

RFBT - LAW ON CORPORATIONS

Clean, text-to-speech-friendly copy based only on the uploaded QuickNotes. Abbreviations, arrows, and tables were converted into readable sentences; the source content was not expanded with outside material.

1. Definition and Basic Characteristics

Artificial Being and Separate Juridical Personality. General rule: juridical personality commences upon issuance of the Articles of Incorporation, as stated in the QuickNotes. Exceptions listed are corporations by estoppel, those created by special laws, and corporation sole.

Corporate Entity Theory. General rule: trustees, directors, and shareholders are not liable. Exception: Doctrine of Piercing the Corporate Veil.

Piercing the corporate veil applies to three areas. First, defeat of public convenience, where the corporation is used to evade obligations. Second, fraud cases, where the corporation is used to justify a wrong, protect fraud, or defend crime. Third, alter-ego cases, where the corporation is used as an alter ego of a person, agency, or another corporation.

Created by operation of law. Corporations may be created under the Revised Corporation Code or special laws. Private corporations are under the Revised Corporation Code. Local government units and government-owned or controlled corporations owe their existence to the State and law.

Right of Succession and Corporate Term. Corporations incorporated under the Revised Corporation Code are deemed perpetual. For corporations incorporated under the Old Corporation Code, the general rule is that the term is extended to perpetual. Exception: the majority of shareholders elect to retain the term.

Powers, Attributes, and Properties. These may be expressly authorized by law, implied by law, or incidental to existence. An act beyond the limit is considered ultra vires. If illegal, it is void. If legal, it is voidable and becomes binding and enforceable when ratified by shareholders.

2. Specific Powers of the Corporation

Extend or Shorten Term. Requires a majority vote of the Board of Directors and two-thirds of the shareholders.

Increase or Decrease Capital Stock. Requires a majority vote of the Board of Directors and two-thirds of the shareholders. For an increase of capital, remember the twenty-five percent, twenty-five percent rule: at least twenty-five percent of the increase must be subscribed, and at least twenty-five percent of the subscribed amount must be paid in cash.

Incur Bond Debts. Requires a majority vote of the Board of Directors and two-thirds of the shareholders, voting and non-voting.

Deny Preemptive Right. The denial must be made in the Articles of Incorporation.

Sale or Disposition of All or Substantially All Assets. In the ordinary course, a majority of the Board is required. For a casual sale, a majority of the Board plus two-thirds of the shareholders is required.

Acquire Own Shares. Must be for a legitimate purpose and there must be sufficient unrestricted retained earnings, in relation to the Trust Fund Doctrine.

Invest Corporate Funds. If for the primary purpose, a majority of the Board is required. If for another purpose, a majority of the Board plus two-thirds of the shareholders is required.

Declare Dividends. For stock dividends: majority of the Board present plus two-thirds of the shareholders. For non-stock dividends: majority of the Board present.

Enter into Management Contract. The term must not exceed five years for one term. General rule: majority of the Board present plus majority of the shareholders. Exception: in case of interlocking shareholders or directors, two-thirds of the shareholders.

3. Incorporation

Application for Use of Corporate Name. The corporate name must be distinguishable, must not be one already protected by law, and must not be contrary to existing laws, rules, and regulations.

If the name is not allowed, there is an immediate cease and desist from use of the name, removal of all visible labels or prints bearing the name, and registration of the amended name with the Securities and Exchange Commission for approval.

Submission of Articles of Incorporation. The Articles contain: the name as approved by the Securities and Exchange Commission; a lawful and definitely stated purpose, with the primary purpose separately stated if there are several purposes capable of being lawfully combined; the principal place, which must be in the Philippines; the term; incorporators; directors; capital; subscribers; other matters deemed necessary or convenient; and the name of the temporary treasurer in trust.

For incorporators, the QuickNotes specify names, nationalities, and residences. For directors: number, names, nationalities, and residences. For capital: amount of authorized capital stock, number of shares, and par value. For subscribers: names and nationalities, number of shares and amount subscribed, and amount paid in.

Additional Requirement. A favorable recommendation from the appropriate government agency must be passed together with the Articles of Incorporation for banks and quasi-banking institutions, insurance and trust companies, non-stock savings and loan associations, and pawnshops.

Amendment of Articles of Incorporation. Requirements are majority approval of the Board, written assent from two-thirds of the shareholders, and approval by the Securities and Exchange Commission. If the Commission does not act on the application within six months, the amendment is deemed approved.

