OVERVIEW OF PHILIPPINE CORPORATION LAW

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I. HISTORY OF PHILIPPINE CORPORATION LAW

In the Philippines, corporations are primarily governed by the Revised Corporation Code of the Philippines,[1] which was enacted on February 20, 2019. Prior to 1906, when the Philippines was still a colony of Spain, Philippine corporations were referred to as *sociedades anonimas* and had the Code of Commerce, which was based on Spanish law,[2] as their governing law.[3] These *sociedades anonimas* closely resembled present-day corporations due to similar features such as limited liability and the centralized management of its affairs.[4]

It was during the subsequent American regime when the Philippine Commission, then mandated to exercise legislative functions, passed into law the first Corporation Law in the Philippine jurisdiction, which took effect on April 1, 1906.[5] Under the Corporation Law of 1906, existing *sociedad anonimas* were given the choice to reorganize within a reasonable amount of time into corporations which possessed the American concept of a corporate entity. Those who chose to reorganize would then have to comply with the Corporation Law, while those who chose to retain their status as a *sociedad* would continue to be governed by the Code of Commerce in matters relating to its organization, method of transacting business, and the rights of its members among themselves.[6]

Within the span of 74 years, the Corporation Law of 1906 underwent several amendments due to changes in conditions and circumstances, particularly in the business and industrial world.[7] However, it was found that these "sporadic" and "piece-meal" amendments failed to meet the demands of the dynamic modern-day needs. Thus in 1970, the University of the Philippines Law Center undertook the task

[1] Rep. Act No. 11232 (2019). The Revised Corporation Code.
[2] SPANISH CODE OF 1885.
[3] JOSE C. CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES 3.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.* at 4.

of preparing a draft of a proposed Corporation Code as one of its major projects. Through the participation of the private and public sector, a draft of the new Code was formulated. Such draft was further revised by the Batasang Pambansa, the legislative body under the 1973 Constitution of the Philippines, with the participation of the Securities and Exchange Commission (SEC). On May 1, 1980, the Corporation Code of the Philippines[8] was finally approved by the President.[9]

On February 20, 2019, Republic Act No. 11232, or the Revised Corporation Code of the Philippines ("Revised Corporation Code") was approved into law, which substantially amended the Corporation Code. The Revised Corporation Code currently applies to all private corporations in general. There are, however, some special laws[10] which govern special kinds of corporations. Furthermore, corporations owned or controlled by the government (government-owned or controlled corporations or GOCCs) are regulated by their own charters, or by the law creating them.[11]

II. CORPORATIONS IN THE PHILIPPINE SETTING

The Revised Corporation Code defines a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence."[12]

From this definition, four attributes of corporations may be derived. First is that corporations are *artificial beings*; this means that corporations are juridical persons with a personality separate from its individual stockholders or members and is capable of acquiring rights and obligations.[13]

Secondly, corporations are *created by operation of law*. Consent of the parties wishing to form corporations is not sufficient as the State must give its consent by way of either a special law or a general enabling act. Corporations created by special law, which are usually those owned or controlled by the government, are primarily governed by such special law, otherwise known as a charter, supplemented by the Revised Corporation Code as far as they are applicable.[14] Meanwhile, private

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8 Batas Pambansa Blg. 68. The Old Corporation Code.

9 CAMPOS, *supra* note 3, at 5.

10 Such as the Insurance Code, General Banking Act, and the Investment Company Act.

11 CAMPOS, *supra* note 3.

12 Rep. Act No. 11232 (2019), § 2.

13 CAMPOS, *supra* note 3, at 2.

14 Rep. Act No. 11232 (2019), § 3.

corporations are generally formed or organized under the provisions of the Revised Corporation Code, which is the general enabling act referred to.[15]

The third attribute is that a corporation has the *right of succession*. The corporation's continued existence is not affected by the change in members or stockholders. Lastly, a corporation has the *powers, attributes, and properties expressly authorized by law or incidental to its existence*.[16] Thus, a corporation may be vested by law with such powers not only expressly provided therefor, but also those powers which are impliedly granted to it.

Other than distinguishing corporations created or organized under the Corporation Code from those created by special law or charter, corporations organized under the Corporation Code can be further classified into stock or non-stock corporations.[17] The Revised Corporation Code classifies corporations as stock corporations when two elements concur in a corporation: (1) it must have capital stock divided into shares; and (2) it must be authorized to distribute to its shareholders dividends out of its surplus profits. Without the concurrence of these elements, the corporation will be deemed a non-stock corporation.

A non-stock corporation is also defined by the Revised Corporation Code as "one where no part of its income is distributable as dividends,"[18] which may be "formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof."[19] On the other hand, stock corporations are primarily formed for the main purpose of making profits for its stockholders.[20] Another distinction is that persons who compose a stock corporation are referred to as *stockholders,* while those who compose a non-stock corporation are *members*.[21] This classification is important since some rules found in the Revised Corporation Code apply exclusively to the kind of corporation in question.

A vital aspect of corporations in the Philippine legal framework in general is nationality. The importance of corporations' nationality cannot be overstated due to the various foreign equity restrictions in place, which must be complied with before a corporation may undertake an enterprise in particular industries or undertake specific

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[15] CAMPOS*, supra* note 3.

[16] CAMPOS*, supra* note 3.

[17] Rep. Act No. 11232 (2019), § 3.

[18] § 86.

[19] § 87.

[20] CAMPOS*, supra* note 3, at 44.

