REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

LAW ON CORPORATIONS

(REVISED CORPORATION CODE, SRC, & CORPORATE GOVERNANCE)

Source: REO Live (Atty. Kris), REO Pre-Recorded (Atty. Diane), ReSA Lecture (Atty. Nicko), and CPAR Lecture (Atty. Kid)

Topics Covered:

Definition and Attributes of a Corporation

Corporation *(Sec. 2)* – 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. ***Artificial Being***
   Separate juridical personality

   General Rule:
   Shareholders are not personally liable

   XPN: ***Doctrine of Piercing the Veil***
   - To defeat public convenience *(such as avoiding obligations)*
   - To justify a wrong, protect fraud, or to defend a crime
   - To perpetuate deception or circumvent the law
   - Alter ego cases *(extension of personality; mere dummy)*

   Control over the majority stock of a corporation *does not of itself* apply the Doctrine of Piercing the Veil

2. ***Created by Operation of Law*** *(Concession Theory)*
   - Exists upon the State's consent - juridical personality commences *upon issuance of SEC's Certificate of Incorporation*

   XPNs:
   - Corporation by ***Estoppel***
   - ***Sole Corporations*** – *upon filing of verified articles*
   - Those created by special laws

3. ***Having the Rights of Succession***

   General Rule:
   Corporate Term is **Perpetual**

   XPN:
   Corporation opted for a definite term

4. ***Imbued with Powers***
   - *Express Powers (RCC Sec. 35 and AOI)*
     - *To sue and be sued in its own name*
     - *Of succession* ***(Also an Incidental Power)***
     - *To adopt and use a corporate seal*
     - *To amend its AOI*
     - *To adopt by-laws not contrary to law, morals, etc.*
     - *To issue or sell stocks to subscribers, and sell treasury stock* ***(stock corporation)***
     - *To admit members to the corporation* ***(non-stock corporation)***
     - *To deal with real and personal properties, including securities and bonds of other corporations*
     - *To enter into a merger or consolidation with other corporations, and enter into a partnership and joint venture*
     - *To make reasonable donations*
       (XPN: Foreign corporations cannot donate to any political party or candidate for a partisan political activity)
     - *To establish pension, retirement, and other benefit plans for its human resources*
     - ***Sec. 35 (k)*** *- Others necessary to exercise such powers to carry out its purpose/s (implied powers)*
   - Implied Powers *(necessary for the exercise of express powers)*
   - Incidental Powers *(incidental to its existence)*
     Note: Powers ***can both be Express and Incidental at the same time***

Ultra Vires Acts

Acts beyond the express, implied, and incidental powers of the corporation

General Rule: ***Voidable***

XPN:
If Ultra Vires Act is also an illegal act, it is ***Void***

Note:
All illegal act is an ultra vires act, ***but not all ultra vires acts are illegal.***

Classes of Corporations

Stock Corporations	With capital stock divided into shares, and are ***authorized to distribute*** surplus profits in form of ***dividends*** or allotments to shareholders
Non-Stock Corporations	***Not authorized to distribute*** surplus profits
Domestic Corporations	Organized or created ***under the PH Laws*** (RCC)
Foreign Corporations	Organized or existing ***under foreign laws***
Close Corporations	Shares of stock are held by a ***limited number*** of persons *(no public investors)*
Open Corporations	Authorized to list in the stock exchange and offer shares ***to the public*** *(publicly-listed corporations)*
Private Corporations	Organized for some ***private purpose or benefit*** of the individuals or members comprising it
Public Corporations	Organized ***for the government***, the State, or any of its political subdivisions
Ecclesiastical Corporations	Organized for ***spiritual purposes*** or for administering properties held for religious ones
Lay Corporations	Organized for purposes ***other than religion*** *(eleemosynary and civil)*
Eleemosynary Corporations	Organized for ***charitable and benevolent*** purposes
Civil Corporations	Organized for the ***benefit or pecuniary of its members*** *(not for public charity)*
Aggregate Corporations	Composed of ***individuals*** vested with corporate powers
Sole Corporations	Composed of ***one individual***, formed by either of the following: ○ *Chief Archbishop* ○ *Bishop* ○ *Priest* ○ *Minister* ○ *Rabbi* ○ *Other presiding elder or religious denominations, sects, or churches*
De Jure Corporation	Those with ***full compliance*** with requirements for valid incorporation
De Facto Corporation	Those with ***colorable compliance*** *(in good faith)* with requirements for valid incorporation
Corporation by Estoppel	Those with ***no compliance***; shareholders are *liable as general partners*

Organization and Incorporation

ARTICLES OF INCORPORATION (AOI)

