

Corporation - is 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.

Attributes of a Corporation

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

Advantages of Corporate Form of Business

1. Capacity to act as a single unit.
2. Limited shareholders liability.
3. Continuity of existence
4. Transferability of shares
5. Centralized management.
6. Standardized method of organization, management and finance.

Disadvantages of the Corporate Form of Business

1. To have a valid and binding corporate act, formal proceedings, such as board meetings are required.
2. The business transactions of a corporation are limited to the State of its incorporation and may not act as such corporation in
 - a. Non-stock corporation – a corporation which does not issue stocks and does not distribute dividends to their members.
2. As to the state or country under whose laws it was created
 - a. Domestic corporation – a corporation formed, organized or existing under the laws of the Philippines.
 - b. Foreign corporation - is a corporation which is formed, organized or existing under any laws other than those of the Philippines and whose laws allow

other jurisdiction unless it has obtained a license or authority from the foreign state.

3. The shareholders' limited liability tends to limit the credit available to the corporation as a separate legal entity.
4. Transfers of share may result to uniting incompatible and conflicting interests.
5. Minority shareholders have practically no say in the conduct of corporate affairs.
6. Stockholders voting rights may become merely fictitious and theoretical because of disinterest in management, wide scale ownership and inaccessible place of meeting.
7. Double taxation may be imposed on corporate income.
8. Corporations are subject to governmental regulations, supervision and control including submission of reportorial requirements not otherwise in other business form.

Classification of corporations

1. As to whether shares of stock are issued or not
 - a. Stock corporation – a corporation in which capital stock is divided into shares and is authorized to distribute to holders thereof of such shares dividends or allotment of the surplus profits on the basis of the shares held.

Filipino citizens and corporation to do business in its own country or state.
3. As to number of persons composing them
 - a. Corporation aggregate
 - b. Corporation sole
4. As to whether its purpose is public or private
 - a. Public corporation - geographical subdivisions or political subdivisions of the state. (Ex: Municipality, City, Province)

- b. Private corporation – this is a corporation where the main purpose of which is for profit
- 5. As to whether its purpose is religious or not
 - a. Ecclesiastical or religious corporation
 - b. Lay Corporation
- 6. As to whether its purpose is charitable or not
 - a. Eleemosynary corporation
 - b. Civil corporation
- 7. As to their legal right to corporate existence
 - a. De Jure Corporation – one created in strict or substantial conformity with the statutory requirements for incorporation. Cannot be attacked directly or collaterally.

De facto corporation – a corporation where there exists a flaw in its incorporation. Can be attacked by the state in a proper proceeding (Qou Warranto).

What are the requisites?

- 8. As to their relation to another corporation or other corporations
 - a. Parent or Holding Corporation - One which owns the shares of another corporation and having power, directly or indirectly, over the latter includes the election of the directors thereof.
 - b. Subsidiary Corporation - One whose shares of stock are owned by another corporation, called the parent corporation, which has the power to elect its directors.
- 9. As to whether its shares may be held by the public or not
 - a. Close corporation
 - b. Open corporation
- 10. Other classifications
 - 1. Corporation by prescription
 - 2. Corporation by estoppel – group of persons which holds itself out as a corporation and enters into a contract with a third person on the strength of

such appearance cannot be permitted to deny its existence in an action under said contract. Not actually a real corporation.

Share of stock - is one of the units into which the capital stock of the corporation is divided.

Stock certificate - is the written acknowledgment by the corporation of the stockholder's interest in the corporation and its property.

Classification of Shares

- 1. Preferred shares - issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code
- 2. Redeemable shares - 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.
- 3. Founders' shares- classified as such in the articles of incorporation may be given certain rights and privileges not enjoyed by the owners of other stocks, provided that where the exclusive right to vote and be voted for in the election of directors is granted, it must be for a limited period not to exceed five (5) years subject to the approval of the Securities and Exchange Commission. The five-year period shall

commence from the date of the aforesaid approval by the Securities and Exchange Commission.

4. 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. Such shares may again be disposed of for a reasonable price fixed by the board of directors.
5. Watered stock – those issued without consideration or with no adequate consideration.
6. Par Value Shares
7. No Par Value Shares
8. Voting shares – those entitled to vote in the meetings of the corporation.
9. Non-voting shares – those without voting rights, except in certain cases.

➤ Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Contents of the articles of Incorporation

1. The name of the corporation.
2. The purpose or purposes of the corporation
3. The place of the principal office which must be in the Philippines.
4. The term of existence
5. Names, nationalities and residencies of the incorporators
6. Number and qualifications of incorporators
7. Number, names, nationalities and residencies of the directors or trustees.
8. The amount of authorized capital stock in lawful money of the Philippines, if the number of shares are without par value, the number of authorized shares and the fact that they are without par value must be stated.
9. The names of the subscribers, nationalities, number of shares subscribed, amount subscribed, amount subscribed, and amount paid-in
10. Other matters not inconsistent with law and which the incorporators may deem
11. necessary or convenient.
12. The name of the temporary treasurer elected (treasurer-in-trust).
13. Notarial acknowledgment.
14. Treasurer's affidavit.

Amendment of the articles of incorporation

1. Purpose
It must be for a legitimate purpose or purposes.
2. Procedure:
Majority vote of the Directors, and the vote or written assent of 2/3 of the outstanding capital stock for stock corporation or 2/3 of the members for non-stock corporation.

3. When effective:
Upon approval of SEC or if not acted upon by SEC within six (6) months from the date of filing provided that delay cannot be attributed to the corporation.

Effect of non-use of corporate charter for 2 years?

Effect of continuous non-operation for 5 years?

Grounds when articles of incorporation or amendment may be rejected or disapproved.

The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code.

Provided: That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment.

The following are grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein;
2. That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations;
3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid is false;
4. That the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.

- Governing body of the corporation - the corporate powers of all corporations formed under the Corporation Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees.
- Term of office of directors or trustees – one (1) year and until their successors are elected and qualified.

➤ ***Number of directors or trustees***

1. In stock corporations : Not less than 5 nor more than 15 directors.
2. Non-stock corporations: Not less than 5 nor more than 15 trustees with the term of office of 1/3 of their number shall expire every year.
3. Close corporations : the articles of incorporation may provide that the business of the corporation shall be managed by its stockholders rather by a board of directors, in which case no meeting of stockholders need not be held to elect directors.
4. Trustees of non-stock educational corporations: Not less than 5 nor more than 15, provided that the number shall be in multiples of 5, with the term of office of 1/5 of their number expiring every year.
5. Corporation sole: no board of directors or trustees because it only consists of one member or incorporator only.
6. Religious societies: Not less than 5 nor more than 15.

➤ ***Qualifications of directors or trustees::***

1. Stock corporations :
 - a. Every director must own at least one share of the capital stock.
 - b. The share of stock must be registered in his name on the books of the corporation.

Board of Directors, Trustees and Officers

- c. Every director must continuously own at least a share of stock during his term, otherwise, he shall automatically cease to be a director.
 - d. Majority of the directors must be residents of the Philippines
2. Non-stock corporations – trustees of non-stock corporations must be members thereof and like in stock corporations, a majority of them must be residents of the Philippines.

- ✓ President – Must be a director but cannot act as president and secretary or president and treasurer at the same time. The powers of the president of the corporation are such only as are conferred upon him by the board of directors or trustees or vested in him by the by-laws.
- ✓ Treasurer – may be a director or not.
- ✓ Secretary – must be a resident and citizen of the Philippines. Need not be a director unless required by the by-laws.
- ✓ Other officers as may be provided in the by-laws.

Election of directors or trustees

1. They are elected at a meeting called for the purpose.
2. There must be present in person or by representative authorized by written proxy:
 - a. The owners of the majority of the outstanding capital stock, if a stock corporation.
 - b. The majority of the members, if a non-stock corporation.
3. The election must be by ballot *if requested* by any voting stockholder or member.
4. No delinquent stock shall be voted.
5. Methods of voting.
 - a. Stock corporation
 1. Straight voting
 2. Cummulative voting for one (1) candidate
 3. Cummulative voting by distribution.
 - b. Non-stock corporation

A member may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate.

What are the requisites of board meeting?

- **Quorum** - is the number of directors or trustees sufficient to transact business.
 - Quorum in meeting of directors or trustees:
- General rule:** Majority of the number of directors or trustees fixed in the articles of incorporation.
- Exception:** If the articles of incorporation or by-laws provide for a for a greater number
- Vote required to have a valid corporate act
- Majority of those present provided there is a quorum except in the election of officers which requires a majority vote or all members of the board.
- Directors or trustees cannot attend or vote by proxy at board meetings.

Report of election of directors, trustees and officers.

- Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected.
- Should a director, trustee or officer die, resign or in any manner cease to hold

Corporate officers

Immediately after their election, the directors must formally organize by the election of the following officers:

office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission.