[21] *Id.*

endeavors in the Philippines. These restrictions are imposed by none other than the Constitution of the Philippines, as well as by other special legislation. Under the Constitution, only corporations at least 60 per centum of whose capital is owned by Filipino citizens may undertake in the exploration, development, and utilization of natural resources under the full control and supervision of the State[22] and operate public utilities.[23]

On the other hand, the Foreign Investments Act of 1991 ("FIA")[24]—while encouraging "productive investments from foreign [entities]"[25]—limits corporations' foreign equity in enterprises included in the negative list. The negative list is a list of areas of economic activity where foreign ownership in a corporation is limited to a specified maximum percentage.[26] Moreover, under the FIA, for a corporation to be considered a *Philippine national*, it must be organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.[27] A corporation organized abroad may also be considered a *Philippine national* if it is registered as doing business in the Philippines under the Corporation Code and that one hundred per cent (100%) of its capital stock outstanding and entitled to vote is wholly owned by Filipinos.[28] The definition of a *Philippine national* under the same section of the FIA further provides that "where a corporation and its non-Filipino stockholders own stocks in a 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."[29]

Interpretation of the constitutional restriction on foreign equity—particularly the phrase "*at least sixty per centum of whose capital is owned by Filipino citizens*"—however, proved to be a contentious issue due to the ambiguity of the word "capital." Such issue was resolved by the Philippine Supreme Court in at least three decisions. In the case *Gamboa v. Teves*,[30] initially decided on June 28, 2011, the Court held that

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[22] CONST. art. XII, § 2.
[23] § 11.
[24] Rep. Act No. 7042, as amended by Rep. Act No. 8179.
[25] § 2.
[26] *See* Executive Order No. 184 (2015). Promulgating the Tenth Regular Foreign Investment Negative List.
[27] Rep. Act No. 7042 as amended by Rep. Act No. 8179, § 3(a).
[28] § 3(a).
[29] § 3(a).
[30] Gamboa v. Teves, G.R. No. 176579, Oct. 9, 2012.

the term capital in Section 11, Article XII of the 1987 Constitution refers only to shares of stock *entitled to vote in the election of directors*. However, in a subsequent resolution of the same case promulgated on October 9, 2012, the Court modified its prior ruling and held that the term capital refers to shares *with voting rights, as well as with full beneficial ownership*. Subsequent to and in accordance with the 2012 resolution, the SEC issued SEC-MC No. 8 which provided that 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 in the election of directors. In *Roy v. Herbosa*,[31] wherein the validity of SEC-MC No. 8 was assailed for not conforming to the letter and spirit of the *Gamboa* decision and resolution, the Court conclusively ruled that the SEC acted pursuant to the Court's pronouncement in both the *Gamboa* decision and resolution. Thus, the standing rule on the interpretation of the word "capital" in Article XII of the 1987 Constitution is that which is embodied in SEC-MC No. 8, which is based on the Court's holding in the *Gamboa* case.

As to the manner of actually calculating the Filipino interest in a corporation, the ruling of the Court in *Narra Nickel Mining and Development Corp., et al v. Redmont Consolidated Mines Corp.* ("*Narra Nickel* case")[32] is illustrative. It is particularly useful since shares in a corporation ("Investee Corporation") may be owned both by individual stockholders and by corporations and partnerships ("Investing Corporation"). According to *Narra Nickel*, under pertinent SEC Rules, there are two tests in determining the nationality of the Investee Corporation.

The first is the *liberal rule*, which was later coined by the SEC as the "Control Test," wherein shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as a Philippine national. Under the liberal Control Test, there is no need to further trace the ownership of the 60% Filipino stockholdings of the Investing Corporation since a corporation which is at least 60% Filipino-owned is considered as Filipino.[33] The second test is the *strict rule* or the "Grandfather Rule Proper," which states that if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. The combined totals in the Investing Corporation and the

[31] Roy v. Herbosa, G.R. No. 207246, Nov. 22, 2016.

[32] G.R. No. 195580, April 21, 2014.

[33] *Id.*

Investee Corporation must be traced (or "grandfathered") to determine the total percentage of Filipino ownership.[34]

The *Narra Nickel* case explains that the Grandfather Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt; otherwise, it is the Control Test that should be used.[35]

III. FORMATION AND ORGANIZATION OF CORPORATIONS

Under the Revised Corporation Code, any person, partnership, association, or corporation, singly or jointly with others, may form a private corporation for any lawful purpose or purposes. These persons, also known as *incorporators*, must not exceed fifteen (15) in number, and for incorporators who are natural persons, they must be of legal age.[36] Notably, the Revised Corporation Code now allows One Person Corporations composed of a single stockholder.[37] The old Corporation Code required at least five (5) incorporators, all of whom should be natural persons.

The general steps in the formation of corporations are as follows: (1) promotional stage; (2) drafting of the articles of incorporation; (3) filing of articles and payment of fees; (4) examination of articles and approval or rejection by the SEC; and (5) issuance of certificate of incorporation.[38]

During the *promotional stage*, a person known as a "promoter" brings together persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation of the corporation itself.[39]

The second stage is the *drafting of the articles of incorporation*. The articles are important insofar as they are regarded as the contract between the corporation itself and its stockholders, as well as the agreement among the stockholders themselves.[40] The Revised Corporation Code provides for the required contents[41] of the articles, and the form[42] which they should follow. These required contents are: (1) name; (2) specific purpose or purposes for which it is being incorporated; (3) place where the principal office is to be located, which must be within the Philippines; (4) the term;

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34 *Id.*
35 *Id.*
36 Rep. Act No. 11232 (2019), § 10.
37 § 116.
38 CAMPOS, *supra* note 3.
39 *Id.* at 54.
40 *Id.* at 56.
41 Rep. Act No. 11232 (2019), § 13.
42 § 14.

(5) names, nationalities and residences of the incorporators; (6) the number of directors or trustees, which shall not be less than 5 nor more than 15; (7) the names, nationalities and residences of the persons who shall act as directors or trustees until the first regular directors or trustees are duly elected; (8) if it be a stock corporation, the amount of its authorized capital stock, the number of shares to which it is divided, and in case the shares are par value shares, the par value of each, the names, nationalities and residences of the original subscribers, and the amount subscribed and paid by each on his subscription, and if some or all of the shares are without par value, such fact must be stated; (9) if it be a non-stock corporation, the amount of its capital, the names, nationalities and residences of the contributors and the amount contributed by each; and (10) such other matters, not inconsistent with law, which the incorporators may deem necessary and convenient.