- The charter of the corporation, *binding against anybody*
- *Signed **AND** acknowledged **OR** authenticated* by ***all*** of the incorporators, filed to the SEC
- Approved once the SEC issues a ***Certificate of Incorporation*** under the SEC's Official Seal
- Upon incorporation, the corporation is *expected to formally organized and commence business operations,* which includes:
    - *Adoption of by-laws, subsequent to incorporation*
    - *Election of original BOD*
    - *Printing of stock certificates*
    - *Negotiation of possible lease agreements*
    - *Election of corporate officers*

General Rule:
May be amended *(Sec. 15)*

- Any *amendment is deemed approved* if not acted upon by the SEC within ***6 months from the date of filing***

XPN:
Accomplished Facts (Name of Incorporators, Signatures, Notary)

Contents of the Articles of Incorporation *(Sec. 13)*

1. **Corporate Name** *(Sec. 17)*

    Requisites:
    - Must be *distinguishable* *(not similar or confusingly similar)*
        - Punctuation marks and abbreviations alone ***do not make the name distinguishable***
    - Must be lawful
    - Must not be protected by law

2. **Corporate Term** *(Sec. 11)*
    - Only if not elected to be perpetual

Extension	Not earlier than ***3 years prior*** to expiry date
Revival	After the expiration of the corporate term

- Extension requirement of 3 years *does not cover shortening of corporate term* *(can file for such anytime)*
- Any extension or shortening of the corporate term is ***considered as an amendment of the AOI***

3. ***Purpose/s of the Corporation***
    - If multiple, must indicate the primary purpose
    - Must be lawful and specific or stated concisely
    - Non-stock corporations' purpose should not change or contradict its nature as such

4. ***Principal Office's Address***
    Regardless of where its operations are

    Requisites:
    - Must be within the Philippines
    - Must specify the city or municipality

5. ***Names, nationalities, and residences of the Incorporators***
    Not required to be Filipino citizens or residents

    Requisites: *(Sec. 10)*
    - Must ***not be more than 15*** *(within 1 to 15 incorporators)*
    - Must be a ***natural*** (of legal age) or a ***juridical*** person *(duly organized and properly acquired a juridical personality)*
    - Must own or subscribe to ***at least 1 share***

Corporators	Composes the corporation at any given time
Incorporators	Original corporators *(those mentioned in the AOI)*

- *All Incorporators are Corporators, but Not All Corporators are Incorporators*

6. ***Temporary Directors or Trustees***

Directors (Stock)	Not more than 15 *(1 to 15)*
Trustees (Non-Stock)	May be more than 15

7. ***Capital Structure***

    For stock corporations:
    - Amount of authorized capital stock
    - Number of shares and its par value
    - Original subscribers' names, nationalities, and residences
    - Amount subscribed and paid by each subscriber
    - Statement that some or all shares are without par value, if applicable

Minimum Paid-up Capital *(Sec. 12)*

Upon Creation	None
Upon Increase of Authorized Capital Stock	• 25% must be subscribed, and • 25% of subscribed must be paid

Valid Considerations for Stocks *(Sec. 61)*

- Actual cash paid *(Excludes Promissory Notes)*
- Tangible or intangible property
- Labor or services *actually performed* or rendered *(Not Future)*
- *Previously incurred indebtedness* of the corporation
- Stock dividends *(transfer from Retained Earnings to Stated Capital)*
- Outstanding shares of the corporation itself in cases of reclassification or re-organization
- Shares of stock of another corporation

For non-stock corporations:

- Amount of Capital
- Contributors' name, nationalities, and residences
- Amount contributed by each contributor

8. ***Such other lawful matters deemed necessary and convenient***
    Example: Arbitration Agreement (Dispute Settlement)

Prior Favorable Recommendation from a Gov't Agency

- Required for approval or amendment of the AOI
- Only for the following corporations:
    - *Banks and Quasi-banks*
    - *Preneeed, Insurance, and Trust Companies*
    - *Non-stock Saving and Loan Associations (NSSLAs)*
    - *Pawnshops*
    - *Other Financial Intermediaries*

Amendment
Majority of BOD/T + 2/3 of OCS/M

BY-LAWS *(Sec. 45 and 47)*

- Rules for its own government, binding to the corporation and its corporate insiders

    General Rule:
    Cannot be invoked to third persons

    XPN:
    Third person has knowledge of the by-laws

- Effective only upon issuance of SEC's Certification that the by-laws are in accordance with RCC
- Should conform with the AOI, but in case of conflict, the ***AOI shall prevail***