Disqualification of directors, trustees or officers?

Removal of directors or trustees

Requisites

- a. The removal must take place in a regular meeting of the corporation or in a special meeting called for the purpose.
- b. Previous notice of the intention to propose such removal must have been given to the stockholders or members.
- c. The following vote must be obtained to effect the removal:
 - 1) Stock corporation- by the stockholders representing at least 2/3 of the outstanding at least 2/3 of the outstanding capital stock entitled to vote.
 - 2) Non-stock corporation- 2/3 of the members entitled to vote.

- ✓ Vacancies in the office of director or trustee
1. Removal
 2. Expiration of term
 3. Increase in the number of directors
 4. Resignation
 5. Death
 6. Abandonment
 7. Disqualification

- ✓ Filling of vacancy
- A vacancy in the office of the board of directors or trustees may be filled as follows:

1. By the stockholders or members
If the cause of vacancy is any of the following:
 - I. If the vacancy results from the removal by the stockholders or members or the expiration off term.
 - II. If the vacancy occurs other than by removal or by expiration of term, such as death, resignation, abandonment, or disqualification, if the remaining directors or trustees do not constitute a quorum for the purpose of filling the vacancy.
 - III. If the vacancy may be filled by the remaining directors or trustees but the board refers the matter to the stockholders or members.
 - IV. If the vacancy is created by reason of an increase in the number of directors or trustees.

2. By the board of directors or trustees
If the cause of vacancy is other than removal, expiration of term or increase in the number of directors, **and** the remaining directors or trustees still constitutes a quorum.

Compensation of directors

General rule: Directors are not entitled to compensation as such as directors.

Exception: Directors are entitled to compensation in the following cases:

1. Fixed in the by-laws.

2. Giving of compensation is approved by the stockholders representing at least a majority of the outstanding capital stock.
3. The compensation refers to reasonable *per diems*
4. If the director is also a corporate officer.

- The director, trustee or officer would be held accountable to the corporation, stockholders or members for the secret profits which would have accrued to the corporation.
- Nature of directors/trustees position
 1. They are agents of the corporation
 2. They are personally liable to the corporation for any loss or injury arising from gross negligence or unauthorized acts or violation of their duties.
 3. They are not liable for business losses because of honest bad judgment.

Limitation on compensation

The total yearly compensation (excluding *per diems*) of directors, as such directors must not exceed 10% of the net income before income tax of the corporation during the preceding year.

Liability of directors or trustees for damages

- 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 (Solidary) for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
- When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, **any interest adverse** to the corporation in respect of any matter which has been **reposed in him in confidence**, as to which equity imposes a disability upon him to deal in his own behalf, he shall be **liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.**

In what instances the director, trustee is therefore liable for damages?

Dealings of directors, trustees or officers with the corporation.

A contract of the corporation with one or more of its directors or trustees or officers is **voidable**, at the option of such corporation, unless all 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 for 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; and
4. That in case of an officer, the contract has been previously authorized by the board of directors.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of at

least two-thirds (2/3) of the members in a meeting called for the purpose.

Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances.

- The contract shall be valid if all the conditions enumerated above are present.
- If the first or the second condition is absent, the contract may still be valid if ratified to by the stockholders holding at least 2/3 of the outstanding capital stock or at least 2/3 of the members

In addition:

- The contract must be fair and reasonable.
- There must be a meeting duly called for that purpose.

Contracts between corporations with interlocking directors.

- Contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone.
- Provided, That 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 the dealings of directors, trustees or officers insofar as the latter corporation or corporations are concerned.
 - The latter corporation stated by the law refers to the corporation where the interlocking director has a nominal interest. The rule in the dealings of directors, trustees or officers shall be applicable.
 - This rule in contracts between corporations with interlocking directors

shall not be applicable in cases of fraud, and provided the contract is fair and reasonable under the circumstances.

- Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.

Disloyalty of a director.

- 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, the director must account to the corporation for all such profits by refunding the same.

Executive committee

- The by-laws of a corporation may create an executive committee, composed of **not less than three members** of the board, to be appointed by the board.
- The executive committee may act, by **majority vote of all its members**, on such specific matters within the competence of the board, as may be delegated to it in the by-laws or on a majority vote of the board.
- The executive committee has no power to act on the following:
 1. Approval of any action for which shareholders' approval is also required.
 2. The filing of vacancies in the board.
 3. The amendment or repeal of by-laws or the adoption of new by-laws.
 4. The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.
 5. A distribution of cash dividends to the shareholders.

Powers of Corporation

Kinds of powers

1. Express powers- powers expressly authorized by the Corporation Code and other laws, and its Articles of Incorporation or charter.
2. Implied powers- those that can be inferred from or necessary for the exercise of the express powers.
3. Incidental or inherent powers-by reason of its very existence as a corporation.

Express Powers

General Powers

1. To sue and be sued in its corporate name.
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation.
3. To adopt and use a corporate seal.
4. To amend its articles of incorporation in accordance with the provisions of this Code.
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code.
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation 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 the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
8. To enter into merger or consolidation with other corporations as provided in this Code.

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, 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.

Specific Powers

- a. ***Power to extend or shorten corporate term.***

A private corporation may extend or shorten its term as stated in the articles of incorporation when approved by:

- I. a majority vote of the board of directors or trustees **and** ratified at a meeting by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock
- II. **or** by at least two-thirds (2/3) of the members in case of non-stock corporations.

- Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.
- Provided, **That in case of extension of corporate term, any dissenting stockholder may exercise his appraisal right under the conditions provided in this code.**

b. ***Power to increase or decrease capital stock; incur, create or increase bonded indebtedness.***

No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless:

- approved by a **majority** vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the **outstanding capital stock** shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.
- Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

A **certificate** in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and the secretary of the stockholders' meeting, setting forth:

1. That the requirements of this section have been complied with.
2. The amount of the increase or diminution of the capital stock.
3. If an increase of the capital stock, the amount of capital stock or number of shares of no-par stock thereof actually subscribed, the

names, nationalities and residences of the persons subscribing, the amount of capital stock or number of no-par stock subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital stock or number of shares of no-par stock allotted to each stock-holder if such increase is for the purpose of making effective stock dividend therefor authorized.

4. Any bonded indebtedness to be incurred, created or increased.
5. The actual indebtedness of the corporation on the day of the meeting.
6. The amount of stock represented at the meeting; and
7. The vote authorizing the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.

Trust Fund Doctrine - Under this doctrine, the capital stock and assets of the corporation are held in trust for creditors. Accordingly, there shall be no distribution of assets to shareholders until the claims of creditors have been paid or appropriations of such assets have been made for the payment of such claims.

- **Non-stock corporations** may incur or create bonded indebtedness, or increase the same, with the approval by a **majority vote** of the board of trustees and of **at least two-thirds (2/3)** of the members

in a meeting duly called for the purpose.

- Bonds issued by a corporation shall be registered with the Securities and Exchange Commission, which shall have the authority to determine the sufficiency of the terms thereof.

c. ***Power to deny pre-emptive right.***

All stockholders of a stock corporation shall enjoy **pre-emptive right** to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings.

The power of pre-emptive right may be denied in the following instances?

d. ***Sale or other disposition of assets.*** –

Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may sell, lease, exchange, mortgage, pledge or otherwise dispose of **all or substantially all** of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, by:

- I. a **majority vote** of its board of directors or trustees and when authorized by the vote of the stockholders representing **at least two-thirds (2/3) of the outstanding capital stock**, or in case of non-stock corporation, by the vote of **at least to two-thirds (2/3) of the members**, in a stockholder's or member's meeting duly called for the purpose.

- Written notice of the proposed action and of the time and place

of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

- II. Provided, **That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.**

- III. A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered **incapable of continuing the business or accomplishing the purpose for which it was incorporated.**

- In non-stock corporations where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section.

e. ***Power to acquire own shares.***

A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: **Provided, That the corporation has unrestricted retained earnings in its books to cover the shares** to be purchased or acquired.

Purposes why the corporation has the power to acquire own shares?

f. ***Power to invest corporate funds in another corporation or business or for any other purpose.***

Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized when approved by:

- I. a **majority** of the board of directors or trustees and ratified by the stockholders representing **at least two-thirds (2/3)** of the outstanding capital stock, or by **at least two thirds (2/3)** of the members in the case of non-stock corporations, at a stockholder's or member's meeting duly called for the purpose.
- II. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally:
- III. Provided, **That any dissenting stockholder shall have appraisal right as provided in this Code.**
- IV. Provided, however, That where the investment by the corporation is **reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.**

g. ***Power to declare dividends.***

The **board of directors** of a stock corporation may declare dividends out of the **unrestricted retained earnings** which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them.

- Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid.
- Provided, further, That **no stock dividend** shall be issued without the approval of stockholders representing **not less than two-thirds (2/3)** of the outstanding capital stock at a regular or special meeting duly called for the purpose.
- Stock corporations are prohibited from retaining surplus profits in excess of one hundred (100%) percent of their paid-in capital stock, what are the exception?

h. ***Power to enter into management contract.***

- **As a general rule:** No corporation shall conclude a management contract with another corporation unless such contract shall have been approved by the board of directors and by stockholders owning at least the **majority** of the outstanding capital stock, or by at least a **majority** of the members in the case of a non-stock corporation, of both the managing and the managed corporation, at a meeting duly called for the purpose.
- **Exception:** The management contract must be approved by the stockholders of the managed corporation owning **at least two-thirds (2/3)** of the total outstanding capital stock entitled to vote, or by **at least two-thirds (2/3) of the members** in the case of a non-stock corporation in the following instances:
 - I. where a stockholder or stockholders representing the

same interest of both the managing and the managed corporations own or control more than one-third (1/3) of the total outstanding capital stock entitled to vote of the managing corporation; or

- II. where a majority of the members of the board of directors of the managing corporation also constitute a majority of the members of the board of directors of the managed corporation, then the.

Ultra vires acts of corporations.

No corporation under this Code 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.

By-Laws

Relatively permanent and continuing rules of action adopted by the corporation for its own government and that of the individuals composing it and those having the direction, management and control of its affairs, in whole or in part, in the management and control of its affairs and activities.

Requisites:

1. must be consistent with the Corporation Code, other pertinent laws and regulations.
2. It must be consistent with the Articles of Incorporation.
3. It must be reasonable and not arbitrary or oppressive.
4. It must not disturb vested rights, impair contract or property rights of stockholders or members or create obligations unknown to law.

Adoption of By-laws

1. Prior to incorporation
 - a. Submitted together with the articles of incorporation, to the SEC and
 - b. Approved and signed by all the incorporators.
2. After incorporation
 - a. Submitted within 1 month after the receipt of the official notice of the issuance of certificate of the incorporation, and.
 - b. Approved by the stockholders representing at least a majority of the outstanding capital stock, or by a majority of the members.

When effective : Upon the issuance of the SEC of certification that the by-laws are not inconsistent with the Corporation Code.

Amendment:

1. May be made by the
 - a. Stockholders together with the Board : Majority of Board plus Majority of outstanding capital stock.
 - b. Board only:
Delegation of power to amend or repeal by-laws or adopt new by-laws to board of directors or trustees
 - a. Delegation of the power
The owners of 2/3 of the outstanding capital stock or 2/3 of the members may delegate to the board of directors or trustees the power to amend or repeal by-laws or adopt new by-laws. In such a case, the board of directors or trustees may amend or repeal the by-laws or adopt new by-laws by a majority vote of those present provided there is a quorum.
 - b. Revocation of the power
The owners of the *majority of the outstanding capital stock* or

majority of the members may revoke the power previously delegated to the board.

2. When amendment or new by-laws effective
Upon the issuance by the SEC of a certification that the amended or new by-laws are not inconsistent with the Corporation Code.

Meetings

Kinds of meeting

1. **Meetings of directors or trustees**

- a. Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise.
- b. Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the by-laws.

- ✓ **Notice of regular or special** meetings stating the date, time and place of the meeting must be sent to every director or trustee **at least one (1) day prior to the scheduled meeting**, unless otherwise provided by the by-laws
- ✓ Meetings of directors or trustees of corporations **may be held anywhere in or outside of the Philippines**, unless the by-laws provide otherwise.
- ✓ A director or trustee **may waive** this requirement, either expressly or impliedly
- ✓ Quorum in meetings - **Majority** of the number of directors or trustees stated in the articles of incorporation, unless such articles or the by-laws provide for a greater majority.
- ✓ The president shall preside at all meetings of the directors or trustees, unless the by-laws provide otherwise.

- ✓ Directors or trustees vote during meetings per head. Directors or trustees cannot attend or vote by proxy at board meetings.

2. Meetings of stockholders or members

- Regular meeting - This is held annually on a date fixed in the by-laws, or if not so fixed, on any date in April every year as determined by the board of directors or trustees
 - Notice of regular meeting should be sent at least 2 weeks prior to the meeting, unless a different period is required by the by-laws
- Special meeting shall be held at any time deemed necessary or as provided in the by-laws.
 - Notice of special meeting should be sent at least 1 week prior to the meeting, unless a different period is required by the by-laws

- ✓ They shall be held in the city or municipality where the principal office of the corporation is located, and if practicable in the principal office of the corporation. *For this purpose, Metro Manila shall be considered a city or municipality.*
- ✓ Majority of the outstanding capital stock or majority of the members shall constitute a quorum, unless a greater majority is provided for in the Corporation Code or in the by-laws.
- ✓ The president, shall preside at all meetings of stockholders or members, unless the by-laws provide otherwise.
- ✓ **Manner of voting**
 - a. Stockholders vote *by shares*. Members vote on the *per head* basis unless the by-laws provide otherwise.
 - b. Right to vote

- 1) Directly or personally by the stockholders or member
- 2) Through representative voting
 - a) By means of proxy

Proxy (3 DEFINITIONS)

- (1) The formal authority given by the shareholder or member to another person to exercise the voting right.
 - (2) The person given the authority by the stockholder or member for the exercise the voting right.
 - (3) The written instruments evidencing the authority given by the stockholder or member for the exercise of the voting right.
- b) By means of a voting trust agreement

The trustee under the voting trust agreement shall exercise the voting right.
 - c) Through legal representatives

Executors administrators, receivers and other legal representatives duly appointed by the court may-attend and vote in behalf of the stockholder or members without need of any written proxy.

Right to vote of pledgors, mortgagors, and administrators.

- In case of pledged or mortgaged shares in stock corporations, the pledgor or mortgagor shall have the right to attend and vote at meetings of stockholders,

unless the pledgee or mortgagee is expressly given by the pledgor or mortgagor such right in writing which is recorded on the appropriate corporate books.

- Executors, administrators, receivers, and other legal representatives duly appointed by the court may attend and vote in behalf of the stockholders or members without need of any written proxy.

Voting in case of joint ownership of stock.

- In case of shares of stock owned jointly by two or more persons, in order to vote the same, **the consent of all the co-owners shall be necessary**, unless there is a written proxy, signed by all the co-owners, authorizing one or some of them or any other person to vote such share or shares.
- Provided, That when the shares are owned in an **"and/or" capacity** by the holders thereof, any one of the joint owners can vote said shares or appoint a proxy therefor.

Voting right for treasury shares

- Treasury shares shall have no voting right as long as such shares remain in the Treasury.

Voting trusts

- One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for a period **not exceeding five (5) years at any time.**
- Provided, That in the case of a voting trust specifically **required as a condition in a loan agreement, said voting trust may be for a period exceeding five (5) years but shall automatically expire upon full payment of the loan.**
- A voting trust agreement must be in writing and notarized, and shall specify the terms

and conditions thereof. A certified copy of such agreement shall be filed with the corporation and with the Securities and Exchange Commission; otherwise, said agreement is ineffective and unenforceable.

- The certificate or certificates of stock covered by the voting trust agreement shall be canceled and new ones shall be issued in the name of the trustee or trustees stating that they are issued pursuant to said agreement. In the books of the corporation, it shall be noted that the transfer in the name of the trustee or trustees is made pursuant to said voting trust agreement.

Subscription contract

- Any contract for the acquisition of unissued stock in an existing corporation or a corporation still to be formed shall be deemed a subscription within the meaning of this Title, notwithstanding the fact that the parties refer to it as a purchase or some other contract.

Pre-incorporation subscription

- A subscription for shares of stock of a corporation still to be formed **shall be irrevocable for a period of at least six (6) months from the date of subscription, unless all of the other subscribers consent to the revocation, or unless the incorporation of said corporation fails to materialize within said period or within a longer period as may be stipulated in the contract of subscription.**
- Provided, That no pre-incorporation subscription may be revoked after the submission of the articles of incorporation to the Securities and Exchange Commission.

Consideration for stocks

- Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the

issuance of stock may be any or a combination of any two or more of the following:

1. Actual cash paid to the corporation;
 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; and
 6. Outstanding shares exchanged for stocks in the event of reclassification or conversion.
- 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.
 - 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.

Certificate of stock and transfer of shares

- The capital stock of stock corporations shall be **divided into shares** for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the

corporation shall be issued in accordance with the by-laws.

- Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.

Issuance of stock certificate

- No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid.

Liability of directors for watered stocks

- Watered stock – 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.
- Any director or officer of a corporation consenting to the watered stock, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary.
- What is the nature of the liability?

Interest on unpaid subscriptions

- Subscribers for stock shall pay to the corporation interest on all unpaid subscriptions **from the date of subscription**, if so required by, and at the **rate of interest fixed in the by-laws**. If no rate of interest is fixed in the by-laws, such rate shall be deemed to be the **legal rate**.