Issuance of Certificate of Incorporation. Failure to commence within five years results in automatic revocation of the Certificate of Incorporation. Continuous inoperation within five years results in delinquent status. The corporation is given two years to comply. Two years after delinquency, the Certificate of Incorporation is revoked.

4. Incorporators

Incorporators must own at least one share of capital stock.

Natural Person. Must be of legal age and must sign the Articles of Incorporation.

Partnership. Application for registration plus partner's affidavit.

Domestic Corporation. Approved by majority of the Board of Directors plus ratified by two-thirds of the shareholders.

Foreign Corporation. Application for registration plus a copy of the document duly authenticated by the Philippine consulate.

Number of Incorporators. Ordinary corporations: two to fifteen incorporators. Closed corporations: one incorporator, as stated in the QuickNotes.

5. Organization

Adoption of By-Laws. Pre-incorporation by-laws are signed and approved by incorporators and submitted together with the Articles of Incorporation. Post-incorporation by-laws are signed and approved

by the majority of shareholders, voting and non-voting.

By-laws are amendable by a majority of the Board plus a majority of shareholders, voting and non-voting. The Board may amend the by-laws alone if delegated by shareholders. Delegation requires two-thirds of shareholders, voting and non-voting. Removal of the delegation requires a majority of shareholders, voting and non-voting.

Election of Corporate Officers. Requires a majority of all members of the Board.

Required positions listed in the QuickNotes are President, Secretary, Treasurer, and Compliance Officer. The President must be a director. The Secretary must be a resident citizen. The Treasurer must be a resident. A Compliance Officer is required if the corporation is vested with public interest. The by-laws may provide additional corporate officers.

General rule: the President should not concurrently hold other corporate offices required by law. Exception: in a One-Person Corporation, the President may be the Treasurer at the same time.

6. Capital Structure

Ordinary Shares versus Preference Shares. Ordinary shares have voting power. Preference shares have preference to dividends. General rule: shares have voting power. Exception: voting power may be deprived in the Articles of Incorporation.

Doctrine of Equality of Shares. All shares enjoy the same rights and are subject to the same liabilities unless the Articles of Incorporation provide otherwise.

Treasury Shares versus Redeemable Shares. Treasury shares have no voting power. Redeemable shares generally have voting power, unless deprived in the Articles of Incorporation. Sufficient unrestricted retained earnings are required for treasury shares and are not required for redeemable shares, as stated in the QuickNotes.

Non-Voting Shares. A non-voting share may nevertheless vote in the following cases: amendments of the Articles of Incorporation; adoption or amendment of by-laws; disposition of corporate properties; incurring bond liabilities; change of authorized capital stock; merger or consolidation; investment of funds in another corporation; and dissolution.

Shares with Par versus No-Par. Par shares have a fixed value. No-par shares do not. The QuickNotes indicate that the subscription price for par shares must be greater than the par value, and for no-par shares, greater than five pesos.

7. Shareholders: Rights and Obligations

Proprietary Rights. Right to dividends, preemptive rights, appraisal right, and right to transfer shares.

Right to Transfer Shares. There is delivery, there is endorsement, and the transfer is recorded in the books. Otherwise, the transfer is not valid and not binding against third persons.

Management Right. Right to vote in meetings.

Remedial Rights. Individual suit: filed by a shareholder on behalf of himself to address personal harm. Representative suit: filed by a shareholder or group of shareholders on behalf of a larger group of shareholders to address a common grievance. Derivative suit: filed by shareholders or a group of shareholders on behalf of the corporation to address wrongdoings of directors or officers.

Other Rights. Right to inspect corporate books and records; elect and remove directors; receive a stock certificate; preemption; enter into a Voting Trust Agreement; ask for dissolution in certain cases; and recover shares illegally sold.

Obligations. Pay unpaid subscriptions. Pay interest on unpaid subscriptions only if required in the by-laws. General rule: use the rate stated in the by-laws. Exception: if no rate is stated, use the legal rate of six percent. There is also an obligation for dividends unlawfully received and liability to the corporation and creditors for stocks bought below par, or watered stocks.

When are unpaid subscriptions due and payable? Based on the subscription agreement; upon the fixed term from a corporate call; or, if the corporation is insolvent, no call is needed.

Remedies of the Corporation. Judicial action, application through dividends, and delinquency sale. If thirty days have lapsed, shares are deemed delinquent. General effect: all rights of shareholders are deprived. Exception: dividends are applied to the unpaid balance first.

In a delinquency sale, the winning bidder is the one with the least shares bid. Amount due equals the unpaid balance plus cost of bidding plus interest.