Pre-Incorporation	Approved and Signed by ***ALL Incorporators***
Subsequent to Incorporation	Approved by *Majority* of the ***Outstanding Capital Stocks (OCS) or Members***

Amendment
General Rule:
Majority of BOD/T + Majority of OCS or Members

XPN: Majority of BOD/T alone

- If such power is ***delegated by 2/3 of OCS or Members*** *(Revocation of such delegation only needs Majority of OCS/M)*

Revocation of Corporate Franchise (Sec. 21)

Non-Use of Charter *(Failure to Organize)*	• For 5 years • ***Automatically revoked***
Continuous Inoperation	• For 5 years • Upon notice and due hearing, it will be placed under a ***Delinquent Status*** • Given 2 years from then to comply and operate, or else will be revoked

Capital Structure and Classification of Shares (Sec. 6)

Doctrine of Equality – *Shares or stocks are assumed to equal, with no preference or restriction as long as nothing is stated in the AOI and Certificate of Stock*

	Common Shares	Preferred Shares	Founder's Shares
Privilege	✗	As to: • Assets, or • Dividends	***Exclusive Privileges*** *for 5 years from incorporation* *(Such as the Right to Vote and Be Voted)*
Voting Power	✓	Deprived* *(XPN: IAMDAISI)*	✓
Par or No-Par Value Shares	Par or No-Par Value Shares	***With Par Value Shares only***	Par or No-Par Value shares

** As a rule, Preferred Shares in absence of it being deprived of voting power, generally is still a voting share. However, for board exam purposes, most questions already automatically assume the preferred shares are generally deprived of voting rights, and such approach will be used.*

Voting Rights of Preferred and Non-Voting Shares "IAMDAISI"

All of which, except adoption and amendment of by-laws also require Majority of BOD/T and 2/3 of OCS or Members

- Increase or decrease capital stock
- Adoption and amendment of by-laws
- Merger or consolidation
- Dissolution of the corporation
- Amendment of the AOI
- Incurring, creating, or increasing bonded indebtedness
- Sale or disposition of all or substantially all of corporate property
- Investment of corporate funds in another corporation

Founder's Shares Exclusive Privileges (Sec. 7)

- *The 5-year limitation for exclusive rights and privileges given to founder's shares* ***only applies to the Exclusive Right to Vote and Be Voted***
- *In all other exclusive rights and privileges conferred to such shares,* ***no 5-year limitation applies***

	Par Value Shares	No-Par Value Shares
Fixed Amount	@ Par	None *(But may be fixed in the AOI, by the BOD, or the Stockholders themselves)*
Limitation on Issue Price	≥ Par Value	≥ 5 pesos per Share
Prohibition on Corporations to Issue such Shares	✗	***"PBB – PITO"*** • Public Utilities • Banks • Building and Loan Associations • Preneed, Insurance, and Trust Companies • Other Companies allowed to obtain funds from the public

Watered Stocks (Sec. 64)

- *Shares issued* ***less than*** *the Par Value (Par Value Shares) or Issue Price (No-Par Value Shares)*
- *A corporate director, trustee, or officer consenting to such issuance with knowledge thereof is personally liable (solidary)*

Assumption for No-Par Value Shares

- No-par value shares issued are ***deemed fully-paid and non-assessable***
- *The entire consideration received for its no-par value shares is not available for distribution as dividends* (Treated as Capital)

	Redeemable Shares (Sec. 8)	Treasury Shares (Sec. 9)
Voting Power	G.R. ✓ XPN: Deprived	✗
Required Unrestricted Retained Earnings	✗ Only Unrestricted Assets are required	✓ *(If so, a violation of Trust Fund Doctrine)*
Distribution as Stock or Share Dividends	✓	✗
Outstanding Share?	✓	✗
Can be Reissued after Reacquisition?	✗ Considered as Retired	✓
Application of Watered Stock Concept	✓	✗ *(May be sold at less than its par value)*

Legitimate Cases to Acquire Own Shares (Sec. 40)

- *To eliminate fractional shares*
- *To collect or compromise indebtedness of shareholders*
- *To pay dissenting shareholders upon exercise of appraisal right*

Subscription Agreement

Pre-Incorporation (Sec. 60)	*General Rule:* *Irrevocable for* ***6 months*** *from the time of the agreement* *XPNs:* • ***All subscribers approved***, or • ***Incorporation fails to materializes*** within said period *(or the period stipulated in the subscription contract)* *XPN to XPNs:* ***Always*** *irrevocable if* ***AOI was already submitted to the SEC***
Post-Incorporation	Revocable

Requisites for Issuance of Certificates of Stock

- *Entire value is paid, including interest or expenses*
- *Signed by the President or Vice President, Countersigned by the Secretary or Assistant Secretary*
- *Sealed with the Corporate Seal*