Payment of balance of subscription

- Subject to the provisions of the contract of subscription, the board of directors of any stock corporation **may at any time declare due and payable** to the corporation unpaid

subscriptions to the capital stock and may collect the same or such percentage thereof, in either case with accrued interest, if any, as it may deem necessary.

- Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, **shall be made on the date specified in the contract of subscription or on the date stated in the call made by the board**.
- Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance, unless a different rate of interest is provided in the by-laws, computed from such date until full payment.
- If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon **become delinquent** and shall be subject to sale as hereinafter provided, unless the board of directors orders otherwise.
- Effect : **DELINQUENT STOCK**

Delinquency sale

- The board of directors may, **by resolution**, order the sale of delinquent stock and shall specifically state the amount due on each subscription plus all accrued interest, and the date, time and place of the sale which shall not be less than thirty (30) days nor more than sixty (60) days from the date the stocks become delinquent.
- **Notice of said sale**, with a copy of the resolution, shall be sent to every delinquent stockholder either personally or by registered mail. The same shall furthermore be **published once a week for two (2) consecutive weeks in a newspaper of general circulation** in the province or city where the principal office of the corporation is located.

- Unless the delinquent stockholder pays to the corporation, on or before the date specified for the sale of the delinquent stock, the balance due on his subscription, plus accrued interest, costs of advertisement and expenses of sale, or unless the board of directors otherwise orders, **said delinquent stock shall be sold at public auction to such bidder who shall offer to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share.**
- The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor.
 - ✓ Should there be **no bidder** at the public auction who offers to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share, **the corporation may, subject to the provisions of this Code, bid for the same, and the total amount due shall be credited as paid in full in the books of the corporation.**
 - ✓ Nothing in this Code shall prevent the corporation from collecting by **action in a court of proper jurisdiction** the amount due on any unpaid subscription, with accrued interest, costs and expenses.
- EXCEPT: the right to dividends in accordance with the provisions of this Code, until and unless he pays the amount due on his subscription with accrued interest, and the costs and expenses of advertisement, if any.
- Holders of subscribed shares not fully paid which are **not delinquent** shall have all the rights of a stockholder.

Merger or consolidation

- Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.
- The board of directors or trustees of each corporation, party to the merger or consolidation, shall approve a plan of merger or consolidation setting forth the following:
 1. The names of the corporations proposing to merge or consolidate, hereinafter referred to as the constituent corporations;
 2. The terms of the merger or consolidation and the mode of carrying the same into effect;
 3. A statement of the changes, if any, in the articles of incorporation of the surviving corporation in case of merger; and, with respect to the consolidated corporation in case of consolidation, all the statements required to be set forth in the articles of incorporation for corporations organized under this Code; and
 4. Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable.

Effect of delinquency

- No delinquent stock shall be voted for be entitled to vote or to representation at any stockholder's meeting, nor shall the holder thereof be entitled to any of the rights of a stockholder

Stockholder's or member's approval

- Upon approval by **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.
- **Notice** of such meetings shall be given to all stockholders or members of the respective corporations, **at least two (2) weeks prior to the date of the meeting**, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger or consolidation.
- 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 non-stock corporations shall be necessary for the approval of such plan.**
- Any dissenting stockholder in stock corporations may exercise his appraisal right in accordance with the Code: Provided, That if after the approval by the stockholders of such plan, the board of directors decides to abandon the plan, the appraisal right shall be extinguished.
- **Any amendment to the plan of merger or consolidation** may be made, provided such amendment is approved by **majority vote** of the respective boards of directors or trustees of all the constituent corporations and ratified by the affirmative vote of stockholders representing **at least two-thirds (2/3) of the outstanding capital stock or of two-thirds (2/3) of the members of each of the constituent corporations.** Such plan, together with any amendment, shall be considered as the agreement of merger or consolidation.

Articles of merger or consolidation

- 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 setting forth:
 1. The plan of the merger or the plan of consolidation;
 2. As to stock corporations, the number of shares outstanding, or in the case of non-stock corporations, the number of members; and
 3. As to each corporation, the number of shares or members voting for and against such plan, respectively.

Effectivity of merger or consolidation

- The articles of merger or of consolidation, signed and certified as herein above required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: Provided, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. **If the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, at which time the merger or consolidation shall be effective.**
- If, upon investigation, the Securities and Exchange Commission **has reason to**

believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of hearing shall be given to each constituent corporation **at least two (2) weeks before said hearing.**

Effects of merger or consolidation

- The merger or consolidation shall have the following effects:
 1. 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;
 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
 3. 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;
 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or 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

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

APPRAISAL RIGHT

- Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:
 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Code; and
 3. In case of merger or consolidation.

How right is exercised

- The appraisal right may be exercised by any stockholder who shall have **voted against**

the proposed corporate action, by making a **written demand** on the corporation **within thirty (30) days after the date on which the vote was taken for payment of the fair value of his shares.**

- Provided, That failure to make the demand within such period shall be deemed a waiver of the appraisal right.
- If the proposed corporate action is implemented or affected, the corporation shall pay to such stockholder, upon surrender of the certificate or certificates of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.
- If within a period of sixty (60) days from the date the corporate action was approved by the stockholders, the withdrawing stockholder and the corporation cannot agree on the fair value of the shares, it shall be determined and **appraised by three (3) disinterested persons**, one of whom shall be named by the stockholder, another by the corporation, and the third by the two thus chosen.

Non-Stock Corporations

- is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution
- Provided, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.
- Non-stock corporations 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, subject to the special provisions of this Title governing particular classes of non-stock corporations

Right to vote

1. The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be **entitled to one vote. (In person)**
2. Unless otherwise provided in the articles of incorporation or the by-laws, **a member may vote by proxy** in accordance with the provisions of this Code.
3. **Voting by mail or other similar means** by members of non-stock corporations may be authorized by the by-laws of non-stock corporations with the approval of, and under such conditions which may be prescribed by, the Securities and Exchange Commission.

Non-transferability of membership

- Membership in a non-stock corporation and all rights arising therefrom are personal and non-transferable, unless the articles of incorporation or the by-laws otherwise provide.
- Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws.

TRUSTEES AND OFFICERS

1. Number of trustees
It may be more than 15 in number as may be fixed in the articles of incorporation or

the by-laws. However, the number should not be less than 5.

2. Qualifications of trustees
 - a. Trustees must be members of the corporation
 - b. Majority of them must be residents of the Philippines
3. Term of office of trustees- unless otherwise provided in the articles of incorporation or by-laws, the term of office shall be as follows:
 - a. The term of office of trustees shall be 3 years.
 - b. Trustees first elected shall so classify themselves so that the term of office of 1/3 of their number shall expire every year. Trustees thereafter elected to fill vacancies shall serve only for the unexpired term of the person they replace.

CLOSE CORPORATIONS

- is a corporation whose articles of incorporation provide the following:
 1. All of the corporations issued stock of all classes, excluding treasury shares, shall be held of record by not more than a specified number of persons, not exceeding 20.
 2. All of the issued stock of all classes shall be subject to one or more restrictions on transfer.
 3. The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class.

What may not be incorporated as a close corporation

1. Mining corporations
2. Oil companies
3. Stock exchanges
4. Banks
5. Insurance companies
6. Public utilities

7. Educational Institutions
8. Corporations vested with public interest

Articles of incorporation

- The articles of incorporation of a close corporation may provide:
 1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;
 2. For a classification of directors into one or more classes, each of whom may be voted for and elected solely by a particular class of stock; and
 3. For a greater quorum or voting requirements in meetings of stockholders or directors than those provided in this Code.
- The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:
 1. No meeting of stockholders need be called to elect directors;
 2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code; and
 3. The stockholders of the corporation shall be subject to all liabilities of directors.
- The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees **shall be elected or appointed by the stockholders**, instead of by the board of directors.

When board meeting is unnecessary or improperly held

- Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if:
 1. Before or after such action is taken, written consent thereto is signed by all the directors; or
 2. All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or
 3. The directors are accustomed to take informal action with the express or implied acquiescence of all the stockholders; or
 4. All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing.

Pre-emptive right in close corporations

- The pre-emptive right of stockholders in close corporations shall extend to all stock to be issued, including reissuance of treasury shares, whether for money, property or personal services, or in payment of corporate debts, unless the articles of incorporation provide otherwise.

Amendment of articles of incorporation

- Any amendment to the articles of incorporation which seeks to delete or remove any provision required by this Title to be contained in the articles of incorporation or to reduce a quorum or voting requirement stated in said articles of incorporation shall not be valid or effective **unless approved by the affirmative vote of at least two-thirds (2/3) of the outstanding capital stock, whether with or without voting rights**, or of such greater proportion of shares as may be specifically provided in

the articles of incorporation for amending, deleting or removing any of the aforesaid provisions, at a meeting duly called for the purpose.