The articles of incorporation and applications for amendments thereto are *filed with the SEC, where the corresponding fees are subsequently paid.*[43] After the filing of the articles and the payment of applicable fees, the *SEC shall examine them* in order to determine whether they are in conformity with the Code. Under the Revised Corporation Code, the SEC may disapprove articles or any amendments thereto if the same are not in compliance with the Revised Corporation Code, provided that the SEC shall give the incorporators, directors, trustees, or officers a reasonable time within which to correct or modify the objectionable portions of the articles.[44] Otherwise, the SEC shall *issue a certificate of incorporation* if it is satisfied that all the legal requirements under the Code have been complied with and that there are no grounds for rejecting or disapproving the articles or amendments thereto.[45] The date of issuance of the certificate of incorporation is material, as it is the reckoning point for the acquisition of the corporation of corporate existence and juridical personality. The corporation is deemed incorporated from such date of issuance of the certificate of incorporation.[46]

IV. THE CORPORATE ENTITY

A corporation's legal existence begins the moment its certificate of incorporation is issued.[47] It is from this moment that the corporation acquires the right to sue and be sued, to hold property in its own name, enter into contracts with third persons, and to perform all other legal acts. This legal existence or personality is separate and distinct from its stockholders or members. Thus, since a corporation owns property as

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[43] CAMPOS, *supra* note 3, at 84.
[44] Rep. Act No. 11232 (2019), § 16.
[45] CAMPOS, *supra* note 3, at 85.
[46] Rep. Act No. 11232 (2019), § 18.
[47] § 18.

a juridical person, its stockholders have no claim on the property as owners. They merely have an expectancy or inchoate right upon the corporation's dissolution, and after all obligations have been settled. Neither can stockholders use corporate property to satisfy personal claims.[48] Conversely, properties belonging to stockholders cannot be levied upon to answer for the obligation of a corporation.[49]

The constitutional guarantee against unreasonable searches and seizures extend to corporations. In the leading case of *Stonehill v. Diokno,*[50] the Supreme Court ruled that it is the corporation, and not its stockholders, who can question the admissibility of evidence obtained from an illegal search and seizure. This is because of the simple reason that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. As corporations have their respective personalities, Stonehill, et al. had no cause of action to assail the legality of the warrants issued and the seizures made in pursuance thereof.

However, being treated as a juridical person with a separate personality is a privilege limited to legitimate uses. The Supreme Court has not hesitated to disregard the corporate entity when evidence tends to show that the corporate fiction is used for fraudulent, unfair, or illegal purposes. The corporate veil may be pierced when the corporation is used to commit a wrong, when the law provides for it, or when the corporation is a mere alter ego of its stockholders. While ownership of one corporation of all or substantially all of the stocks of another corporation does not in itself justify disregarding the subsidiary's separate existence, 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.[51] The "Instrumentality Rule" is applied when the control by one corporation over another is such that it dominates the subsidiary's finances, policies, and practices that it merely becomes a conduit of the principal. Moreover, the rule may be invoked only when such control was exercised during the period when the acts complained of occurred, and only if the control and breach of duty are the proximate causes of the injury or unjust loss.

The three-fold test in determining whether the doctrine of piercing the corporate veil applies requires: (1) CONTROL—complete domination, not only of finances, but also of policy and business practice in respect to the questioned transaction so that the

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[48] Wise and Co v. Man Su Lung, 69 Phil 309.

[49] Cruz v. Dalisay, 152 SCRA 483.

[50] Stonehill v. Diokno, 20 SCRA 383.

[51] Concept Builders v. NLRC, G.R. No. 108734.

corporate entity had, at the time, no separate mind, will, or existence of its own; (2) FRAUD—such control must have been used to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of a legal right; and (3) HARM—the aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.[52]

When the veil of corporate entity is pierced, stockholders become "personally liable for the acts and contracts of the corporation whose existence, at least for the purpose of the particular situation involved, is ignored."[53] The corporation is regarded as either a mere group of persons, or in cases where at least two corporations are involved, as being merged into one. When a court disregards the corporate entity, it is not denying its corporate existence. It merely refuses to allow the corporation to use its corporate privileges for the fraudulent purpose involved in the case.

V. CORPORATE POWERS

A corporation can exercise those powers that are expressly conferred by law and those essential and necessary to carry out its purpose/s. Every corporation incorporated under the Corporation Code can exercise the following general powers: to sue and be sued in its corporate name; of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation; to adopt and use a corporate seal; to amend its articles of incorporation; to adopt by-laws not contrary to law, morals, or public policy, and to amend or repeal the same; to issue or sell stocks to subscribers and to sell stocks to subscribers and to sell treasury stocks in case of stock corporations; to admit members in case of a non-stock corporation; 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 the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution; to enter into a partnership, joint venture, merger or consolidation with other corporations; to make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: provided, that no foreign corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity; and to establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees.[54] These general powers

[52] PNB v. Hydro Resources Contractor Corporation, G.R. No. 167530.
[53] CAMPOS, *supra* note 3, at 150.
[54] Rep. Act No. 11232 (2019), § 36.

are to be exercised by a corporation's Board of Directors, unless the law provides otherwise.

Corporations also possess other specific powers which can be found in other provisions of the Code. These include the power to:

1. Extend or shorten corporate term;[55]
2. Increase or decrease capital stock;[56]
3. Incur, create, or increase bonded indebtedness;[57]
4. Deny pre-emptive right;[58]
5. Sell or otherwise dispose of substantially all its assets;[59]
6. Acquire its own shares;[60]
7. Invest in another corporation or business;[61]
8. Declare dividends;[62] and
9. Enter into management contracts.[63]

These general and specific powers found in the Revised Corporation Code, along with powers granted by the Constitution and a corporation's Articles of Incorporation, comprise its express powers. The Code also defines what are ultra vires acts of a corporation. Section 44 states that no corporation "shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred." Ultra vires acts are merely voidable and may be ratified. The only exceptions to ratification are acts or contracts which are contrary to law, morals, public policy, or public order, or when there is harm or injury caused to third persons because of the ultra vires act or contract. However, it is also a settled rule that "when a contract is not on its face necessarily beyond its authority, it will, in the absence of truth to the contrary, presumed to be valid."[64] A wide range of implied powers may be inferred from Section 35 of the Revised Corporation Code, which provides that a corporation has "the power and capacity to exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in its articles of

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[55] § 36.
[56] § 37.
[57] § 37.
[58] § 38.
[59] § 39.
[60] § 40.
[61] § 41.
[62] § 42.
[63] § 43.
[64] CAMPOS, *supra* note 3, at 286.