Doctrine of Indivisibility

- *Subscription of shares are deemed indivisible*
- *No certificate of stock shall be issued unless fully paid, including interest and expenses*

Rights of a Subscriber

Entitled to all the rights of a shareholder, except

- Issuance of Certificate of Stock

Other Classes of Corporations

AS TO LEGAL STATUS

	De Jure Corporation	De Facto Corporation	Corporation by Estoppel (Sec. 20)
Legal Status	Substantial and Strict Compliance	Colorable Compliance *(Defectively Created)*	Misrepresentation
Juridical Personality	✓	✓	✗
Liability	As a **Corporation**	As a **Corporation**	As a **General Partner** *(Jointly and Pro-Rata)*
Attack on Juridical Personality	N/A	***Direct Attack*** *only* *(Through a Quo Warranto Proceeding made by the Solicitor General)*	***Direct or Collateral*** *Attack*

Requisites for a De Facto Corporation (Sec. 19)

- *Valid law under which the corporation is created*
- *There is an attempt in good faith to incorporate*
- *Certificate of Incorporation is issued by the SEC* ***before*** *the corporation acted as a corporation*
- *Subsequent exercise of corporate powers*

AS TO NUMBER OF INCORPORATORS

	Ordinary Corporation	One Person Corporation (OPC – Sec. 116-130)
Number of Incorporators	2 to 15	1
Who can Form?	Natural or Juridical Persons	Natural Persons, Estates, and Trusts
Prohibited Business	✗	**"BINI – PPT"** • Banks and Quasi-banks • Insurance Companies • Non-Chartered GOCCs (those created under RCC) • Individuals Exercising a Profession • Preneed Companies • Public and Publicly-listed Companies • Trust Companies
Term	**Perpetual** (G.R.)	Natural Persons: **G.R.: Perpetual** (XPN: Term Limit) Estate and Trust: **Co-terminus** with the Estate or Trust
AOI	✓	✓ (Must indicate the letters "OPC" either Below or At the End of the Corporate Name)
By-Laws	✓	✗
Minimum Capital Requirement	None	None
Minutes of the Meetings	✓	None (Resolutions are recorded in a Minutes Book)
Officership	President should not be the Treasurer or Secretary at the same time	**President may also be the Treasurer** at the same time, provided that: • He submits an affidavit of faithful administration, and • He gives a bond to the SEC based on the authorized capital stock
Juridical Personality and Piercing the Viel	✓	✓
Nominees	None	**Primary and Alternative** (Name, Residence, and Contact Details)

Time of Appointment and Notification of Officers

- **Appointment of Officers** must be done within 15 Days from the Issuance of Certificate of Incorporation
- **SEC must be notified** of the appointment of the officers within 5 days from the time of appointment

OPC's Corporate Secretary

- Must not be the President or the Single Stockholder himself
- Maintains minutes books and/or corporate records
- Notifies the nominees and the SEC

Nominee or Alternate Nominee	• For **Death or Incapacity** • Within 5 days from occurrence
SEC	• For **Death** • Within 5 days from occurrence • State the name, residence, and contact details of all known legal heirs

Nominee and Alternate Nominee

- Takes place as director and manages the corporate affair in the event of the death or incapacity of the single stockholder
- Must have consented in writing, but may be withdrawn as well in writing any time before the single stockholder's death or incapacity

Term of the Nominee

Due to Temporary Incapacity	Until the Single Stockholder is **Capacitated**, upon Self-Determination
Due to Death or Permanent Incapacity	Until the Legal Heirs are Identified and has **Designated a Successor**

Conversion from or to One Person Corporation

From Ordinary Corp. To an OPC	• Single Stockholder acquires all stocks of an existing ordinary corporation • Submit documents required by SEC • Once approved, issued a **Certificate of Filing of Amended AOI**
From OPC To an Ordinary Corp.	• Must notify the SEC within 60 Days from the Conversion • Once approved, issued a **Certificate of Filing of Amended AOI**

AS TO NATIONALITY

Nationalized Activities

Those reserved by the law **only to Philippine citizens or corporations**
(ex. Mass media – 100%; Exploration of natural resources – 60%)

For Nationalized Activities	G.R.: **Control Test** (1st Layer only) XPN (If there exists a doubt): • **Grandfather Rule** (Subsequent Layers)
For Non-Nationalized Activities	**INCORPORATION TEST** • Under PH Laws – **Domestic** • Under Foreign Laws (w/ Reciprocity) - **Foreign**

Foreign Corporation Doing Business in Philippines (Sec. 150)

