

BUSINESS ORGANIZATION

At a Glance

CORPORATION

Corporation, definition:

Within the context of Philippine law, a "*corporation*" is treated 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 [Sec. 2, Corporation Code].

Corporation, classes:

Corporations may be classified as follows:

- [a] **Stock corporations** - [1] capital stock divided into shares; and [2] authorized to distribute profits
- [b] **Non-stock corporations** - organized not for profit

Corporation, kinds by method of creation:

- [a] by special law or charter
- [b] by being organized under the corporation code

Corporation, how organized:

Philippine corporate entities are organized as follows:

[a] ***Number of incorporators:***

Incorporators are required to be not less than five [5] but not more than fifteen [15].

[b] ***Residency requirement:***

Majority of the incorporators are required to be residents of the Philippines.

[c] ***Qualifications:***

All incorporators:

- [1] must be natural persons
- [2] must be of legal age

A corporation or a partnership cannot be incorporators of a Philippine corporate entity. The only way a corporation or a partnership may become stockholder of a Philippine corporation is by acquiring a stock

thereof but only after it shall have been duly incorporated.

[d] Subscription requirement:

All incorporators must subscribe to at least one (1) share of stock of the corporation being organized.

Corporation, minimum subscription:

The law requires that the total capital stock to be subscribed at the time of incorporation should at least be twenty five percent [25%] of the authorized capital stock of the corporation being organized.

Corporation, minimum paid-up capital:

The paid-up capital of a Philippine corporation must not be less than PhP5,000.00. Thus, it is required that at least twenty five percent [25%] of the subscribed capital stock should be fully paid up but the amount of which should not be less than said PhP5,000.00.

Corporation, incorporation documents:

The following incorporation documents are required:

[a] Articles of Incorporation;

[b] By-laws;

[c] Treasurer's Affidavit which should state compliance with the authorized subscribed and paid-up capital stock requirements.

[d] Bank Certificate that the paid-up capital portion of the authorized capital stock has been deposited with the issuing bank.

There are "express lane" forms available at the Securities and Exchange Commission [SEC] for certain specified corporate business organizations.

Corporation, where filed:

The incorporation documents should be filed with the Securities and Exchange Commission [SEC] of the Philippines.

Corporation, what should be stated:

[a] the name of the corporation which must not be identical or deceptively or confusingly similar to any existing corporation;

[b] the purpose of the corporation;

[c] principal office of the corporation;

[d] the term or life of the corporation which should not exceed fifty [50] years. This corporate lifetime may, however, be extended for another fifty [50] years but the extension must not be effected earlier than five [5] years before the expiration of its term.

Corporation, limitation on foreign equity holdings:

The equity requirements should be strictly observed and followed in certain areas of business where the constitution and the laws of the Philippines impose limitation on foreign holdings.

Generally, however, foreigners may invest as much as one hundred percent [100%] equity in areas not covered by the Negative List under the Foreign Investments Act.

The following provisions thereof may serve as guide:

List A : Includes those reserved to Philippine nationals by the Constitution of the Philippines.

[a] exploitation of natural resources [100% domestic equity]

[b] operation of public utilities [60% domestic equity]

[c] mass media [100% domestic equity]

[d] educational institution [70% domestic equity]

[e] labor recruitment [65% dom. equity]

[f] retail trade [100% dom. equity]

[g] rural banking [100% dom. equity]

List B : Includes those regulated by law.

[a] defense-related activities

[b] manufacture and distribution of dangerous drugs

[c] nightclubs, bathhouse and similar activities

[d] small and medium-sized domestic market enterprises with paid-in equity capital of less than US\$500,000.00

[e] export enterprises utilizing new materials from depleting natural resources with paid-in equity of less than US\$500,000.00

Corporation, when corporate existence commences:

The corporate life or existence of a Philippine corporation commences from the time a Certificate of Incorporation is issued in its favor by the Securities and Exchange Commission [SEC].

Corporation, effect of non-use:

[a] A corporation is deemed dissolved if the corporate charter granted in its favor expires by non-use for a period of at least two [2] years from issuance thereof.

[b] A corporation is deemed suspended or its franchise revoked if it has been duly organized but it failed to operate for a period of five [5] years.

Corporation, its organization:

A Philippine corporation is organized by electing members to its Board of Directors, by electing the corporate officers thereof and/or by setting up an Executive Committee.

Board of Directors, qualifications:

The members of the Board of a Philippine corporation must possess the following qualifications:

- [1] owner or holder of at least one [1] share of capital stock;
- [2] majority of the members must be residents of the Philippines;
- [3] they must be elected by the owners/holders of at least the majority of the outstanding capital stock.

Board of Directors, corporate acts:

For validity and legality of the corporate acts of the Board of Directors, a meeting should be fully convened and the same must be attended by at least a majority of its members. Any and all corporate acts must be duly approved by a majority of the members of the Board except when otherwise provided by Philippine laws or by the By-laws of the corporation.

Board of Directors, self-dealing rule:

A self-dealing transaction of a member of the Board of Directors becomes voidable except under the following circumstances:

- [1] When the presence of such director in the Board meeting is not necessary to constitute a quorum;
- [2] When his vote is not necessary for the approval of the contract or transaction
- [3] When the terms of the contract are fair and reasonable and had been previously approved by the Board of Directors.

Corporate Officers, general rule:

As a general rule, the corporate officers of a Philippine corporation consist of the President who is required to be a member of the Board of Directors; the Corporate Treasurer; and the Corporate Secretary who is required to be both a resident and a citizen of the Philippines.

Other corporate officers may be designated under the By-laws of the corporation without getting afoul with the law.

The only limitation imposed by law on corporate officers is that no person can be the President and the Corporate Secretary at the same time or the President and Corporate Treasurer at the same time.

Corporate Officers, personal liability for damages:

A corporate officer of a Philippine corporation becomes personally liable for certain corporate acts under the following circumstances:

- [1] When he willfully and knowingly votes or assents to patently unlawful acts;
- [2] When he is guilty of gross negligence or bad faith in the conduct of the corporate affairs; or
- [3] When he acquires personal or pecuniary interest which is in conflict with his duty as such officer.

Stockholders, limited liability:

The liability of stockholders in Philippine corporations is limited only to the extent of their capital contribution thereto. Other properties, holdings or assets of stockholders are not within the reach of corporate creditors. To discourage abuse of this privilege, the Securities and Exchange Commission [SEC] imposes certain reportorial requirements which should be complied with on a regular basis.

Stockholders, kinds of meetings:

The kinds of meetings involving the stockholders of a Philippine corporation are as follows:

- [1] Regular meeting which is the equivalent of the annual stockholders' meeting required to be duly provided under the By-laws;
- [2] Special meeting which may be called anytime as may be necessary

Stockholders' meeting, requisites for validity:

In order to be valid, the stockholders' meeting should comply with the following requisites:

- [1] A notice of such meeting must be served to the stockholders
- [2] A quorum, [*i.e.*, majority of the outstanding capital stock of the corporation] must be fully established.
- [3] Any and all acts of the stockholders in a meeting duly called and constituted, are deemed valid if approved by a majority of the outstanding capital stock or at least two-thirds [2/3] vote in certain cases specified under the law.

Corporation, dissolution:

As a general rule, the corporate existence of a Philippine corporation may last up to fifty [50] years, renewable for another fifty [50] years. However, such lifetime may be shortened by a vote of 2/3 of the outstanding capital stock thereof through the process called dissolution.