incorporation." While as a rule, an ultra vires act is one committed outside the object for which the corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law, there are, however, certain corporate acts that may be performed outside of the scope of the powers expressly conferred if they are necessary to promote the interest or welfare of the corporation. Thus, the establishment of a post office at a mining camp has been held to be a reasonable and proper adjunct to the conduct of the business of a mining company as it concerns the benefit, convenience, and welfare of its employees.[65] The Supreme Court has also held that the National Power Corporation is empowered to undertake stevedoring services since the pier it owns receives various shipments of coal exclusively used to fuel its Thermal Power Plant for generating electric power.[66]

Ultra vires acts of a corporation have consequences on the corporation itself, the parties to the contract, and the rights of stockholders. A corporation may be dissolved under a quo warranto proceeding instituted by the Solicitor General, but the more common penalty is a suspension or revocation of its certificate of registration. If the contract has been fully executed, then the parties will be left as they are without the remedies of resolution or rescission. If the contract is merely executory on both sides, neither of the two parties can ask for specific performance. When one of the parties has already performed his part to the benefit of the other party, the latter is estopped from invoking the ultra vires doctrine. The remedy of an individual—filing a derivative suit—is available to stockholders if they wish to enjoin a threatened ultra vires act or contract. The same remedy is available against directors when the act has already been performed or the contract was already executed. However, the directors' liability will depend on whether they acted in good faith and with reasonable diligence.

VI. CONTROL AND MANAGEMENT OF THE CORPORATION

There are three levels of control in the corporate hierarchy: the board of directors or trustees, the corporate officers, and the stockholders or members.

Unless otherwise provided by the Corporation Code, the board of directors shall exercise corporate powers, conduct the business, and control all the property of a corporation.[67] The board of directors or board of trustees (for non-stock corporations) is the governing body of a corporation and responsible for corporate policies and the general management of the business. Directors or trustees are elected from among the corporation's stockholders or members and hold office for one year, and until their successors are elected and qualified. Once elected, stockholders will no longer have

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[65] Republic v. Acoje Mining Company, Inc., 7 SCRA 361.

[66] NAPOCOR v. Vera, G.R. No. 83558.

[67] Rep. Act No. 11232 (2019), § 22.

the right to intervene with the board's exercise of its powers and functions, unless the law provides otherwise.[68]

The acts of the board of directors are embodied in resolutions which are the result of decisions made after discussion and deliberation by the body in board meetings. A proper and lawful meeting will have the necessary quorum of majority of the number of directors or trustees as fixed in the articles of incorporation, unless such articles of incorporation or by-laws provide for a greater majority.[69] There can be no transaction of corporate business without the requisite quorum, and directors or trustees are not allowed to attend board meetings or vote on matters by proxy. However, under the Revised Corporation Code, directors or trustees who cannot physically attend or vote at board meetings can participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate.[70] Valid corporate acts are those acts decided upon by a majority of the quorum present. However, the election of corporate officers is an exception, as it requires the vote of majority of all the members of the board. These formal requirements do not preclude corporate liability in favor of third persons when they are not complied with. A corporation is still bound by an otherwise unauthorized act if majority of the members of the board have knowledge of the same and were benefitted by it.

There are two kinds of board meetings—regular and special. Regular meetings are "held monthly, unless the corporation's by-laws provide otherwise."[71] Special meetings, meanwhile, "may be held at any time upon the call of the president or as provided in the by-laws."[72] Regardless of the type of meeting, it must be properly called and convened in accordance with law, otherwise, the meeting will not be valid. Matters decided upon during an invalid meeting may be questioned by a director or stockholder without prejudice to the rights of innocent third persons who have entered into contracts with the corporation.

Notice of any meeting is mandatory in order for a board meeting to be valid. The by-laws may fix the frequency with which board meetings are held, but if the by-laws are silent regarding this matter, then the board is required to meet at least once a month to comply with Section 52 of the Revised Corporation Code. Notice must be given at least two (2) days prior to the scheduled meeting, and must include the date,

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[68] CAMPOS, *supra* note 3, at 340.
[69] Rep. Act No. 11232 (2019), § 52.
[70] § 52.
[71] § 52.
[72] § 52.

time, and place of the meeting.[73] It should also contain the purpose for which the meeting is being called and the matters to be taken up therein. Notice must be sent to every director or trustee, but this requirement is subject to express or implied waiver. Failure to notify a director or trustee will allow him or her to question the validity of the meeting and any matters taken up or decision made in said meeting. However, a director or trustee who waives notice will not have the same right.

The board may meet anywhere it pleases if the by-laws are silent on the matter. The directors or trustees may choose to meet at a different place every meeting, may choose to hold meetings at the same place every time, or they may even choose to meet outside the Philippines. By default, the corporation's President shall preside over all board meetings unless the by-laws provide otherwise.

Only matters stated in the notice of meeting can be discussed and deliberated upon in the meeting. A listing of "other matters" will only include routine and ordinary matters. The board cannot validly act upon any other matter not included in the notice, unless all members of the board are present and agree to discuss any extraordinary matter and all of them are estopped from questioning the validity of any corporate act resulting from such discussion.

As there is identity between stockholders and management in close corporations, they may do away with the formalities of a board meeting, or of even having a board of directors. The Revised Corporation Code, through Sections 96 and 100, allows close corporations to treat the stockholders as directors and relaxes the general rules in relation to meetings and the powers and functions of directors.

The second level of control is exercised by corporate officers. A corporate is officer is one who is "entrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation."[74] Their derived powers come from the board of directors which may delegate powers to individual officers, committees, or agents it appoints.

Under Section 24 of the Revised Corporation Code, immediately after their election, the directors of a corporation must elect a president, a treasurer, a secretary, and other such officers as may be provided for in the by-laws. New in the Revised Corporation Code is the requirement of electing a compliance officer for corporations vested with public interest.[75] The law allows for officers to concurrently hold two or

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[73] § 52.

[74] Board of Liquidators v. Heirs of Kalaw, 20 SCRA 987.