Tests of Doing Business

- Contract Test – producing commercial effects in PH
- Continuity Test – part of ordinary course of business
- Substance Test

Requisites for Foreign Corporations Doing Business in PH:

- Must appoint a resident agent, and
- Must obtain a license to do business
  (Subsequent compliance may cure legal incapacity to sue)

Failure to Obtain License

General Rule:

- **Does not affect the validity and enforceability** of contracts entered into
- **Cannot Sue, but Can be Sued**

XPNs:

Can Sue in the following cases:

- Isolated transactions
- Estoppel
- Protection of trademark
- Merely defending a suit
- Violation of Revised Penal Code

Foreign Corporation NOT Doing Business in Philippines

Can Sue and Can be Sued (Rule above does not apply)

AS TO AUTHORITY TO DISTRIBUTE DIVIDENDS

	Stock Corporations	Non-Stock Corporations
Authority to Distribute Dividends	✓	✗
Purpose	Primarily **for Profit**	Primarily **Non-Profit**
Composition	Shareholder	Members
Membership	**Transferrable**	**Non-transferrable** (XPN: AOI/By-laws provide otherwise)
Management	Directors	Trustees
Number of Directors or Trustees	**1 to 15**	**May exceed 15** (For Educational Corporations, must also be in multiples of 5)
Term of Directors or Trustees	**1 year**	**3 years** (XPN: 5 years staggered for educational corporations)
Manner of Voting of Directors or Trustees	Cumulative	Straight
Requirement of a Director or Trustee	Owns **at least 1 share**	Must be **a member** (XPN: Independent trustees)

AS TO NUMBER OF SHAREHOLDERS

	Ordinary Corporation	Close Corporation (Sec. 95-103)
Number of Shareholders	Unlimited	***Maximum of 20***
Management	Directors	G.R.: Directors XPN: Shareholders if stated in the AOI
Prohibited Business	None specified	• *Mining or Oil Companies* • *Stock Exchanges* • *Banks* • *Insurance Companies* • *Public Utilities* • *Educational Institutions* • *VPI Corporations*
Restriction on Transfers	✗	***At least one***, and such ***must be specified in all of*** the following: • *AOI* • *Certificate of Stock* • *By-laws*
Pre-emptive Rights	May be ***denied on certain grounds***	***Includes ALL issues*** without exception
Deadlock (Positive = Negative)	✗ *(Business Judgment Doctrine)*	***SEC arbitrates,*** *and may appoint a* ***provisional*** *director*

Corporations Vested with Public Interest (VPI)

- *Public Corporations (Those Registered and Covered by SEC)*
  - *With* ***assets of at least 50 million***, ***200 shareholders***, *and holding* ***at least 100 shares each***
- *Banks and Quasi-banks*
- *Preneed, Trust, and Insurance Companies*
- *Non-Stock Savings and Loan Association (NSSLAs)*
- *Pawnshops*
- *Corporations engaged in money service business*
- *Other financial intermediaries (and others as determined by the SEC)*

Corporate Officers

Corporate Officers *(Sec. 24)*

Can be removed any time, no security of tenure

1. ***President*** *– must be a* **director** *(Co-terminus with term as Director)*
2. ***Treasurer*** *– must be a resident*
3. ***Secretary*** *– must be a resident and citizen*
4. ***Compliance Officers*** *(for those vested with public interest)*
5. *Others as stated in the By-laws*

Prohibitions:

- *No one can be a President and the Secretary at the same time*
- *No one can be a President and the Treasurer at the same time (unless OPC)*

Election of Corporate Officers

Majority of ALL BOD/T

Corporate Powers

Theory of General Capacity	Corporate actions are ***presumed to be valid*** unless proven otherwise
Theory of Specific Capacity	Corporation can **only exercise specific powers** *(any action not within is considered ultra vires)*

Common Powers with Respective Voting Requirements *(Sec. 36-43)*

Power	Voting Requirement
*Declaration of Cash Dividends**	Majority of BOD/T
Sale or Disposition of Corporate Assets in the Ordinary Course of Business	
Investment of Corporate Funds for Primary Purpose	
Entering into a Joint Venture or Partnership	

Entering into Management Contracts • *Interlocking Shareholder – owns or controls* ***1/3 of the capital stock*** *of the managing corporation* • *Interlocking Directors –* ***majority of the BOD/T*** *of the managing corporation constitutes also majority of the to be managed corporation's BOD/T*	**No Interlocking Shareholders or Directors:** Majority of BOD/T + Majority of OCS/M **With Interlocking Shareholders or Directors:** Majority of BOD/T + 2/3 of OCS/M *(for the To be Managed Corporation)*