8. Board of Directors

The Board of Directors is the top governing body of a corporation. Its composition is not more than fifteen, and the term is one year.

The Board is based on the centralized management principle and the business judgment rule. It exercises corporate power, conducts all business of the corporation, and controls and holds corporate property.

Qualifications. Owns at least one share, plus qualifications required in the by-laws.

Disqualifications. Criminal liability: an offense punishable by imprisonment of more than six years, or violation of the Revised Corporation Code or Securities Regulation Code. Administrative liability includes fraud. The QuickNotes indicate conviction within five years prior to election.

Election. Cumulative voting. Total vote equals number of shares multiplied by number of candidates. It is designed to allow the minority to elect their representatives.

Formula for shares needed to elect a director: number of voting shares multiplied by the number of directors desired to be elected, divided by total number of directors to be elected plus one, then add one.

9. Dissolution

Voluntary Dissolution Where No Creditors Are Affected. Files to the Securities and Exchange Commission; hearings are not required; approval is required; publication in general circulation is not required; Certificate of Dissolution is required for effectivity. Request for dissolution, majority of the Board, majority of shareholders, and notice of meeting are indicated in the QuickNotes.

Voluntary Dissolution Where Creditors Are Affected. Petition for dissolution; hearings are required; approval by majority of the Board and two-thirds of shareholders; notice of meeting; publication in general circulation; and Securities and Exchange Commission order required for effectivity.

Shortening of Term. Amended Articles of Incorporation, majority of the Board, and two-thirds of shareholders. A Certificate of Dissolution is not required. The corporation is deemed dissolved on the day following the end of the term.

Involuntary Dissolution. Expiration of term, by order of the Securities and Exchange Commission, by law, or by court.

10. Key Issues Concerning Directors

Removal. By two-thirds of shareholders entitled to vote. It may be made with or without just cause as long as it is not prejudicial to minorities.

Filling of Vacancies by Shareholders. If vacancy is due to removal, expiration, or increase; if due to other cases and remaining directors cannot constitute a quorum; or if remaining directors can constitute a quorum but refer the matter to shareholders.

Filling of Vacancies by Directors. If vacancy is due to cases other than removal, expiration, or increase; remaining Board can still constitute a quorum; and remaining Board did not refer the matter to shareholders.

Compensation. General rule: directors are not entitled. Exceptions include reasonable per diem and other compensation when provided in the by-laws, approved by majority of shareholders, or for other functions.

Self-Dealing Directors. General rule: voidable. Exception: valid when fair and reasonable, the director's presence is not required for quorum, and the director's presence is not required for approval.

Interlocking Directors. General rule: valid. Exception: voidable in case of fraud. If the director's interest is substantial, more than twenty percent, to the other corporation, or insubstantial or nominal to the other, the rule of self-dealing directors applies, as stated in the QuickNotes.

11. Reorganization and Appraisal Right

Merger. Corporation A plus Corporation B equals Corporation A. One corporation absorbs the other.

Consolidation. Corporation A plus Corporation B equals Corporation C. The old corporations cease and a new corporation exists.

The surviving corporation in a merger and the consolidated corporation in a consolidation possess all rights, privileges, immunities, and powers under the Revised Corporation Code; all rights and privileges of each constituent corporation; and all assets, liabilities, and equities of the constituent corporations.

Appraisal Right. The right to demand payment of the fair value of shares when the shareholder dissents or votes against certain corporate acts.

The QuickNotes indicate majority of the Board plus two-thirds of shareholders for the relevant corporate action.

Cases where appraisal right is exercisable. Amendment of the Articles of Incorporation relating to changing or restricting the rights of stockholders; authorizing preferences superior to outstanding shares of any class; extending or shortening the term; disposition of all or substantially all corporate property and assets; investment of funds in another entity other than the primary purpose; and merger or consolidation.

12. Meetings, Proxy, and Voting Trust Agreement

Directors' Meetings. Regular or special. Regular meetings are monthly; special meetings may be held anytime. Notice for regular or special meetings is two days prior unless the by-laws provide otherwise. Attendance may be in person or remote. Proxy is not allowed. Venue may be anywhere. General rule for quorum is majority; the by-laws may provide a higher quorum only.

Shareholders' Meetings. Regular or special. Regular meetings are annual, based on the date fixed in the by-laws or any date after April fifteenth. Special meetings are held whenever needed. Notice for regular meetings is at least twenty-one days prior; for special meetings, at least seven days prior. Notice is not needed if the meeting date is fixed in the by-laws.

The stock transfer book is closed twenty days prior to a regular shareholders' meeting and seven days prior to a special shareholders' meeting. Attendance may be in person or remote, by proxy, or by trustee in a Voting Trust Agreement.