[75] Rep. Act No. 11232 (2019), § 24.

more positions at any given time, but an officer cannot be president and secretary, or president and treasurer at the same time.[76] There is also no citizenship requirement for corporate officers save for the Secretary, which the Code requires to be a Filipino citizen.[77] Aliens also cannot become corporate officers if the business is in an industry that is partially or completely reserved for Filipino citizens[78] such as mass media, forestry, mining, and law.[79]

The President of a corporation shall also be a director of the company as provided by the Code.[80] It is the president who presides over all meetings of the board of directors or trustees, as well as stockholders or members meetings. His powers are usually enumerated in the by-laws, but he is also often impliedly vested with board powers through acquiescence, and any act of the president may be ratified later on by the board. The determination of whether an act of the president is within his powers depends mainly on the circumstances, and the burden of proving that he had acted beyond the scope of his power's rests on the corporation. The Supreme Court, speaking through Justice Brion, has ruled that "in the absence of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties."[81]

Only the corporate secretary is required to be both a resident and citizen of the Philippines under the Code.[82] His primary duties of keeping corporate records and having custody thereof are ministerial in nature and his acts are not binding on the corporation, except if he holds the concurrent position of manager or treasurer.

The General Manager takes care of the day-to-day affairs of the corporation, and while his powers are limited mostly to policy implementation, he is given wide discretion in ensuring that the same are effectively implemented. A general manager "may, without any special authority from the Board of Directors perform all acts of an ordinary nature, which by usage or necessity are incident to his office, and may bind the corporation by contracts in matters arising in the usual course of business."[83] Thus, a corporation cannot sue its general manager for negligence and breach of duty for lost profits when its practice is to allow him to negotiate and execute contracts

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[76] § 24.
[77] § 24.
[78] CONSTI. art. XII, § 11.
[79] FIA Negative List.
[80] Rep. Act No. 11232 (2019), § 24.
[81] Advance Paper Corp v. Arma Traders Corp, G.R. No. 176897.
[82] Rep. Act No. 11232 (2019), § 24.
[83] Board of Liquidators v. Heirs of Kalaw, 20 SCRA 987.

without prior board approval.[84] Furthermore, under the doctrine of apparent authority, the rights of an innocent third party who presumes that a corporate has the authority to perform and act or enter into a contract when, in fact, he does not, cannot be prejudiced.

Stockholders exercise the least amount of control over a corporation. Their powers are merely residual in nature, meaning that there are only specific instances where stockholders' or members' consent is required before any action may be taken. These matters include:

1. The election of directors and trustees;[85]
2. The removal of directors;[86]
3. Fundamental changes affecting the contract between the stockholders and the corporation such as:

    a. Amendment of the articles of incorporation;[87]
    b. Sale or disposition of all or substantially all assets of the corporation;[88]
    c. Investment in another business or corporation;[89]
    d. Merger and consolidation;[90]
    e. Increase or decrease of capital stock; creation or increase of bonded indebtedness;[91] and
    f. Adoption, amendment, or repeal of by-laws;[92]

4. Declaration of stock dividends;[93]
5. Entering into management contracts;[94]
6. Fixing consideration for no-par-shares;[95] and
7. Fixing compensation of directors.[96]

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[84] *Id.*
[85] Rep. Act No. 11232 (2019), § 23.
[86] § 27.
[87] §15 and § 102.
[88] § 39.
[89] § 41.
[90] § 76.
[91] § 37.
[92] § 45 and § 47.
[93] § 42.
[94] § 43.
[95] § 61.
[96] § 29.

VII. DUTIES OF DIRECTORS AND CONTROLLING STOCKHOLDERS

The law makes directors fiduciaries of a corporation because they "represent the interests of all the stockholders and the corporation as a whole"[97] and are given very broad powers to formulate company policies and exercise management powers. Every director has a three-fold duty that he owes a corporation—DILIGENCE, LOYALTY, and OBEDIENCE. Section 30 of the Code states that "[d]irectors 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."[98]

Under the business judgment rule that originated from *Otis & Co. v. Pennsylvannia R. Co.*,[99] courts have properly decided to "give directors a wide latitude in the management of the affairs of a corporation, provided always that judgment, and that means an honest, unbiased judgment, is reasonably exercised by them." In *Casey v. Woodruff*,[100] it was stated that "mistakes or errors in the exercise of honest business judgment do not subject the officers and directors to liability for negligence in the discharge of their appointed duties."

The degree of diligence required is that "which men prompted by self-interest[] generally exercise in their own affairs."[101] In determining whether directors acted negligently, it has been ruled that "what constitutes negligence depends upon the circumstances of the case; that the court will not interfere with the internal management of corporations, and therefore will not substitute its judgment for that of the officers and directors; and, what is a rule of reason, that negligence must be determined as of the time of the transaction."[102]

However, the acceptance of the office by a director of a corporation implies that such director possesses competent knowledge of the duties assumed, and cannot excuse imprudence on the ground of their ignorance or inexperience.[103] Directors are presumed to keep themselves abreast of the state of the corporation and its business

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[97] CAMPOS, *supra* note 3, at 641.
[98] Rep. Act No. 11232 (2019), § 30.
[99] 61 F. Supp. 905.
[100]49 NY S.2d.
[101] CAMPOS, *supra* note 3, at 643.
[102] Otis & Co. v. Pennsylvania R. Co, 61 F. Supp. 905.
[103] CAMPOS, *supra* note 3, at 643.

transactions. Should they commit an error of judgment through mere recklessness or want of ordinary prudence or skill, they may be held liable for the consequences. In cases of gross negligence or fraud, erring directors may even be removed by the corporation's stockholders.

It is also the duty of the director to give primacy to the interests of the corporation over his own. Directors are liable for disloyal acts when corporate interests are sacrificed for personal interests. Section 31 of the Code embodies the doctrine of a self-dealing director. It states that corporate contracts with at least one of its directors, trustees, or officers are voidable at the option of the corporation. The same provision provides an exception in that such contract would be perfectly valid, provided that the following conditions are present:

1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum of such meeting;
2. That the vote of such director or trustee was not necessary for the approval of the contract;
3. That the contract is fair and reasonable under the circumstances;
4. In case of corporations vested with public interest, material contracts are approved by at least two-thirds (2/3) of the entire membership of the board, with at least majority of the independent directors voting to approve the material contract; and
5. That in the case of an officer, the contract with the officer has been previously authorized by the board of directors.[104]

If any of the first three (3) conditions are absent and the contract was entered into with a director or trustee, the stockholders may ratify a fair and reasonable act under the circumstances by a vote of two thirds ($^2/_3$) of the outstanding capital stock or of at least two thirds ($^2/_3$) of the members present in a meeting called for the purpose, given that disclosure of the adverse interest of the directors or trustees involved is made at such meeting.[105] In any case, even without the exception, the disloyal act may still be ratified regardless of the damage suffered by the corporation.