Power	Voting Requirement
*Deny **P**re-emptive Right**	Majority of BOD/T + 2/3 of OCS/M (PST, I'MDAISI)
*Declaration of **S**tock Dividends**	
*Extend or Shorten Corporate **T**erm*	
***I**ncrease or Decrease Authorized Capital Stock**	
***M**erger or Consolidation*	
***D**issolution (Voluntary with Creditors Affected)*	
***A**mendment of AOI (Not technically a power)*	
***I**ncur, Create, or Increase Bonded Indebtedness*	
***S**ale or Disposition of All or Substantially All Corporate Assets*	
***I**nvestment of Corporate Funds in Another Corporation (for Secondary Purpose)*	

* *Applies only to Stock Corporations, thus BOD and OCS only*

- *For I'MDAISI, it shall* ***include both voting and non-voting shares*** *(includes Term Extension or Shortening, since technically, it is an amendment of the AOI)*

Shareholder Rights

REMEDIAL RIGHTS

	Violated Right	Who Files?
Individual Suit	One Shareholder	Same Shareholder
Representative Suit	Group of Shareholders	Member of the Group
Derivative Suit	Corporation	Any Shareholder/s

When is a Derivate Suit Instituted?

- *Those assigned to file the suit did not file, or*
- *The BOD/T is the one to be sued*

PROPRIETARY RIGHTS

1. ***Right to Dividends***

   General Rule:
   Dividend declaration is at the corporation's complete discretion, and the ***shareholder can't compel its declaration***

   XPN:
   Surplus profits ***exceed 100% of the paid-up capital stock***

   XPNs to XPN:
   - *BOD-approved corporate expansion projects or programs*
   - *Prohibited under any loan agreement without their consent*
   - *Retention is necessary under special circumstances (such as for probable contingencies)*

2. ***Right to Distribution Assets***
   - *Only upon dissolution*
   - *During the existence of the corporate, such* ***right is only inchoate***

3. ***Right to Inspect Books and Records*** *(Sec. 73)*
   - *At reasonable hours on business days*
   - *In writing*
   - *At their own expense*
   - *Boud by confidentiality rules*

   Includes the right to be furnished with the most recent FS (Sec. 74)
   - *Furnished* **within 10 days** *from a written request*
   - *FS must be issued* **with an Independent CPA's certification** *(SEC rules),* *unless total assets or liabilities is less than 600,000, wherein the Treasurer and President may instead certify under oath*

4. ***Right to be Issued a Stock Certificate***
   - *Only upon full payment of the subscription*

   Fractional Shares *– Non-voting shares that is less than one share of stock possibly arising from declaration of stock dividends*
   - *Fractional Scrip Certificate may be negotiated with another of the same kind to convert into one full share*

5. ***Right to Transfer Shares***

Delivery (to the transferee)	Valid and binding **only between the parties**
Indorsement *(Signing on any part of the certificate with intention of transferring ownership)*	
Recording in the Stock and Transfer Book	Binds ***third persons***

6. **Pre-emptive Right – Sec. 38** *(Applies to ANY type of shares)*
First opportunity to acquire newly issued shares to retain ownership percentage

Denial of Pre-emptive Rights
*Only in **any** the following instances (only AOI can deny, not the by-laws):*

- *Share issuance in **compliance with laws** requiring public stock ownership*
- *Share issuance in good faith with approval of 2/3 of OCS, in **exchange of property needed for corporate purpose** or in **payment of previously contracted debt***

7. **Appraisal Right** *(Sec. 80, 81, & 84)*
*Dissenting **(voted against, not just abstain)** shareholders' right to demand payment of the fair value of their shares*

When May the Appraisal Right be Exercised? "MISA-E"

- Merger or Consolidation
- Investment of Corporate Funds **in Another Corporation** *(Secondary Purpose)*
- Sale or Disposal of **All or Substantially All** Corporate Property
- Amendment of AOI with the effect of either:
  - ***Restricting or changing his rights***
  - *Authorizing **preferences superior to any outstanding shares***
- Extending or Shortening the Corporate Term

Exercise of Appraisal Right

- ***Written demand** is filed to the corporation within 30 days from the approval of corporate act (or else, waived)*
- ***Submit the Certificate of Stock for notation** that the shares are dissenting within 10 days from demanding payment*
- *Dissenting shareholder will be **paid upon surrender** of the Certificate of Stock at the Fair Value of their shares **at the time before the corporate act was approved***
- *The cost and expenses of the appraisal shall be borne by the corporation*
- *Treated as a **treasury share**, subject to sufficient unrestricted earnings requirement (must be sufficient upon demand)*