General rule for venue: principal office. Exception: any place within the city, only if the principal office is not available. General rule for quorum: majority. The by-laws may provide a higher or lower quorum.

Proxy. Written and filed with the corporate secretary. Voting power is transferred. General duration: one meeting. Exception: continuing proxy, with a maximum of five years.

Voting Trust Agreement. Written and notarized; filed with the corporate secretary and the Securities and Exchange Commission. Legal title is transferred. General rule: at most five years. Exception: if connected with a loan agreement, it is co-terminous with the loan.

Corporation Vested with Public Interest. Twenty percent of the Board must be independent directors.

Dividends. Dividends can only be derived from retained earnings.

Process of Exercising Appraisal Right. Written demand within thirty days after the vote on the corporate action. Submission of stock certificates within ten days after making the written demand. The corporation determines fair value and bears the cost of valuation. If the shareholder disagrees with the fair value, the parties may agree on the value. If there is no agreement, fair value is determined by three interested persons: one chosen by the shareholder, one by the corporation, and one by the two thus chosen. Payment is within thirty days after fair value is agreed upon or determined.

13. Classes of Corporations According to Legal Status

De Jure Corporation. Full compliance, juridical personality exists, Certificate of Incorporation exists, and there is no attack on juridical personality.

De Facto Corporation. Defective compliance, juridical personality exists, Certificate of Incorporation exists, and juridical personality may be attacked only through a direct attack, or quo warranto proceedings.

For a de facto corporation, there should be a valid law, an attempt to incorporate in good faith, and exercise of corporate powers.

Estoppel versus Prescription. Estoppel is based on misrepresentation and liability is as a general partnership. Prescription is based on passage of time and liability is as a corporation.

14. According to Number of Incorporators

Ordinary Corporation versus One-Person Corporation. Ordinary corporation: two to fifteen incorporators, no prohibited incorporators listed, perpetual term, Articles of Incorporation and by-laws are required, and officers include President, Secretary, and Treasurer.

One-Person Corporation: one incorporator. Prohibited to incorporate as a One-Person Corporation are banks, pre-need companies, insurance companies, government-owned or controlled corporations, entities exercising a profession, and public and publicly listed companies.

For a One-Person Corporation, natural persons have a perpetual term; estate or trust is co-terminous. Articles of Incorporation are required but by-laws are not. The President is the sole shareholder. The Secretary cannot be the President. The Treasurer can be the President.

A self-appointed Treasurer shall file an affidavit and shall post a surety bond to the Securities and Exchange Commission.

Nominees. A One-Person Corporation has nominees in case of the sole shareholder's incapacity to manage. Temporary authority ceases when the shareholder's capacity to manage is restored. Permanent authority ceases when the rightful heir succeeds the corporation. When no heir succeeds, the estate or trust will apply as indicated in the QuickNotes.

15. According to Number of Shareholders

Open Corporation. No limit on the number of shareholders, no transfer restriction, public offering is allowed, and management is by the Board of Directors. Maximum of fifteen directors. No deadlock. Cumulative voting is allowed. Officers are elected by the Board. Preemptive right may be denied, with limits. Appraisal right is available.

Closed Corporation. Maximum of twenty shareholders. Transfer restriction should not exceed twenty shareholders. Public offering is prohibited. General rule: management is by the Board; exception: shareholders may manage. Maximum of twenty directors. Deadlock is possible. Cumulative voting is not allowed. Officers may be elected by the Board or shareholders. For preemptive right, the QuickNotes state no exceptions. For appraisal right, the QuickNotes state no limit.

16. According to Nationality

Domestic versus Foreign Corporation. General rule: use the incorporation test. A domestic corporation is incorporated under Philippine laws. A foreign corporation is incorporated under foreign laws.

Exception: Nationalized Activities. These are activities subject to strict foreign ownership limits, such as mass media and activities dealing with natural resources.

Control Test. Primary test. At least sixty percent of shares must be owned by Filipinos for the corporation to be classified as domestic under the example in the QuickNotes.

Grandfather Rule Test. Supplementary test only, in case of doubt regarding the Control Test result.

In the example, Corporation B, domestic, owns sixty percent of Corporation A, while Corporation C, foreign, owns forty percent. Corporation B is forty percent foreign and sixty percent Filipino. Under the Control Test, Corporation A is domestic. Under the Grandfather Rule, foreign interest is sixty-four percent, computed as sixty percent times forty percent, plus forty percent. Domestic interest is thirty-six percent, computed as sixty percent times sixty percent.