A director also has a specific duty not to seize corporate opportunities for himself. Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter all such profits made by

[104] Rep. Act No. 11232 (2019), § 31.
[105] § 31.

virtue of such transaction.[106] "The doctrine of "corporate opportunity" is precisely a recognition by the courts that the fiduciary standards could not be upheld where the fiduciary was acting for two entities with competing interests. This doctrine rests fundamentally on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection."[107] The doctrine applies even if the director risked his own funds in the venture, but such act may be ratified by a vote of the stockholders owning or representing at least two thirds ($^2/_3$) of the outstanding capital stock.[108]

Furthermore, directors shall not receive compensation, except for reasonable per diems, when there is no provision providing for the same in the by-laws of a corporation.[109] Any other form of compensation may be given by a vote of the stockholders representing majority of the outstanding capital stock, or if an express contract regarding the matter was made in advance.[110] Thus, board resolutions authorizing per diems, increasing them, and appropriating discretionary funds for directors are invalid when the by-laws provide that the stockholders have the power to fix the compensation of directors.[111] Even absent this provision, such a resolution would still be invalid for violating the principle that directors of a corporation presumptively serve without compensation, and in the absence of agreement or resolution in relation thereto, no claim can be asserted therefor.

A director's compensation may include salaries, per diems, and profit sharing agreements such as bonuses, stock option plans, and pension plans. The aggregate yearly amount should not exceed ten percent of the net income, before income tax of the corporation, during the preceding year.[112] The same rules apply to trustees of non-stock corporations by virtue of Section 86 of the Revised Corporation Code. These rules do not apply to officers, who are considered employees of the corporation, and directors who render service outside of their usual duties.

Directors or trustees are prohibited from using inside information to benefit themselves or any competitor in which they have a more substantial interest. Inside information is any information that is confidential in nature and would not have been known to the director or trustee if not for his position. Contracts entered into using

[106] § 33.
[107] Gokongwei v. SEC, G.R. No. L-45911, April 11, 1979.
[108] Rep. Act No. 11232 (2019), § 33.
[109] § 29.
[110] § 29.
[111] Central Cooperative Exchange v. Tibe, G.R. No. L-27972, Jun. 30, 1972.
[112] Rep. Act No. 11232 (2019), § 29.

inside information are void with respect to the rights of the guilty officer or director. An innocent third party can still rightfully enforce the contract, with the right to recover what he has paid or delivered if he has been prejudiced. An amendment to the by-laws disqualifying stockholders to be elected as a director, if he is also a director in a corporation whose business is in competition with that of the other corporation, is valid.[113] It has been previously held that the Philippine Constitution and its anti-trust laws prohibit combinations in restraint of trade or unfair competition, monopolies, and are aimed at raising levels of competition by improving the consumer's effectiveness as the final arbiter in free markets.[114]

It is a general principle in Philippine Corporation Law that a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone, provided that the contract is fair and reasonable and is not tainted with fraud.[115] However, if the interest of the interlocking director in one corporation is substantial and his interest in the other corporation or corporations is merely nominal, he shall be subject to the provisions of Section 31 (self-dealing director) insofar as the latter corporation or corporations are concerned. The burden of proving the validity of the contract is borne by the corporation which seeks to uphold it.

In case of insolvency, directors will be deemed trustees of the corporation's creditors and will have the fiduciary duty to manage the corporation's assets with strict regard to the creditor's interest.

A majority shareholder has the fiduciary of good faith when voting at stockholders' meetings when a matter being discussed is one in which he has a personal interest, such as ratifying an otherwise voidable action, merger, dissolution, or sale of all or substantially all of the corporation's property. While a controlling stockholder may generally dispose of his shares at any time and at any price of his choosing, he cannot violate his fiduciary duty by transferring shares to third persons who are known or should be known to have the intention to raid the corporate treasury or otherwise improperly benefit themselves.[116]

VIII. FINANCING THE CORPORATION

Corporations in the Philippines are usually financed by three sources: contributions through stockholder equity or investment equity, loans or advances, and

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[113] Gokongwei v. SEC, G.R. No. L-45911, Apr. 11, 1979.
[114] Gokongwei v. SEC, G.R. No. L-45911, Apr. 11, 1979.
[115] Rep. Act No. 11232 (2019), § 32.
[116] Insuranshares Corp. v. Northern Fiscal Corp., 42 F. Supp. 126 (1940).

profits earned by a corporation. Of the three, stockholder equity is the most common mode of financing corporations.

Capital stock is "the amount fixed, usually by the corporate charter, to be subscribed and paid in or secured to be paid in by the shareholders, either in money or property, labor or services at the organization of the corporation or afterwards."[117] Meanwhile, capital is the aggregate par or issued value of the subscribed capital stock, or what is commonly referred to as legal or stated capital. It is comprised of all the actual property of the corporation, including cash, real and personal property, and all other corporate assets.

Shares of stock are the units into which the capital stock is divided.[118] A share of stock represents the holder's interest to participate in managing the corporation, to share proportionally in the business' profits, and to obtain an aliquot part of the remaining corporate assets upon liquidation. This interest is evidenced by a certificate of stock, which is issued in the name of the holder.

The Revised Corporation Code classifies shares according to the rights granted to shareholders, privileges enjoyed, and restrictions. The Code gives corporations much leeway as to the kinds of shares it may issue, subject only to the condition that there be a class of shares with complete voting rights.[119] Section 6 outlines other guidelines for the issuance of shares which include the following: (1) any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation; (2) no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided; and (3) banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

The two most commonly issued classifications of shares are common stock and preferred stock. Common stock entitles the stockholder to equal pro-rata division of profits, if any. There is no common stockholder that will have advantage, priority, or preference over any other holder in the same class. When common stock is issued along with preferred stock, common stockholders are usually vested with the exclusive right to vote and have the residual right to profits and assets upon liquidation.