MANAGEMENT RIGHTS

By exercising their right to vote and be voted upon either personally, proxy, or a voting trust agreement

Majority of BOD/T + 2/3 of OCS/M	• ***PST, I'M DAISI*** • *Management Contracts **with Interlocking Shareholders or Directors***
Majority of BOD/T + Majority of OCS/M	• Adopt, amend, repeal by-laws • Management Contracts **as a G.R**
2/3 of OCS/M alone	*"DRR"* • *Delegate power to amend by-laws to the BOD/T* • *Removal of a director (Vote Required)* • *Ratification of transaction by self-dealing directors, interlocking directors, and those under corporate opportunity doctrine*
Majority of OCS/M Alone	*"CRIM"* • *Fixing director's Compensation* • *Revoke delegate power to amend by-laws* • *Fixing the Issue price or stated value of no-par value shares* • *Call a special Meeting to remove directors (For Quorum)*

Meetings (Sec. 48-52 & 57-58)

	Directors / Trustees	Stockholders / Members
Type	Regular and Special	Regular and Special
Frequency of Regular Meetings	***Monthly*** *(unless otherwise provided in the by-laws)*	*Annually **at date fixed in the By-laws*** *(if none, any date after April 15)*
Frequency of Special Meetings	Any time upon the call of the President	Any time deemed necessary
Notice for Regular Meetings	***2 Days*** *Prior to the Meeting*	***21 Days*** *Prior to the Meeting*
Notice for Special Meetings	***2 Days*** *Prior to the Meeting*	***1 Week*** *Prior to the Meeting*
Place or Venue	***Anywhere*** *(Even outside PH)*	*General Rule:* ◦ *Principal Office* *XPN:* **Not practicable** ◦ *City or Municipality where the Principal Office is Located*
Allowed Quorum XPN in the By-laws (G.R. Majority)	***Higher*** *than Majority*	***Higher or Lower*** *than Majority*
Attendance	◦ *In Person* ◦ *In Absentia (Remote Communication)*	◦ *In Person* ◦ *In Absentia* ◦ *By Representation* ▪ *Legal* ▪ *Proxy* ▪ *VTA*

Quorum for Directors

- *Unless stipulated otherwise in the by-laws, it will ALWAYS be the majority of the directors as indicated in the AOI (Regardless if members died, resigned, or is out of the country)*

Stockholders' Meeting Validity Despite Defect

General Rule:
***Valid if ALL** stockholders or members are present or duly represented*

XPN:
***Void** if the purpose of their attendance is **only to object the meeting** or any transaction of any business in such*

Proxy Voting and Voting Trust Agreement (VTA)

	Proxy Voting	VTA
Formality	◦ ***Written*** ◦ *Submitted to the Corporate Secretary within Reasonable Hours Prior to the Meeting*	◦ ***Notarized*** ◦ *Submitted to the **Corporate Secretary and SEC***
Transfer of	***Voting Power*** *(Shareholder can still be a director)*	***Legal Title*** *(Shareholder can no longer be a director, if he is)*
Duration	*General Rule:* **One Meeting** *XPN:* *Continuing Agreement, which **should not exceed 5 years** (renewable)*	*General Rule:* **Not More than 5 years** *XPN:* ***Co-terminus to a loan** agreement that exceeded 5 years*

Subscription Agreement

Consideration for Subscription Agreement
Not Allowed: Promissory Notes and Future Services

Unpaid and Delinquent Subscribers *(Sec. 67, 70 & 71)*

Unpaid Subscribers	*Retains **all the rights of stockholders**, except the right to be issued a stock certificate*
Delinquent Subscribers	*Retains **only the right to receive dividends***

Unpaid and Delinquent Subscriptions

Unpaid Subscriptions
Enforced through either:

- Judicial Action *(to collect balance)*
- Through Dividends *(applies to unpaid and delinquent)*
  - Cash Dividends – deduction from unpaid balance
  - Stock Dividends – withheld

Delinquent Subscriptions
Collected through Dividends or Delinquency Sale

***When Delinquent? =** 30 Days of Being Unpaid from Due Date*

- Stated in the subscription agreement
- Specified upon call made by BOD
- Insolvency *(immediately)*

Delinquency Sale

Amount to Be Paid	◦ Balance Due ◦ Accrued Interest ◦ Advertisement Costs ◦ Expenses of Sale
Bids	• Always for Same Amount • ***Varies to Number of Shares Willing in Exchange***

Highest Bidders	• Willing to Pay the Amount for the Least Number of Shares
Remaining Shares	• Credited *in favor of the Delinquent Stockholder*
No Bidder	• The *only instance that the Corporation may bid* (vested as Treasury Shares)