Deadlocks

- Notwithstanding any contrary provision in the articles of incorporation or by-laws or agreement of stockholders of a close corporation, if the directors or stockholders are so divided respecting the management of the corporation's business and affairs that the votes required for any corporate action cannot be obtained, with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally, the Securities and Exchange Commission, upon written petition by any stockholder, shall have the power to arbitrate the dispute.
- In the exercise of such power, the Commission shall have authority to make such order as it deems appropriate, including an order:
 1. canceling or altering any provision contained in the articles of incorporation, by-laws, or any stockholder's agreement;
 2. canceling, altering or enjoining any resolution or act of the corporation or its board of directors, stockholders, or officers;
 3. directing or prohibiting any act of the corporation or its board of directors, stockholders, officers, or other persons party to the action;
 4. requiring the purchase at their fair value of shares of any stockholder, either by the corporation regardless of the availability of unrestricted retained earnings in its books, or by the other stockholders;
 5. appointing a provisional director;

6. dissolving the corporation; or
7. granting such other relief as the circumstances may warrant.

➤ Who is a Provisional director?

Special Corporations

Educational Corporations

1. Laws applicable
 - a. Special laws governing them
 - b. General provisions of the Corporation Code
2. Indorsement from the Department of Education (DepEd) or Commission on Higher Education
3. Board of Trustees
 - a. Number and term of office
 - 1) Stock educational corporation
The number and term of directors shall be governed by the provision on stock corporations.
 - 2) Non-stock educational corporations
 - a) The number shall not be less than 5 nor more than 15 but the number should be in multiples of 5 (i.e., 5, 10, 15).
 - b) Unless provided in the articles or by-laws, the trustees shall so classify themselves so that the term of office of 1/5 of their number shall expire every year.
 - 3) Quorum - A majority of the trustees shall constitute a quorum.

Religious corporations

1. Corporation sole
 - It is incorporated by one person and consists of one member such as the chief archbishop, bishop, priest, minister or rabbi or other presiding elder.

➤ Purpose: To administer and manage as trustee the affairs, property and temporalities of any religious denomination, sect or church.

✓ **Filling of vacancies**

➤ The successors in office of any chief archbishop, bishop, priest, minister, rabbi or presiding elder in a corporation sole shall become the corporation sole on their accession to office and shall be permitted to transact business as such on the filing with the Securities and Exchange Commission of a copy of their commission, certificate of election, or letters of appointment, duly certified by any notary public.

✓ **Dissolution**

➤ A corporation sole may be dissolved and its affairs settled voluntarily by submitting to the Securities and Exchange Commission a verified declaration of dissolution.

The declaration of dissolution shall set forth:

1. The name of the corporation;
2. The reason for dissolution and winding up;
3. The authorization for the dissolution of the corporation by the particular religious denomination, sect or church;
4. The names and addresses of the persons who are to supervise the winding up of the affairs of the corporation.

➤ Upon approval of such declaration of dissolution by the Securities and Exchange Commission, the corporation shall cease to carry on its operations

except for the purpose of winding up its affairs.

2. Religious Society

- It is incorporated by an aggregate of persons consisting district organization of any religious denomination the purpose of which is to administer or manage its temporalities, affairs and property.
- It must file verified articles of incorporation with the SEC.
- Any religious society or religious order, or any diocese, synod, or district organization of any religious denomination, sect or church, unless forbidden by the constitution, rules, regulations, or discipline of the religious denomination, sect or church of which it is a part, or by competent authority, may, upon written consent and/or by an **affirmative vote at a meeting called for the purpose of at least two-thirds (2/3) of its membership**, incorporate for the administration of its temporalities or for the management of its affairs, properties and estate by filing with the Securities and Exchange Commission, articles of incorporation verified by the affidavit of the presiding elder, secretary, or clerk or other member of such religious society or religious order, or diocese, synod, or district organization of the religious denomination, sect or church, setting forth the following:
 1. That the religious society or religious order, or diocese, synod, or district organization is a religious organization of a religious denomination, sect or church;
 2. That **at least two-thirds (2/3) of its membership** have given their

written consent or have voted to incorporate, at a duly convened meeting of the body;

Dissolution Stock or Non-Stock Corporation

- is the termination of the existence of a corporation.

Kinds of Dissolution

1. ***Voluntary dissolution where no creditors are affected***

- If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by **majority vote of the board of directors or trustees**, and by a resolution duly adopted by the affirmative vote of the stockholders owning **at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members** of a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located;

2. ***Voluntary dissolution where creditors are affected***

- Where the dissolution of a corporation may prejudice the rights of any creditor, **the petition for dissolution shall be filed with the Securities and Exchange Commission.**
- The petition shall be signed by a **majority** of its board of directors or trustees or other officers having the management of its affairs, verified by its president or secretary or one of its directors or trustees, and shall set forth all claims and demands against it, and that its dissolution was resolved upon

by the **affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members at a meeting of its stockholders or members called for that purpose.**

3. ***Dissolution by shortening corporate term***

- A voluntary dissolution may be effected **by amending the articles of incorporation to shorten the corporate term** pursuant to the provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation of the expiration of the shortened term, as the case may be, the corporation

shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation.

4. ***Involuntary dissolution***

- A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on the grounds provided by existing laws, rules and regulations.

Corporate liquidation

1. Concept; corporation to exist for 3years after dissolution (winding period)
2. Who may effect liquidation
 - a. By the corporation itself through the board of directors or trustees or by the stockholders or members who have the power to liquidate.
 - b. By receivership.

MULTIPLE CHOICE QUESTIONS

1. Rayemoon, after a day of rest and after her plane landed in the Philippine jurisdiction following a surgery she underwent in Thailand and just after the ruling of the court rendering an order/judgment that he is a she, subscribed to 10,000 shares of stock of NORTHERN Corporation located at the heart of Baguio along the foot of Session road and head of Burnham Park. She paid 25% of the said subscription. During the stockholders meeting, can Rayemoon vote all her subscribed shares?
 - A. No, because the subscription has not yet been fully paid.
 - B. No, because A's shares have become delinquent which cannot be voted.
 - C. No as to the unpaid percentage of subscription.
 - D. Yes, because unpaid shares not delinquent can be vote
2. Mr. Zeu Rex, named after his beautiful mother and handsome father, subscribed to 100 shares of Sharryl Aduncion Corporation, paying 25% of the amount thereof. The corporation refuses to issue to the former a stock certificate for his subscription despite the demand of Zeu Rex for a stock certificate corresponding to 25 shares which he claims have been paid. Meanwhile, the corporation

- has become insolvent and Zeu Rex now refuses to pay for his unpaid balance on his subscription. Is the refusal of the corporation to issue the certificate valid?
- Not valid because there can be issued a stock certificate for the number of shares already paid.
 - Valid because the stock certificate can only be issued after the full payment of the subscription.
 - Valid with respect to the unpaid portion of the subscription
 - Not valid because only delinquent share may be denied stock certificate.
3. Based on the same facts, is Zeu Rex correct in refusing to pay for the remaining shares, the company being already insolvent?
- No, under the trust and fund doctrine upon the insolvency of the corporation to which he is still liable for his unpaid subscription.
 - No, because of the doctrine of piercing the veil of corporate fiction.
 - Yes, his obligation extinguished due the insolvency of the corporation and his discharge from liability by reason thereof.
 - Yes, because he is denied of his right to receive stock certificate.
4. •The by-laws may provide that the holders of a majority of the outstanding capital stock may elect all the members of the board of directors.
•That it may also provide that no officer of the corporation shall be required to be a stockholder.
- Both statement are true.
 - Both are false.
 - First is true, second is false.
 - First is false, second is true.
5. Which of the following is not a requisite for a close corporation?
- The number of stockholders shall not exceed twenty.
 - That no close corporation is a stockholder thereof owning at least 2/3 of the voting stocks.
 - There is a restriction in the transfer in the shares.
 - There is no public offering of shares.
6. •The declaration of dividends out of the capital and not surplus profits is violation of the doctrine of piercing the veil of corporate fiction.
•When the used as an alter ego or conduit to avoid the performance of an obligation is violation of the trust fund doctrine.
- Both statements are false.
 - Both statements are true.
 - First is false second is true.
 - First is true second is false.
7. Majority of the following must residents of the Philippines, except:
- Members of the board of directors.
 - Members of the board of trustees.
 - Incorporators
 - Officers
8. •Stockholders' meeting must be in the city or municipality where the principal office is located while members meeting of non-stock corporation may be outside thereof.
•The secretary of the corporation must generally be a citizen and a resident of the Philippines.
- Both are true.
 - Both are false.
 - First is true, second is false.
 - First is false, second is true.
9. •The doctrine of corporate opportunity rests on the unfairness of an officer or director of a corporation taking advantage of an