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[117] CAMPOS, *supra* note 3, at 5.
[118] CAMPOS, *supra* note 3, at 6.
[119] Batas Pambansa Blg. 68, § 6.

Preferred stock gives the holder some preference in the dividends or the distribution of assets upon the corporation's liquidation.[120] Unlike common stock, preferred stock can be issued only with stated par value, and the preferences that come with it must be indicated in both the articles of incorporation and the stock certificate.

Stocks with preference as to dividends may be participating or non-participating. If a preferred stock is classified as participating, it may share with the common stocks in the remaining dividends after it had already exercised its preference. Preferred stocks may also be cumulative or non-cumulative. By default, preferred stocks are deemed to be cumulative, meaning that arrears for years when no dividends were given have to first be made to preferred stocks before common stocks can be paid dividends.[121] Non-cumulative dividends may be discretionary, mandatory, or earned cumulative or dividend credit type. If a preferred, non-cumulative stock is discretionary, the right to dividends would rest upon the discretion of the board of directors. When the stock is mandatory, the directors have a positive duty to declare dividends for preferred stock on years where profit is earned. An earned cumulative or dividend credit type gives the stockholder rights to arrears in dividends for years when dividends were not declared.

Preferred stocks may also be given preference as to voting rights. As a general rule, preferred stocks are not given the right to vote by contract but when there is no express stipulation regarding the matter, a preferred stockholder would still have the right to vote. Moreover, the Code provides that even non-voting stocks have the right to vote in specified instances involving major changes.[122] As regards liquidation, the articles of incorporation must provide for the preference of preferred stocks to the corporate assets upon settlement of all corporate obligations.

Shares may also be classified as par or no-par shares. The par value of a share is the minimum issue price of such share, which must be fixed in the articles of incorporation and indicated in the stock certificate. No-par shares are those whose price is not indicated in the stock certificate even if it were fixed in the articles of incorporation, by the board, or by the shareholders themselves. Regardless of this classification, however, subscribers must pay full consideration before they can be considered issued.

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[120] CAMPOS, *supra* note 3, at 8.
[121] CAMPOS, *supra* note 3, at 10.
[122] Batas Pambansa Blg. 68, § 6.

Furthermore, no-par shares are subject to the following limitations:[123]

1. Once issued, they are deemed fully paid and therefore, non-assessable;
2. Consideration for issuance cannot be less than P5.00;
3. The entire consideration for issuance constitutes capital, hence no part of it is available for distribution as dividends;
4. They cannot be issued as preferred stocks;
5. They cannot be issued by banks, trust companies, insurance companies, public utilities, and building and loan associations; and
6. The Articles of Incorporation must state the fact that the corporation issues no-par shares as well as the number of such shares.

Treasury shares are "shares of stock which have been issued and fully paid for but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means."[124] When treasury shares are re-issued, they may be disposed of at any reasonable price, even less than par. This is because as re-acquired shares, they had already been fully paid for, during subscription or initial purchase.

Redeemable shares come with the privilege on the part of the corporation to redeem such shares for a price higher than par or face value. These "may be issued by the corporation when expressly so provided in the articles of incorporation. They may be purchased or taken up by the corporation 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 as may be stated in the articles of incorporation, which terms and conditions must also be stated in the certificate of stock representing said shares."[125]

IX. CONSIDERATION FOR ISSUANCE OF SHARES

In general, shares are not considered issued until they are paid in full. When a subscription is only partially paid at the time of issuance, the unpaid portion becomes the stockholder's debt to the corporation. Consideration for the issuance of stock may be:

1. Actual cash paid to the corporation;

[123] CAMPOS, *supra* note 3, at 30.
[124] Rep. Act No. 11232 (2019), § 9.
[125] Batas Pambansa Blg. 68, § 8.

2. Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued;
3. Labor performed for or services actually rendered to the corporation;
4. Previously incurred indebtedness of the corporation;
5. Amounts transferred from unrestricted retained earnings to stated capital;
6. Outstanding shares exchanged for stocks in the event of reclassification or conversion;
7. Shares of stock in another corporation; and
8. Other generally accepted form of consideration. [126]

Section 61 of the Revised Corporation Code further states that:

> Where the consideration is other than actual cash or consists of intangible property such as patents of copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.
>
> Shares of stock shall not be issued in exchange for promissory notes or future service. The same considerations provided for in this section, insofar as they may be applicable, may be used for the issuance of bonds by the corporation.
>
> The issued price of no-par value shares may be fixed in the articles of incorporation or by the board of directors pursuant to authority conferred upon it by the articles of incorporation or the by-laws, or in the absence thereof, by the stockholders representing at least a majority of the outstanding capital stock at a meeting duly called for the purpose.[127]

Watered stocks are "shares issued as fully paid up but no consideration is paid or consideration is inadequate."[128] There are two theories for basis of liability on watered stock. The first is the trust fund theory which treats a corporation's capital stock as a trust for the payment of its obligations, in the absence of personal liability on the part of the stockholders. The other is the fraud or misrepresentation theory which bases liability on false representations made to creditors that the par value of the stock has been paid or agreed to be paid in full. In this theory, "the issue of watered stock is viewed as a misrepresentation of the corporation's capital, and creditors who

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[126] Rep. Act No. 11232 (2019), § 61.

[127] § 61.

[128] CAMPOS, *supra* note 3, at 142.

rely on this misrepresentation are entitled to recover the "water" from the holders of watered stock."[129]

Section 64 of the Revised Corporation Code states that any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary, shall be solidarily liable with the stockholder concerned, to the corporation and its creditors, for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same.[130] This liability is unqualified, meaning the erring officer and stockholder will be liable to all creditors, whether the corporation incurred indebtedness prior or subsequent to the issuance of watered stock.