Why identify whether a corporation is domestic or foreign? Because foreign corporations doing business in the Philippines have special requirements.

Doing Business Tests. Contract Test: results in commercial effect in the Philippines. Continuity Test: commercial dealings are continuous and recurring. Substance Test: the commercial dealing is a continuation of the business for which the corporation was organized.

Special Requirements. Appointment of a resident agent and securing a license to do business.

Failure to Secure a License. General rule: cannot sue but can be sued. Exceptions listed in the QuickNotes are isolated transactions, protection of trademark, victim of violation of the Penal Code, defense of counter-suit, and estoppel through contract. In these cases, the foreign corporation is allowed to sue.

17. According to Capital: Stock versus Non-Stock

Stock Corporation. Purpose is for profit. Capital is divided into shares. Cumulative voting is authorized. The governing body is directors, who must own at least one share. Number of Board members is one to fifteen. Term is one year. Ownership is with shareholders. Interest is transferable.

Non-Stock Corporation. Purposes include charitable, religious, educational, professional, cultural, scientific, social, and other similar purposes. Capital is not divided into shares. Straight voting applies unless cumulative voting is authorized. The governing body is trustees, who must be members except for an independent trustee. There is no limit on the number of Board members. Term is three years. Ownership is with members. Interest is not transferable unless authorized in the Articles of Incorporation or by-laws.

18. Summary of Voting Requirements on Exercise of Corporate Powers

The QuickNotes group the following corporate powers under voting requirements involving the Board of Directors and shareholders: extend or shorten term; amendment of Articles of Incorporation; disposition of all or substantially all assets; investment of corporate funds in another business for another purpose; merger or consolidation; increase or decrease capital stock; incur, create, or increase bonded indebtedness; voluntary dissolution where creditors are affected; voluntary dissolution where no creditors are affected; declaration of stock dividends; amendment to the plan of merger or consolidation; deny preemptive right; amendment of by-laws; enter into management contract; acquire own shares; and declare cash or property dividends.

The source page presents these in a compact table. For text-to-speech, refer to the specific sections above for the corresponding majority or two-thirds voting requirement and availability of appraisal right.

19. Important Periods to Remember

Two days. Notice of a directors' meeting must be made at least two days prior to the meeting date.

Seven days. Notice of a special shareholders' meeting must be made at least seven days prior to the meeting date. The stock and transfer book is closed seven days prior to a special shareholders' meeting.

Twenty-one days. Notice of a regular shareholders' meeting must be made at least twenty-one days prior to the meeting date.

Twenty days. The stock and transfer book is closed twenty days prior to a regular shareholders' meeting.

One month or thirty days. Stock certificates must be issued thirty days after full payment. Due subscriptions not paid within thirty days become delinquent. A delinquency sale shall not be made at less than thirty days from the time the stock becomes delinquent. Written demand of a dissenting shareholder for appraisal of shares shall be made within thirty days. The corporation shall pay the stockholder the fair value of the share within thirty days upon surrender of the stock certificate.

One year. Term of a director on the Board.

Three years. Term of a trustee on the Board. An amended corporate name cannot be used by another corporation within three years after approval.

Three days. The corporation must notify the Securities and Exchange Commission within three days from creation of an emergency board.

Five days. The corporate secretary shall notify the Securities and Exchange Commission of the death of a stockholder within five days. The corporate secretary shall notify the nominee of the incapacity of a shareholder within five days.

Six months. The Articles of Incorporation amendment is deemed approved if the Securities and Exchange Commission does not act within six months after submission. Pre-incorporation subscriptions cannot be revoked for a period of less than six months.

Two years. Delinquent corporations are given two years to comply before the Certificate of Incorporation may be revoked.

Five years. The name of a dissolved corporation cannot be used by another within five years after dissolution. If a corporation does not commence within five years after incorporation, the Certificate of Incorporation is revoked. If a corporation is in continuous nonoperation for at least five years, its status is delinquent. A director must not have been convicted within five years prior to appointment or election. Trustees of non-stock educational corporations have a staggering term of five years. A management contract shall not exceed five years for any one term. A Voting Trust Agreement shall not exceed five years at any one time.

Ten days. The corporation shall furnish a requesting shareholder the recent financial statements within ten days from receipt of the request.

Fourteen days. Notice of postponement of a regular meeting of shareholders shall be made two weeks prior to the date.

Management of Operations. Corporate acts related to management of operations require only a majority of directors present. Examples stated in the QuickNotes are declaration of dividends and entering into management contracts.