- opportunity for his own personal benefit adverse to the corporation.
- The by-laws must be filed with the SEC for the corporation to acquire juridical personality.
- A. Both statements are true.
 - B. Both statements are false.
 - C. First is true, second is false.
 - D. First is false, second is true.
10. Private corporations have the following attributes, except:
- A. It is created by law as a juridical person.
 - B. It has the right of succession.
 - C. Its may be formed, organized and existing under a special law or charter.
 - D. It has the powers, attributes and properties expressly authorized by the law or incident to its existence.
11. In three of the following instances, shares with or without voting rights can be voted, except:
- A. Increase or decrease of capital stock.
 - B. Dissolution of the corporation.
 - C. Election of directors or trustees.
 - D. Merger or consolidation with other corporation.
12. One of the following does not have voting rights:
- A. Preferred shares
 - B. Redeemable shares
 - C. Treasury shares
 - D. Common shares
13. The executive committee cannot act on this matter except:
- A. Filling of vacancy in the board of directors.
 - B. Cash dividend declaration.
 - C. Board resolution on depository bank of the corporation.
 - D. Stock dividend declaration.
14. At the annual meeting of REY BAL-REX BANG Corporation (a distributor of the nationwide overflowing famous coffee known as “KAPE, DOS PESOS LANG”) for the election of five directors, A, B, C, D, E, F and G were nominated. A, B, C, D and E received the highest number of votes and proclaimed elected. F received ten votes less than E. Subsequently, E sold his share to F. Who between E and F has the right to attend as director in the board meeting? The transfer of shares having been registered with the corporation.
- A. E is the director because his term is one year until successor is elected and qualified.
 - B. F is the director for he has acquired all the shares of E.
 - C. Either of them shall be director.
 - D. Neither of them shall be director.
15. The articles of incorporation differ from the by-laws in that the articles of incorporation is:
- A. The rules action adopted by the corporation for its internal government
 - B. Adopted before or after incorporation
 - C. A condition precedent in the acquisition by a corporation of a juridical personality
 - D. Approved by the stockholders if adopted after the incorporation
16. The following may be the consideration of the shares of stock of a corporation, except
- A. Actual cash paid to the corporation
 - B. Previously incurred indebtedness of the corporation
 - C. Amounts transferred from unrestricted retained earnings
 - D. Services to be performed by a lawyer on the proposed increased in capital stock of the corporation

17. A certificate of stock is distinguished from a share of stock in that a share of stock
- Is the written evidence of a stockholder's interest in the assets and management of a corporation
 - Is tangible personal property
 - Is one of the units into which the capital stock is divided
 - May not be issued if the subscription has not been duly paid
18. A, B, C, D, E, F and G are the duly elected directors for 2012 of FIDELITY Corporation whose article of incorporation provide for 7 directors. On August 1, 2012, Directors A, B, C, D and E met to fill the two vacancies in the board brought about by the valid removal of F for disloyalty to the corporation and the death of G. In the said meeting, the remaining directors voted for X to replace F and Y, a son of G, to replace his father. Both X and Y are owners of at least one share of stock of the corporation. The election of X and Y by the remaining directors:
- Valid for both X and Y
 - Not valid for both X and Y
 - Valid with respect to X, not valid with respect to Y
 - Not valid with respect to X, valid with respect to Y
19. In the meeting of the board of directors of NORTH Corporation, a construction company held on March 31, 2010, directors, A, B, C, D and E were present among the 9 directors. The meeting had for its agenda the following:
- The appointment of Y a new manager as allowed by the by-laws
 - The approval of the contract for the purchase of office supplies worth P130,000 from CPA Supplies Co.
- When the voting took place, directors A, B, C and D voted for the election of Y as the new manager, and directors A, B and C voted for the approval of the contract with CPA Supplies
- Both corporate acts are valid
 - Both corporate acts are not valid
 - The election of Y as a new manager is valid, the approval of the contract with CPA Supplies is not valid
 - The election of Y as a new manager is not valid, the approval of the contract with CPA Supplies is valid
20. Under this theory, the nationality of the corporation is that of the country whose law it was formed
- Control test
 - Incorporation test
 - Domicile test
 - Grandfather rule
21. A corporation created in strict compliance with all the legal requirements and whose right to exist as a corporation cannot be successfully attacked in a direct proceeding for that purpose by the State is?
- De jure corporation
 - De facto corporation
 - Corporation by estoppels
 - Corporation by prescription
22. Stock dividends differ from cash dividend in that stock dividends
- Do not increase the legal capital
 - Involves the disbursement of corporate funds
 - Require the approval of both the board of directors and the stockholders
 - Once received by the stockholders, are beyond the reach of corporate creditors
23. Corporations as distinguished from partnerships
- the liability extends up to private properties
 - created by agreement

- C. interest or ownership is transferable only if the other owners consent
D. no dissolution in case of death, withdrawal or resignation of an owner
24. Corporations begin to have corporate existence and juridical personality
- From the moment of the execution of the Articles of Incorporation
 - From the moment of the execution of the Constitution and by-laws
 - From the moment of the execution of the Treasurer's Affidavit
 - From the date of the issuance of the certificate of incorporation by the SEC under its official seal**
25. One established for charitable purposes
- Ecclesiastical corporation
 - Lay Corporation
 - Corporation sole**
 - Eleemosynary corporation
26. A religious corporation which consists of one member only or his successors
- Corporation aggregate
 - Lay Corporation
 - Corporation sole**
 - Eleemosynary corporation
27. One organized for a purpose other than for religion
- Ecclesiastical corporation
 - Lay corporation**
 - Corporation sole
 - Eleemosynary corporation
28. One incorporated under the laws of the Philippines
- Domestic corporation**
 - Foreign corporation
 - De facto corporation
 - Close corporation
29. A corporation in fact and in law
- De facto corporation
 - Do Raymoon corporation
 - De jure corporation**
 - De open corporation
30. A corporation existing in fact but not in law
- De jure corporation
 - De Bal corporation
 - De facto corporation**
 - De open corporation
31. One which is limited to selected persons or members of a family
- Open corporation
 - Close corporation**
 - Lay corporation
 - Ecclesiastical corporation
32. One which is so related to another corporation that the majority of its directors can be elected by such other corporation
- Subsidiary corporation**
 - Parent or holding corporation
 - Quasi corporation
 - Corporation by prescription
33. Corporators in a stock corporation
- Members
 - Stockholders**
 - Incorporators
 - Promoters
34. Persons who have agreed to take and pay for original unissued shares of a corporation formed or to be formed
- Promoters
 - Subscribers**
 - Incorporation
 - Corporators
35. Persons who bring about or cause to bring about the formation and organization of a corporation by bringing together the persons interested in the enterprise
- Subscribers
 - Promoters**
 - Corporators

D. Incorporators

36. Amount equal to the aggregate par value or issued value of the outstanding capital stock
- A. Legal Capital
 - B. Unissued capital stock
 - C. Outstanding capital stock
 - D. Authorized capital stock
37. Shares without par value may not be issued for a consideration
- A. Less than P2 per share
 - B. Less than P5 per share
 - C. Outstanding capital stock
 - D. Less than P99 per share
38. Issued to those who in some way interested to the company, for incorporating the company, for services rendered in launching the welfare of the company
- A. Preferred share of stock
 - B. Common share of stock
 - C. Promotion stock
 - D. Share in escrow
39. When a corporation is used to defeat public convenience, justify wrong, protect fraud, or defend crime or made as a shield to confuse the legitimate issues or where a corporation is a mere alter ego or business conduit of a person, this doctrine applies
- A. Doctrine of business opportunity
 - B. Trust fund doctrine
 - C. De Jure doctrine
 - D. Doctrine of piercing the veil of corporate fiction
40. If the remaining directors constitute a quorum, they can fill up the vacancy
- A. In case of removal of a director
 - B. In case of expiration of term of a director
 - C. If there is an increase in the number of directors
 - D. In case of abandonment of a director
- Items 43 and 44 are based on the following:
If the authorized capital stock is P60,000, divided into 600 shares with par value of P100 per share
41. And P40,000 has been subscribed, the minimum paid-up should be
- A. P40,000
 - B. P15,000
 - C. P10,000
 - D. P5,000
42. If P15,000 has been subscribed, the minimum paid-up should be
- A. P15,000
 - B. P10,000
 - C. P5,000
 - D. P3,750
43. The board of directors of a corporation consists of nine (9) members, where two (2) were removed and two (2) have resigned, who fills up the vacancy?
First answer – the remaining members of the Board
Second answer – the stockholders
- A. Both answer are true
 - B. Both answers are false
 - C. Only the first answer is true
 - D. Only the second answer is true
44. Using number 45, except that three (3) have resigned, who fills up the vacancy?
First answer – the remaining members of the Board
Second answer – the stockholders
- A. Both answers are true
 - B. Both answers are false
 - C. Only the first answer is true
 - D. Only the second answer is true
45. May rightfully question an ultra-vires act of a corporation, except
- A. Stockholders
 - B. State

