduced amendments aimed at strengthening and simplifying corporate governance standards for a more business friendly environment. It also set out measures which will remove the barriers for hindering the entry of both small and large enterprises into the market. Further, it is aimed to improve ease of doing business in the country by allowing the incorporation of a One-person corporation, removing the minimum capital requirement and providing for the perpetual existence of corporations.³

¹ Briefer on Revised Corporation Code, SEC.

² Villanueva, Corporation Law

³ Senate of the Philippines Press Release, November 27,2018, Press Release - Drilon: Bicam approves Corporation Code amendments amidst PH drop in Doing Business rank (senate.gov.ph)

2. General principles

The general principles applicable to corporations in general are as follows:

- a. Limited Liability of Corporation
 - i. Separate Personality of Corporation

Basic is the principle that a corporation is vested by law with a personality separate and distinct from that of each person composing or representing it.⁴ Equally fundamental is the general rule that corporate officers cannot be held personally liable for the consequences of their acts, for as long as these are for and on behalf of the corporation, within the scope of their authority and in good faith.⁵ The separate corporate personality is a shield against the personal liability of corporate officers, whose acts are properly attributed to the corporation.⁶

As a general rule, a corporation has a separate and distinct personality from those who represent it.⁷ Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code (now Section 30 of the Revised Corporation Code).⁸

- ii. Piercing the Corporate Veil

Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group.

Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary

⁴ Solidbank Corporation v. Mindanao Ferroalloy Corporation, GR No. 153535 (2005) citing the case of

⁵ id. citing the case of Francisco v. Mejia, Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC, 357 Phil. 110, 127, September 25, 1998.

⁶ id. citing the case of FCY Construction Group, Inc. v. CA, 381 Phil. 282, 290, February 1, 2000

⁷ Pioneer Insurance Surety Corporation v. Morning Star Travel & Tours, Inc., G.R. No. 198436 (2015) citing the case of Solidbank Corporation v. Mindanao Ferroalloy Corporation, 502 Phil. 651, 664 (2005)

⁸ Section 30, Revised Corporation Code

SEC. 30. Liability of Directors, Trustees or Officers.

– 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 or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.⁹

b. Trust Fund Doctrine

Under the Trust Fund Doctrine, subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims.¹⁰

Pursuant to the Trust Fund Doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who must first be paid before any corporate assets may be distributed among stockholders.¹¹

3. Classes or Types of Corporations

Under the Revised Corporation Code, there are four (4) types of corporations, namely, stock corporations, non-stock corporations, one person corporations (OPC), and closed corporations.

a. Stock Corporation

Stock Corporations are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of the shares held.¹²

b. Non-stock Corporation

Non-stock Corporations are those entities which do not have authorized capital stock divided into shares and do not distribute any part of its income to the members. It is generally organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social civil service, or similar purposes, like trade, industry, agricultural and like chambers, or any combinations thereof.¹³

c. One Person Corporation

The Revised Corporation Code removed the minimum number of incorporators required to organize a corporation and allowed the formation of a One Person corporation.¹⁴

⁹ Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission, G.R. No. 170689, March 17, 2009,

¹⁰ SEC-OGC Opinion No. 19-60, December 20, 2019.

¹¹ *Id. citing Philip Turner and Elnora Turner v. Lorenzo Shipping Corp.*, GR No. 157479 (2010) further citing *Boman Environment Development Corporation v. CA*, GR No. L-77860 (1988)

¹² Section 3, Revised Corporation Code

¹³ FAQs - Securities and Exchange Commission

¹⁴ Primer on the Revised Corporation Code, SEC

A One person Corporation is a corporation formed with a single stockholder; Provided that only a natural person, trust, or an estate may form a One Person Corporation.¹⁵ The single stockholder shall be the sole director and president of the One Person Corporation.¹⁶ The single stockholder may not however be appointed as the corporate secretary, but may assume the role of a treasurer.¹⁷ In the event that the single stockholder should assume the position of treasurer, the single stockholder is required to post a surety bond.¹⁸

The suffix “OPC” should be indicated in the name of the One Person Corporation either below or at the end of its corporate name.

d. Closed Corporations

A Close Corporation is one which articles of incorporation provides that:

- (a) all the corporation’s issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20);
- (b) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and
- (c) the corporation shall not list in any stock exchange or make any public offering of its stocks of any class.

Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.

Any corporation may be incorporated as a close corporation, except mining or oil companies, stock exchanges, banks, insurance companies, public utilities, educational institutions and corporations declared to be vested with public interest in accordance with the provisions of this Code¹⁹

¹⁵ Section 115, Revised Corporation Code

¹⁶ Section 121, REVISED CORPORATION CODE.

¹⁷ Section 122, REVISED CORPORATION CODE.

¹⁸ Id.

¹⁹ Section 95, REVISED CORPORATION CODE

4. Nationality of Corporations

A corporation is deemed a Philippine national if at least 60% of its capital stock is owned or controlled by Filipinos.²⁰

a. Control Test

Under the Control Test, if Filipino Citizens own at least 60% of the corporation's capital, all the shares of the corporation, including those owned by foreigners, shall be considered of Philippine Nationality.

b. Grandfather Test

When the 60-40 rule (60% of the Corporation is owned by Philippine Nationals and 40% is owned by Foreign Nationals) is apparently met by the subject or investee corporation, a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the beneficial ownership and control of the shares involved.

The Grandfather Rule is "the method by which the percentage of Filipino equity in a corporation engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, is computed, in cases where corporate shareholders are present, by attributing the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder." Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.²¹

c. Beneficial Ownership Test and Voting Control Test

For purposes of determining compliance with the constitutional or statutory ownership, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote.²²

²⁰ Section 3(a), Foreign Investments Act of 1991

SEC. 3. Definitions. - As used in this Act:

a) the term "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines or a corporation organized abroad and registered as doing business in the Philippine under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national; (as amended by R.A. 8179)

²¹ Narra Nickel Mining and Development Corp., v. Redmont Consolidate Mines Corp., GR No. 1995580 (2015) citing Villanueva, Philippines Corporate Law (2001)

²² Roy v. Herbosa, GR No. 207246 (2017) citing the case of *Gamboa v. Teves*, further citing SEC MC No.8-2013

A Beneficial Owner of the share of stock is defined as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security).²³

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the shares of stock, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.²⁴

5. Classes of Shares

A corporation can have several classes of shares as discussed below.

a. Founder's Shares

Founders' shares may be given certain rights and privileges not enjoyed by the owners of other stocks. i.e., the exclusive right to vote and be voted for in the election of directors.

The most obvious feature of Founder's Shares is that they are issued basically to the founders or initial organizers of the corporation.²⁵

b. Par value/no par value shares

Par Value Shares are those which have a fixed value stated in the Articles of Incorporation and the Certificate of Stock.

No Par-value Shares are those which do not have a fixed value stated in the Articles of Incorporation and the Certificate of Stock. These shares shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided, that no-par value shares must be issued for a consideration of at least Five pesos (P5.00) per share: Provided, further, That the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.²⁶

²³ Sec. 3.1.2, 2015 Implementing Rules and Regulations of the Securities Regulation Code

²⁴ Sec. 1(b), Implementing Rules and Regulations of the Foreign Investment Act of 1991

²⁵ Villanueva, Corporation Law

²⁶ Section 6, Revised Corporation Code

c. Preferred Shares

Preferred shares of stock issued by a corporation may be given preference in the distribution of dividends and in the distribution of corporate assets in case of liquidation, or such other preferences: Provided, that preferred shares of stock may be issued only with a stated par value. The board of directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof.²⁷

d. Redeemable Shares

Redeemable shares may be issued by the corporation when expressly provided in the articles of incorporation. They are shares which may be purchased by the corporation from the holders of such shares upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation, and upon such other terms and conditions stated in the articles of incorporation and the certificate of stock representing the shares.²⁸

e. Treasury Shares

Treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation through purchase, redemption, donation, or some other lawful means. Such shares may again be disposed of for a reasonable price fixed by the board of directors.²⁹

6. Incorporation and Organization

a. Steps in Incorporation and Registration

A person or group of persons desiring to incorporate shall submit the intended corporate name to the SEC for verification. If the SEC finds that the name is distinguishable from a name already reserved or registered for the use of another corporation, not protected by law and is not contrary to law, rules and regulations, the name shall be reserved in favor of the incorporators. The incorporators shall then submit their articles of incorporation and bylaws to the Commission.³⁰

The Applicant/s must register the Corporation through the SEC's Company Registration System on <https://crs.sec.gov.ph>

²⁷ Id.