A. Dividends

The right to share in the corporation's assets, or what is commonly known as the dividend right, is one of the three most important rights of a stockholder (the other two being the right to vote and the right to a proportional share in the corporate assets upon liquidation). Dividends are of three kinds—cash, property, and stock. Dividends are declared by the board of directors out of a corporation's unrestricted retained earnings.[131] Unrestricted retained earnings are the undistributed earnings of the corporation which have not been allocated for any managerial, contractual, or legal purposes, and which are free for distribution to the stockholders as dividends.

The right to dividends is always proportional to the outstanding capital stock owned by the stockholder. This right is protected by the Revised Corporation Code in Section 42 which states that "stock corporations are prohibited from retaining surplus profits in excess of one hundred (100%) percent of their paid-in capital stock, except: (1) when justified by definite corporate expansion projects or programs approved by the board of directors; or (2) when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its/his consent, and such consent has not yet been secured; or (3) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is need for special reserve for probable contingencies."

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[129] Bing Crosby Minute Maid Corp v. Eaton, 46 Cal., 2d., 484 (1956).

[130] Rep. Act No. 11232 (2019), § 64.

[131] § 42.

Stock dividend is the distribution of the corporation's own stock to stockholders. In order to do this, earnings are transferred to capital stock, and the shares representing the increase in capitalization are distributed. While these do not represent income, they are considered civil fruits belonging to the usufructuary, which in this case is the corporation. Section 42 enumerates the guidelines in declaring stock dividends. These are: (1) that stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid; and (2) no stock dividend shall be issued without the approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose. The Code also provides that cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription, plus costs and expenses.[132]

B. Transfer of Shares

Shares of stock are personal property which the stockholder may freely transfer at will. This transfer may be effected by the "delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer."[133]

The law also states that "no transfer [] shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred."[134] Registration of the transfer in the corporation's stock and transfer book is necessary for the transfer to be valid. However, mere indorsement and delivery of the stock certificate will bind the transferor and the transferee. Thus, the following requisites must concur in order for a transfer to be binding between the parties:

1. Certificates must be signed by the President or Vice President, countersigned by Secretary or Assistant Secretary of the corporation accompanied by the corporate seal;
2. Delivery of stock certificate to the transferee;
3. The par value as to par value shares, or full subscription as to no-par shares, must be paid; and
4. Original certificate must be surrendered where the person requesting the issuance is a transferee from a stockholder.

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[132] § 42.

[133] Batas Pambansa Blg. 68, § 62.

[134] § 62.

This duty to record transfers in the corporate books falls upon the corporate secretary to whom the stock certificate and certificate authorizing registration (tax clearance) should be presented. Jurisprudence tells us that the registration allows the corporation to know who its actual stockholders are, object to or withhold its consent to the transfer, and prevent fictitious or fraudulent claims.[135] In contrast, if the transfer is not registered by the transferee, the same is not binding on the corporation and the transferee will not enjoy the full extent of the rights and privileges granted to a stockholder. Another consequence of non-registration is that a stockholder of record (the transferor), despite the transfer, can still participate in any meeting and, in the absence of fraud, any action at such meeting cannot be collaterally attacked on account of such participation. Moreover, an unregistered transfer, not being effective against persons other than the parties thereto, cannot prevail over the rights of a subsequent attaching creditor.[136] Even the transfer of unissued shares held in escrow must be recorded because the names of the parties, the date of transfer, and the number of shares transferred, which are the most important data, can still be determined.[137]

A transfer will also not bind the corporation if their stockholder's subscription has not been paid in full because there can be no stock certificate on which an indorsement may be made. In such cases, a transfer may be made by way of assignment, although the corporation may refuse to register the transfer or agree to register if the unpaid balance will be settled by the transferee.

A transferee who presents a transfer for registration that is refused may resort to mandamus to compel the corporation to register the transfer, provided that there is no other plain, speedy, and adequate remedy available; and provided further, that there are no unpaid claims against the transferred stocks. The right to have the transfer registered exists from the time of the transfer. However, the action does not accrue until there has been a demand to register and a refusal by the corporation to do so.

X. FOREIGN CORPORATIONS DOING BUSINESS IN THE PHILIPPINES

Under the Revised Corporation Code, a *foreign corporation* is defined as one formed, organized, or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state.[138] Further, the Revised Corporation Code provides that foreign corporations

[135] Escaño v. Filipinas Mining Corp., G.R. No. L-49003, July 28, 1944.
[136] Uson v. Diomisito, G.R. No. 42135, Jun. 17, 1935.
[137] Escaño v. Filipinas Mining Corp., G.R. No. L-49003, July 28, 1944.
[138] Rep. Act No. 11232 (2019), § 140.

must obtain a license to transact business in the Philippines, and a certificate of authority from the appropriate government agency before it can *do business* in the country.

Application for a license to do business in the Philippines from the SEC is also governed by the Revised Corporation Code.[139] Such license granted to a foreign corporation enables it to transact business in the Philippines for the purpose or purposes specified in such license.[140] Thus, should the foreign corporation wish to engage in business other than that for which it was licensed, it must obtain an amended license from the SEC.[141]

Doing business in the Philippines without a license entails legal consequences. The Revised Corporation Code provides that a foreign corporation doing business in the Philippines without a license shall not be permitted to maintain or intervene in any action, suit, or proceeding in any court or administrative agency of the Philippines; however, such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.[142]

From the foregoing provisions relevant to foreign corporations, it is evident that the determination of whether or not a corporation is *doing business* in the Philippines is crucial. While the Supreme Court has, in the past, repeatedly stated that no general rule can be laid down as to what constitutes doing business and that each case must be decided in light of its peculiar circumstances,[143] the FIA contains a provision defining, through enumeration and exclusion, what *doing business* means. According to the FIA, *doing business* shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; 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; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and 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

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[139] *See* §§ 142-143.
[140] § 143.
[141] CAMPOS, *supra* note 3, at 497.
[142] Rep. Act No. 11232 (2019), § 140.
[143] CAMPOS, *supra* note 3, at 552.

incident to, and in progressive prosecution of, commercial gain, or of the purpose and object of the business organization.[144]

The FIA also provides that *doing business* shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.[145]

[144] Rep. Act No. 7042 (1991), § 3(d). Foreign Investments Act.
[145] § 3(d).