- C. Competitors
- D. Creditors, if fraud is charged
46. The veil of corporate fiction may be pierced in the following cases, except:
- When used as cloak to cover fraud, illegality or it results in injustice
 - To defeat public convenience, justify wrong, defend crime
 - Where two factories are made to appear as one and used as a device to defeat the ends of law or as a shield to confuse legitimate issues
 - Where two corporations have the same president
47. Shares deposited by the seller or his agent with a bank or third party to be delivered to the buyer or subscriber only upon the fulfillment of the stipulated suspensive condition
- Promotion shares
 - Founders shares
 - Redeemable shares
 - Escrow shares
48. Unless sooner dissolved or extended, the life of a corporation may be for a period not exceeding
- Five & 1/2 years
 - Fifteen years
 - Fifty years
 - Seventy years
49. As regards treasury shares, which is not correct?
- They have no voting rights as long as they remain in the treasury
 - They are considered as part of earned or surplus profits and therefore distributable as dividends
 - They are not entitled to dividends
 - They may be distributed as property dividend if there are retained earnings arising from the business of the corporations
50. Each of the incorporator of a stock corporation must own or be a subscriber to at least
- One share of the capital stock of the corporation
 - Two and 1/2 shares of the capital stock of the corporation
 - Three shares of the capital stock of the corporation
 - Four shares of the capital stock of the corporation
51. The board of directors of a corporation consists of nine (9) members, where two (2) have died during their term of office and one (1) is abroad, the quorum would be
- Five (5) members
 - Four (4) members
 - Six (6) members
 - Seven (7) members
52. In no case shall the total yearly compensation of directors, as such directors, exceed
- 5% of the net income before income tax during the preceding year
 - 10% of the net income before income tax during the preceding year
 - 10% of the net income after income tax during the preceding year
 - 10% of the net income after income tax during the current year
53. A corporate officer or director cannot, take advantage for their personal benefit a business opportunity which the corporation is financially able to undertake.
- Doctrine of corporate fiction.
 - Trust fund doctrine.
 - Doctrine of corporate opportunity
 - Doctrine of limited capacity

54. A corporation has only such powers as are expressly granted and those that are necessarily implied from those expressly granted or those which are incidental to its existence
- Doctrine of corporate fiction
 - Trust fund doctrine
 - Doctrine of corporate opportunity
 - Doctrine of limited capacity**
55. For purposes of interlocking directors, the stockholdings shall be considered substantial if
- Exceeding 10% of the authorized capital stock
 - Exceeding 10% of the outstanding capital stock
 - Exceeding 20% of the authorized capital stock
 - Exceeding 20% of the outstanding capital stock**
56. A shareholders' option to subscribe to allotment of shares in proportion to his holding of outstanding shares, before new shares are offered to others
- Voting right
 - Pre-emptive right**
 - Ultra vires act
 - Appraisal right
57. The assets of the corporation as represented by its capital stock are to be maintained unimpaired that there can be no distribution of such assets among the stockholders without provision being first made for the payment of corporate debts
- Doctrine of corporate fiction
 - Trust fund doctrine**
 - Doctrine of corporate opportunity
 - Doctrine of limited capacity
58. Dividend in the form of a promissory note and may be issued to bear interest
- Optional dividend
 - Composite dividend
 - Preferred dividend
 - Scrip dividend**
59. Dividend which is partly in cash and partly in stocks
- Optional dividend
 - Composite dividend**
 - Cumulative dividend
 - Liquidating dividend
60. Dividend which gives the stockholder an option to receive cash or stock dividend
- Optional dividend**
 - Bond dividend
 - Cumulative dividend
 - Liquidating dividend
61. Dividend which are actually distributions of the assets of the corporation upon dissolution or winding up
- Bond dividend
 - Preferred dividend
 - Cumulative dividend
 - Liquidating dividend**
62. Rules of action adopted by the corporation for its internal government and for the government of its officers and of its stockholders or members
- Contract
 - Articles of Incorporation
 - Ultra Vires act
 - By-laws**
63. The corporation shall be deemed dissolved and its corporate powers cease, if from the date of its incorporation, it does not formally organize and commence the transaction of its business or the construction of its works within
- 4 years

- B. 3 years
C. 2 years
 D. 5 years
64. If the corporation has commenced the transaction of its business, the corporate franchise or certificate of incorporation may be suspended or revoked, if it subsequently becomes continuously inoperative for a period of at least
- A. 4 years
 B. 3 years
 C. 2 years
D. 5 years
65. A representative action where a stockholder brings an action in the name and in behalf of the corporation and any relief obtained belongs to the corporation and not to the stockholders individually or collectively
- A. Individual suit
B. Derivative suit
 C. Representative suit
 D. Corporate suit
66. An action brought by a stockholder against the corporation for direct violation of his contractual rights
- A. Individual suit**
 B. Derivative suit
 C. Representative suit
 D. Corporate suit
67. Where a stockholder may bring suit in behalf of himself and all other stockholders who are similarly situated when a wrong is committed against them
- A. Individual suit
 B. Derivative suit
C. Representative suit
 D. Corporate suit
68. Any profit which it may earn shall be used for the furtherance of the purpose for which the corporation was organized as such profit is not distributable to its members
- A. non stock corporation**
 B. close corporation
 C. stock corporation
 D. private corporation
69. All of this corporation's issued stock of all classes exclusively of treasury shares shall be held of record by not more than twenty (20) persons
- A. close corporation**
 B. stock corporation
 C. private educational corporation
 D. non stock corporation
70. Which of the following statements is correct?
- A. To sell lease, mortgage or otherwise dispose of all or some of the corporate assets, majority vote of directors or trustees and majority of the outstanding capital stock or of the members is needed;
- B. To enter into management contract, a majority vote of the board of directors and majority of the outstanding capital stock or of the members is required;**
- C. To issue stock dividends, majority vote of the quorum of the board of directors and majority of the outstanding capital stock is required;
- D. To invest corporate funds in another corporation or business, majority vote of directors or trustees and majority of the outstanding capital stock or of the members thereof.
71. A. It is illegal to issue watered stocks. However, stock issues without any consideration at all is justified if such issues are bonus shares.
 B. A director is removed from office by a vote of the stockholders holding at least 2/3 of the outstanding capital stock. The vacancy occasioned by such removal can be filled by a

vote of the majority of the remaining directors if still constituting a quorum.

- A. Only letter A is correct;
- B. Both letters are correct;
- C. Only letter B is correct;
- D. Both letters are wrong.

72. Which of these conditions comply with the minimum requirements of law to corporate formation?

| | Authorized Capital | Subscribed Capital | Paid-up Capital |
|----|--------------------|--------------------|-----------------|
| A. | P64,000 | P16,000 | P4,000 |
| B. | P100,000 | 25,000 | 12,500 |
| C. | P200,000 | 10,000 | 10,000 |
| D. | P200,000 | 50,000 | 1,000 |

73. Which of the following conditions will allow corporate formation and S.E.C. registration?

| | Authorized Capital | Subscribed Capital | Paid-up Capital |
|----|--------------------|--------------------|-----------------|
| A. | P90,000.00 | P12,500.00 | P3,125.00 |
| B. | P100,000.00 | 20,000.00 | 5,000.00 |
| C. | P100,000.00 | 25,000.00 | 5,000.00 |
| D. | 60,000.00 | 15,000.00 | 6,000.00 |

74. The authorized capital stock of a proposed corporation is P1,000,000 divided into 10,000 shares with a par value of P100 each. The minimum amount of subscription that must be paid is?

- A. P62,500 or 625 shares
- B. P50,000 or 500 shares
- C. P75,000 or 750 shares
- D. P87,500 or 875 shares.

75. Which of the following will qualify as an incorporator in a corporation?

- A. A minor;
- B. A corporation
- C. Partnership
- D. Foreigner.

76. The Corporation Code requires that;

- A. At least a majority of the directors are residents of the Philippines;

- B. All of the directors or trustees are residents of the Philippines;
- C. All of the directors or trustees are citizens of the Philippines;
- D. Majority of the directors are citizens of the Philippines.

77. The voting proportion required to enable a corporation to invest its fund in any other corporation or business or for any purpose other than its primary purpose?

- A. 2/3 vote of the board of directors and ratified by majority of the outstanding capital stock;
- B. Majority vote of the board of directors and ratified by majority of the outstanding capital stock;
- C. Majority vote of the board of directors and ratified by 2/3 of the outstanding capital stock;
- D. Majority vote of the board of directors and ratified by 2/3 of the stockholders.

78. Watered stock is share of stock issued by a corporation 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 par value. In this regard?