²⁸ Section 8, Revised Corporation Code

²⁹ Section 9, Revised Corporation Code

³⁰ Section 18, Revised Corporation Code

The Company Registration System (CRS) is the full automation and online pre-processing of corporations and partnerships, licensing of foreign corporations, amendments of the articles of incorporation and other corporate applications requiring SEC approval.

Through the CRS, the applicant can Verify the availability of the Company Name, Fill-out the Articles of Incorporation and By-laws, as well as avail of services such as the payment of fees and assessment of filing fees.

b. Corporate Term

Under the Revised Corporation Code corporations shall now have perpetual existence unless its articles of incorporation provide otherwise.³¹

c. Capital Stock requirement

Pursuant to the amendments reflected in the Revised Corporation Code, Stock Corporations are no longer required to have minimum capital stock, except as otherwise specifically provided by special law.³²

As a general rule, there are no restrictions on the extent of foreign ownership of export enterprises. In domestic market enterprises³³, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the negative list. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their businesses by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.³⁴

Export enterprises which are non-Philippine nationals shall register with BOI and submit the reports that may be required to ensure continuing compliance of the export enterprise with its export requirement.³⁵

Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution existing law or the Foreign Investment Negative List.³⁶

³¹ Section 11, Revised Corporation Code

³² Section 12, Revised Corporation Code.

³³ Section 3(a), Foreign Investments Act of 1991

Sec. 3. Definitions. – As used in this Act:

f) the term “domestic market enterprise” shall mean an enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least sixty percent (60%) thereof;

³⁴ Section 2, Foreign Investments Act of 1991.

³⁵ Section 6, Foreign Investments Act of 1991.

³⁶ Section 7, Foreign Investments Act of 1991.

d. Issuance of Certificate of Incorporation

If the SEC finds that the submitted documents and information are fully compliant with the requirements of this Code, other relevant laws, rules and regulations, the SEC shall issue the certificate of incorporation.³⁷

A private corporation organized under the Revised Corporation Code commences its corporate existence and juridical personality from the date the SEC issues the certificate of incorporation under its official seal and thereupon the incorporators, stockholders/members and their successors shall constitute a body corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.³⁸

e. Articles of Incorporation and By-Laws

The Articles of Incorporation (AOI) has been described as one that defines the charter of the corporation and the contractual relationships between the (1) state and the corporation, the (2) stockholders and the State, and between the (3) corporation and its stockholders.³⁹ The AOI generally contains the name of the corporation, the specific purposes of incorporation, place of principal office, details of the incorporators and the directors/trustees, among other relevant information on the corporation.

By-laws are traditionally defined as regulations, ordinances, rules or laws adopted by an association or corporation or the like for its internal governance, including rules for routine matters such as calling meetings and the like. If those key by-law provisions on matters such as quorum requirements, meetings, or on the internal governance of the local/chapter are themselves already provided for in the constitution, then it would be feasible to overlook the requirements for by-laws.⁴⁰ The By-laws contain the details as to the time, place and manner of calling and conducting the meetings of the directors/trustees and stockholders/members, the required quorum in meetings, modes of casting votes in meetings, among other relevant information.

Once the SEC finds that the Corporate Name to be used by the applicant is available for use, the Incorporators shall submit their AOI and By-laws to the SEC.⁴¹ The articles of incorporation and applications for amendments thereto may be filed with the SEC in the

³⁷ id.

³⁸ Id.

³⁹ Lanuza v. CA, 454 SCRA 54 (2005)

⁴⁰ San Miguel Corp. v. Mandaue Packing Products Plants Union-FFW, 467 SCRA 107 (2005)

⁴¹ Section 18, Revised Corporation Code.

form of an electronic document, in accordance with the SEC rules and regulations on electronic filing.⁴²

f. Corporate Books and Records

Every corporation shall keep and carefully preserve at its principal office all information relating to the corporation including, but not limited to:

1. Articles of Incorporation and By-laws;
2. Current ownership structure and voting rights of the corporation, list of stockholders or members, group structures, intra-group relations, ownership data, and beneficial ownership;
3. Names and addresses of all the members of the board of directors or trustees and the executive officers;
4. Record of all business transactions;
5. Record of the resolutions of the board of directors or trustees and of the stockholders or members;
6. Copies of the latest reportorial requirements submitted to the SEC
7. Minutes of the meetings of the Board of directors/trustees or of the stockholders/members.⁴³

In addition thereto, the Corporation is also obliged to keep and maintain a Stock and Transfer Book within the principal office which shall contain a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stocks for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, by and to whom made; and such other entries as the bylaws may prescribe.⁴⁴

7. Corporate Powers

A corporation has both general and specific powers which are provided under the Revised Corporation Code.

General Corporate Powers	Specific Corporate Powers
<p>Every corporation incorporate has the power and capacity:</p> <ol style="list-style-type: none"> 1. To sue and be sued in its corporate name; 2. To have perpetual existence unless the certificate of incorporation provides 	<p>The Revised Corporation Code provides for other powers of the Corporation:</p> <ol style="list-style-type: none"> 1. Power to extend or shorten corporate term; 2. Power to increase or decrease capital stock; incur, create or increase bonded

⁴² Section 13, Revised Corporation Code.

⁴³ Section 73, Revised Corporation Code.

⁴⁴ Id.

<p>otherwise;</p> <ol style="list-style-type: none"> 3. To adopt and use a corporate seal; 4. To amend its articles of incorporation in accordance with the provisions of the Revised Corporation Code; 5. To adopt bylaws, not contrary to law, morals or public policy, and to amend or repeal the same in accordance with the Revised Corporation Code; 6. In case of stock corporations, to issue or sell stock to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members if it be a non-stock corporation; 7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property including securities and bonds of other corporations, as the transaction of lawful business of the corporation may reasonably and necessarily require, subject to the limitation prescribed by law and the Constitution; 8. To enter into a partnership, joint venture, merger, consolidation, or any other commercial agreement with natural or juridical persons; 9. To make reasonable donations, including those for public welfare or for hospital, charitable, cultural, scientific, civi, or similar purposes; 10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees; 11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation. 	<p>indebtedness;</p> <ol style="list-style-type: none"> 3. Power to deny preemptive right; 4. Power to sell or dispose of corporate assets; 5. Power to acquire own shares; 6. Power to invest corporate funds in another corporation or business or for any other purpose; 7. Power to declare dividends; 8. Power to enter into management contract;
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Voting requirements in corporate action:

Corporate Action or Purpose	Voting Requirement
Amendment of Articles of Incorporation	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock; or $\frac{2}{3}$ of the members, for non-stock corporations
Removal of Directors of Trustees <ul style="list-style-type: none">• Sign of a written demand for special meeting regarding removal	Majority of the stockholder representing the outstanding capital stock Majority of the remaining directors, if still constituting a quorum. Otherwise, regular voting of the stockholders or members
Granting compensation to directors other than per diems	Majority of the stockholder representing the outstanding capital stock
Approval of material contract - With public interest	$\frac{2}{3}$ vote of the entire membership of the Board, with at least majority of its independent directors
Ratifying by vote of corporation's contract with a director or officer	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Ratifying an act of disloyalty by a director	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Actions of the Executive Committee	Majority of the Executive Committee
Extending or shortening corporate term	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Increase or decrease capital stock, incur, create or increase bonded indebtedness	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Approval to issue shares as payment for property or debt	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Sale, lease, exchange, mortgage, pledge, disposition of corporate assets	Majority vote of the Board or of the Trustees
Sale of all or substantially all properties,	Vote of stockholders representing $\frac{2}{3}$ of