- A. The agreement that it shall be paid for less than its par value is illegal and void and cannot be enforced;
- B. the issue itself is void;
- C. The subscriber shall not be liable for full par value;
- D. Answer not given

79. Corporate dissolution may take place by voluntary inaction which will result in the cessation of its corporate powers and the corporation shall be deemed dissolved. Such voluntary inaction may result from?

- A. Inaction of the corporation through its failure to formally organized and commence with the transaction or its business or the construction of its work

- within two (2) years from the date of its incorporation;
- B. Failure of the corporation to submit the annual reports required by the S.E.C. for a period of five (5) years;
- C. Merger or consolidation with respect to absorbed corporation;
- D. None of the above.
80. One of the following is a ground for the suspension or revocation of the certificate of incorporation by the S.E.C.
- A. If the corporation fails to commence and start to operate and the failure is due to a cause beyond its control;
- B. If the corporation has commenced its business transaction and afterwards ceased operations continuously for a period of at least 5 years;
- C. If the corporation has commenced its operations and subsequently become continuously inoperative for two years.
- D. None of the above.
81. The following are corporate acts in which a stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares of stock, except one?
- A. In case of an amendment of the articles of incorporation which has the effect of changing or restricting the rights of any stockholder;
- B. In case of incurring, creating, or increasing bonded debts;
- C. In case of merger or consolidation;
- D. In case of sale, lease, mortgage or other disposal of all or any corporate assets.
82. Which of the following statements is not correct in terms of appraisal right?
- A. In case of merger or consolidation;
- B. In case of incurring, creating or increasing bonded debts;
- C. In case of sale, lease, mortgage or other disposal of all corporate assets;
- D. In case of an amendment or articles of incorporation which in effect of changing, restricting the rights of any stockholder.
83. OLD RAMBO CORPORATION has a total 1,000 delinquent shares at P10 par value, to be sold at public auction sale. Total amount recoverable includes: total amount of the delinquent shares P10, 000 and total expenses of the sale P5, 000. Who will be declared the highest bidder among the following bidders in the public sale?
- A. M, who is willing to pay the P15,000 at 920 shares;
- B. A, who is willing to pay the P15,000 at 950 shares;
- C. N, who is willing to pay the P15,000 at 970 shares;
- D. G, who is willing to pay the P15,000 at 900 shares;
84. The following are ways of enforcing payment of unpaid subscription, which is the exception?
- A. Filing a court action to recover unpaid subscription;
- B. Sale at public auction of delinquent stocks;
- C. Denying delinquent stock cash dividends;
- D. Denying delinquent stock the right to vote and voted upon.
85. A corporate doctrine which the stockholders are not personally liable for corporate debts?
- A. Piercing the veil of corporate fiction
- B. Separate legal entity
- C. Trust fund doctrine
- D. Corporate opportunity.
86. A stockholder who does not approve the action taken by the Board of Directors in

proposing to amend the articles of incorporation is not allowed to withdraw from the corporation in one of the following instances?

- A. Creating, incurring, increasing or decreasing any bond indebtedness;
- B. Shortening or prolonging corporate existence;
- C. Investing of corporate funds in another corporation;
- D. Merger or Consolidation.

87. Which of the following statement is not correct?

- A. The sale of delinquent stock at public auction can be stopped if the board of directors stop the sale for valid reasons;
- B. Payment of unpaid subscription may not be enforced by applying cash dividends to delinquent stockholders;
- C. In delinquency sale at public auction the highest bidder is one who offers to pay the full amount of the balance of the subscription plus interest and expenses of the sale for the highest number of shares;

88. One of the following does not require stockholder's approval?

- A. Change of corporate name;
- B. Merger or consolidation;
- C. Declaration of cash dividend;
- D. Investment or corporate funds outside main purpose of the corporation.

89. Which of the following is the disadvantage of forming a corporation?

- A. The subservience of minority stockholders to the wishes of the majority subject only to equitable restraints;
- B. The free and ready transferability of ownership;

- C. The shareholders are not liable for the debts of the business;
- D. The owner of shares has a right of succession and the existence of the entirety is not affected by the personal vicissitudes of the individual stockholders.

90. In a corporation, two or more positions may be held concurrently by the same person, except that no person shall act as?

- A. President and chairman of the board.
- B. President and secretary;
- C. Secretary and treasurer;
- D. Treasurer and director.

91. The following are qualifications of corporate directors, except?

- A. Must own at least one share of stock;
- B. Must not be convicted by final judgment with imprisonment exceeding 6 yrs. and committed within 5 yrs. prior to election;
- C. Majority are citizens of the Philippines;
- D. Ownership of shares must be recorded in the books of the corporation.

92. The following are the requisites except one, for valid declaration and/or issuance of stock dividend.

- A. Existence of the original and unissued shares;
- B. Existing unrestricted retained earnings;
- C. Dividends declaration by the Board of Directors and approved by 2/3 vote of the outstanding capital stock;
- D. It is issued to increase the authorized capital.

93. Purely ultra vires acts of the officers of a corporation to invest corporate funds in another business or corporation, i.e., acts not contrary to law, morals, public policy may be ratified by:

- A. Majority vote of all members of the board;
- B. Stockholders with $\frac{1}{2}$ of voting power;
- C. Stockholders holding $\frac{2}{3}$ of the voting power;
- D. Majority vote of the board present.
94. Requirement to effect the amendment of the by-laws of a corporation?
- A. Majority vote of the board of directors;
- B. Majority vote of the outstanding capital;
- C. Vote of $\frac{2}{3}$ of the outstanding capital stock;
- D. Majority vote of the board of directors and majority vote of the outstanding capital stock.
95. The interest or right of the stockholder in the corporation's profits or in the net assets of corporation on dissolution is?
- A. Shares of stock
- B. Dividend
- C. Capital
- D. Certificate of stock.
96. The right of a corporation to exist as juridical person during its term as stated in the articles of incorporation despite the death of any of its stockholders is?
- A. Right of existence;
- B. Right of succession;
- C. Pre-emptive right;
- D. Right of redemption.
97. The following cannot be an incorporator of a corporation?
- A. A corporation organized under the Philippine laws
- B. A resident alien
- C. A pastor who memorized John 3:16 and the entire book of Revelation
- D. Subscriber who pays less than 25% of his subscription
98. One of the characteristics of treasury shares is that?
- A. They may be reissued or sold again;
- B. They have status of outstanding shares;
- C. They may participate in the meeting of corporation as voting shares;
- D. They are the exclusive shares of the corporate treasurer
99. Which of the following is a ground for the suspension or revocation of the certificate of incorporation by the SEC?
- A. If the corporation has commenced its business and subsequently become continuously inoperative for two years;
- B. If the corporation has ceased operations continuously for a period of at least five years;
- C. If the corporation did not commence its business transactions for 2 years;
- D. If the corporation did not formally organize after incorporation.
100. Watered stocks are shares of stock issued by a corporation 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 par value. In this regard?
- A. The agreement that it shall be paid for less than its par value is illegal and void and cannot be enforced;
- B. The subscriber or purchaser shall not be liable for the full par value of the shares;
- C. The issue itself is void;
- D. The directors officers and stockholder are jointly liable.
101. The distinction between proxy and voting trust is that in a voting trust?
- A. The trustee has no legal title to the shares of the transferring stockholder;
- B. It is limited to any particular meeting;
- C. The stock certificate is not cancelled;
- D. The trustee may attend the stockholders' meeting even in the presence of the stockholder-trustor

102. The following defect will preclude the creation of even a de facto corporation?

- A. The incorporators or a certain number of them are not residents of the Philippines;
- B. Lack of certificate of incorporation from the SEC;
- C. Name of the corporation closely resembles that of a pre-existing corporation and may deceive the public;
- D. There is actual use of corporate powers.

103. The holders of non-voting shares shall nevertheless be entitled to vote on the following matter, except:

- A. Increase or decrease of capital stock;
- B. Adoption or amendment of by-laws;
- C. Dissolution of the corporation;
- D. Dividend declaration.

104.(1) Appraisal right means that whenever the capital stock of a corporation is increased and new shares of stock are issued, the new issue must first be offered to the stockholders in proportion to their existing shareholdings before subscription are received from the general public.

(2) Ultra vires acts are illegal and therefore void.

(3) Certificate of incorporation is the document prepared by the persons establishing the corporation and filed with the SEC containing the matter required by the Corporation Code.

A. Only (1) is true;

B. Only (2) is false;

C. All are false;

D. All are true.

105.(1) A foreign corporation doing business in the Philippines without a license may be sued but it cannot sue.

(2) A written demand for payment of the fair value of the shares made in the exercise of the appraisal right will suspend the stockholder's rights.

A. (1) is false but (2) is true;

B. (1) is true but (2) is false;

C. Both are false;

D. Both are true.