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assets or goodwill of the corporation	the outstanding capital stock; or $\frac{2}{3}$ of the members, for non-stock corporations
Investing Corporate funds in another corporation or business, or for another purposes other than its primary purpose	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Approval to issue stock dividends	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Entering into management contracts <ul style="list-style-type: none">● Approval is needed if:<ul style="list-style-type: none">○ The corporation owns $\frac{1}{3}$ of the outstanding capital stock entitled to vote of the managing corporation○ Majority of the Board of the managing corporation also makes the majority of the Board of the managed corporation	Approved by at least the majority of the stockholders representing the outstanding capital stock
Adoption of bylaws	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Amendment of bylaws	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Delegate power to amend and repeal bylaws to the board	Vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Quorum in meeting shall consist of	Majority vote representing the outstanding capital stock
Approval or amendment of a merger plan or consolidation	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock of all constituent corporations
Amendment of articles of incorporation of a Closed Corporation seeking to: <ol style="list-style-type: none">1. Delete or remove a provision required by Title XII; or2. Reduce quorum requirements; or3. Reduce voting requirements	$\frac{2}{3}$ vote of stockholders representing the outstanding capital stock, or greater proportion provided for in the Articles of Incorporation for amending

Religious Societies: Decision of a religious society to incorporate as a religious corporation	$\frac{2}{3}$ vote of its membership
Voluntary Dissolution (No creditors affected)	Majority vote of the board and vote of stockholders representing $\frac{2}{3}$ of the outstanding capital stock
Voluntary Dissolution (With creditors affected)	$\frac{2}{3}$ Affirmative vote of stockholders representing the outstanding capital stock

8. Board of Directors and Trustees

a. Duties, Liabilities and Responsibilities

The board of directors or trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation.⁴⁵

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 or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.⁴⁶

A director, trustee or officer shall not attempt to acquire, or acquire any interest adverse to the corporation in respect of any matter which has been reposed in them in confidence and upon which, equity imposes a disability upon themselves to deal in their own behalf; otherwise, the said director, trustee or officer shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.⁴⁷

b. Corporate Officers – Powers and Functions

The officers shall manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors.

Immediately after their election, the directors of a corporation must formally organize and elect:

- (a) a president, who must be a director;

⁴⁵ Section 22, Revised Corporation Code

⁴⁶ Section 30, REVISED CORPORATION CODE

⁴⁷ Id.

- (b) a treasurer, who must be a resident of the Philippines;
- (c) a secretary, who must be a citizen and resident of the Philippines; and
- (d) such other officers as may be provided in the bylaws.

If the corporation is vested with public interest, the board shall also elect a compliance officer. The same person may hold two (2) or more positions concurrently, except that no one shall act as president and secretary or as president and treasurer at the same time, unless otherwise allowed in this Code⁴⁸

c. Term of Office

The Term of office of Corporate Officers is one (1) year due to the fact that the term of Directors is fixed at one (1) year pursuant to Section 22 of the Revised Corporation Code.

d. Elections

Corporate Officers must be elected by a majority vote of all members of the Board.

9. Stockholders and Members Rights of Stockholders and members

a. Rights of the stockholders

The following are the basic rights of the stockholders pursuant to the Revised Corporation Code:

1. Direct or Indirect Participation in the Management of the Corporation
2. Right to Vote
3. Right to remove Directors
4. Right to Dividends
5. Appraisal Right
6. Right to Issuance of Stock Certificate for fully paid shares
7. Proportionate participation in the distribution of assets in liquidation
8. Right to transfer of stocks in the stock and transfer book
9. Pre-emptive right
10. Right to inspect books and records
11. Right to be furnished with corporate financial records
12. Right to recover stocks unlawfully sold for delinquent payment of subscription
13. Right to issuance of new certificates in lieu of lost, stolen, or destroyed certificates
14. Right to file individual suits, representative suits and derivative suits.⁴⁹

⁴⁸ Section 24, REVISED CORPORATION CODE

⁴⁹ *Sundiang*, Commercial Law

b. Intra-corporate disputes

An intra-corporate dispute has been defined as a dispute which arises between the stockholder and the corporation.⁵⁰

Section 5.2 of the Securities Regulation Code provides that the SEC's jurisdiction over the cases enumerated under Section 5 of PD 902⁵¹ has been transferred to the courts of general jurisdiction, including the jurisdiction to hear and decide intra-corporate disputes between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity.

One of the major amendments brought about by the Revised Corporation Code is the introduction of the provision on Arbitration for Corporations which provide that when an arbitration agreement clause is in place in the corporation's AOI or Bylaws, disputes between the corporation, its stockholders or members, which arise from the implementation of the AOI or bylaws, or from intra-corporate relations, shall be referred to arbitration.⁵² Pursuant to this provision of the Revised Corporation Code, the RTC must first refer the intra-corporate dispute to arbitration if it finds an arbitration agreement in the AOI or bylaws of the corporation.

10. Acquisitions, Mergers and Consolidations

a. Merger v. Consolidation

A merger occurs when two (2) or more corporations merge into a single corporation which shall be one of the constituent corporations⁵³

⁵⁰ San Jose v. Ozamiz, GR No. 190590 (2017) citing the case of (Philex Mining Corp. vs. Reyes, 118 SCRA 602)

⁵¹ Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

⁵² Section 181, Revised Corporation Code

⁵³ Section 75, Revised Corporation Code

A consolidation occurs when a new single corporation is formed from two (2) or more corporations which shall be the consolidated corporation.⁵⁴

b. Procedure

A Plan of Merger or Consolidation must be approved by the majority vote of the Board of Directors or Trustees.⁵⁵ Upon approval by a majority vote of each of the board of directors or trustees of the constituent corporations of the plan of merger or consolidation, the same shall be submitted for approval by the stockholders or members of each of such corporations at separate corporate meetings duly called for the purpose.⁵⁶ The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporation in the case of stock corporations or at least two-thirds (2/3) of the members in the case of nonstock corporations shall be necessary for the approval of such plan.⁵⁷

After the approval by the stockholders or members as required by the preceding section, articles of merger or articles of consolidation shall be executed by each of the constituent corporations, to be signed by the president or vice president and certified by the secretary or assistant secretary of each corporation.⁵⁸ The Articles of Merger or of Consolidation shall be submitted to the SEC for approval.⁵⁹

c. Effect and Limitation

Section 79 of the Revised Corporation Code provides for the Effects of Merger or Consolidation

SECTION 79. Effects of Merger or Consolidation. — The merger or consolidation shall have the following effects:

(a) The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

(b) The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

(c) The surviving or the consolidated corporation shall possess all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

⁵⁴ id.

⁵⁵ Id.

⁵⁶ Section 76, Revised Corporation Code

⁵⁷ Id.

⁵⁸ Section 77, REVISED CORPORATION CODE

⁵⁹ Section 78, REVISED CORPORATION CODE.

(e) *The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and franchises of each constituent corporation; and all real or personal property, all receivables due on whatever account, including subscriptions to shares and other choses in action, and every other interest of, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and*

(e) *The surviving or consolidated corporation shall be responsible for all the liabilities and obligations of each constituent corporation as though such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any constituent corporation may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of such constituent corporations shall not be impaired by the merger or consolidation.*

11. Dissolution and Liquidation, Reincorporation

a. Modes of Dissolution

Corporations formed or organized under the Revised Corporation Code may be dissolved voluntarily or involuntarily.

Voluntary Dissolution	Involuntary Dissolution
<p>A corporation can be dissolved voluntarily when there are no creditors who will be affected.</p> <p>Steps in Voluntary Dissolution:</p> <ol style="list-style-type: none"> 1. Majority vote of the board of directors or trustees 2. Resolution adopted by the affirmative vote of the stockholders owning at least majority of the outstanding capital stock or majority of the members of the meeting to be held upon 	<p>A corporation may be dissolved by the SEC <i>motu proprio</i> or upon filing of a verified complaint by any interested party.</p> <p>The following may be grounds for dissolution of the corporation:</p> <ol style="list-style-type: none"> (a) Non-use of corporate charter; (b) Continuous inoperation of a corporation; (c) Upon receipt of a lawful court order dissolving the corporation; (d) Upon finding by final judgment that the corporation procured its incorporation through fraud; (e) Upon finding by final judgment that the corporation: <ol style="list-style-type: none"> (1) Was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices;

	<p>(2) Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew of the same; and</p> <p>(3) Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.⁶⁰</p>
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b. Corporate Liquidation

Every corporation whose charter expires pursuant to its AOI, is annulled by forfeiture, or whose corporate existence is terminated in any other manner, shall nevertheless remain as a body corporate for three (3) years after the effective date of dissolution (“winding up period”), for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, dispose of and convey its property, and distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors and other persons in interest. After any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons-in-interest.⁶¹

⁶⁰ Section 138, Revised Corporation Code

⁶¹ Section 139, Revised Corporation Code