Directorship (or Trustees)

Doctrine of Centralized Management

Supreme authority *in matter of management of the regular and ordinary business affairs of the corporation*

Business Judgment Rule

Generally, BOD's judgment ***can't be questioned or interfered***

Liability of Corporate Directors and Officers

General Rule:
No Personal Liability

XPNs ***(Liable Jointly and Severally under Sec. 30):***

- *By Law (BP 22, Watered Stocks, etc.)*
- *By Stipulation of Contract*
- *In Bad Faith*
- *Gross Negligence*
- *Assents to a Patently (Very Obvious) Unlawful Act*
- *Conflict of Interest*

Doctrine of Corporate Opportunity (Sec. 33)

- *Directors are prohibited from seizing a business opportunity, and* ***cannot appropriate to himself such opportunity*** *which in fairness should belong to the corporation*
- *If done so, such directors* ***must account for and refund all the profits to the corporation***

XPN: ***Ratified by 2/3 of OCS***

	Term (Sec. 22)	Number of Directors or Trustees
Stock Corporation	***1 year***	***1 to 15*** (20% must be independent for those VPI)
Non-Stock Corporation	***3 years***	***May exceed 15***
Non-Stock Educational Institution	***5 years, staggered*** (only 1/5 expires yearly)	***5 to 15*** (Multiples of 5)

Qualifications

- *Must own at least one share (or a member)*
- *Any additional requirement as provided in the by-laws*

Disqualifications – Sec. 26 (Must Not Be Possessed)

Within 5 years prior to election or appointment, convicted by final judgement by a local or foreign court, with ***ANY*** *of the following:*

Criminal Liability	• *Punishable by law* (not necessarily the actual punishment) with ***more than 6 years of imprisonment***, or • By the ***penal provision of the RCC or SRC*** (regardless of period)
Administrative Liability	• Due to ***Fraud***

Special Issues for Directorship

Election of Directors or Trustees (Sec. 23)

Majority of OCS/M

- *Voting shall be by viva voce,* ***unless voting by ballot is requested by ANY stockholders*** *(not needing certain number)*
- ***Majority*** *of the outstanding capital stock or members must be present, either in person or through a representative*
- *Remote or voting in absentia is* ***allowed only if authorized in the by-laws or majority of the BOD (Always Allowed if VPI)****, but they shall be, in all cases, deemed present for determining quorum*
- *Anyone elected in place of a vacancy not due to expiry of term only fills up the original term of the original director*

Cumulative Voting

Can be straight, to single candidate, or by distribution

- ***Maximum Vote = No. of Shares x No. of Directors to be Elected***

Reporting to the SEC (Sec. 25)

- ***Within 30 days*** *from the election date* (Names, Nationalities, Shareholdings, and Residences of Those Elected)
- *Even in case of non-holding of elections, such must be* ***reported to the SEC within 30 days****, including a new date of election within 60 days from original scheduled date*

Removal and Vacancy of Directors or Trustees

Removal (Sec. 27)

- *2/3 of OCS/M* (The BOD cannot remove a member)
- *Must take place at either a meeting (R/S) called for such purpose*
- ***Notice*** *to shareholders or members of the intention to propose such removal either through a publication or written notice*
- *May be with or without cause* ***(XPN: Minority Directors can only be removed with cause)***
- *The SEC may motu proprio (on its own) also order the removal of a director or trustee due to disqualification*

Vacancy (Sec. 28)

Vacancy Reason	Quorum of Remaining BOD	Who fills in?
Removal, Expiration of Term, or Increase in Number of Directors (REID)	Regardless	Majority of OCS/M
Other than REID	✓	Majority of BOD/T
	✗	Majority of OCS/M

Election in Case of Vacancy

Due to Expiration of Term
Not later than the ***day of term expiration***

Due to Removal
On the ***very same meeting where the director was removed***

All Other Cases
Not later than ***45 days from the time the vacancy arose***

Emergency Board of Directors

Vacancy prevents quorum and emergency action is required to ***prevent grave, substantial, and irreparable loss or damage*** *to the corporation*

- *Temporarily* ***filled among the corporate offices*** *by unanimous vote of remaining directors or trustees*
- *Actions are limited to the emergency action necessary*
- *Term shall* ***cease within a reasonable time from termination of emergency or upon election of replacement****, whichever comes earlier*
- *Must notify the SEC within 3 days from creation stating the reason*

Compensation of Directors (Sec. 29)

General Rule:
Not Entitled

XPNs (Must ***Not Exceed 10% of Net Income Before Tax*** of the Prior Year):

- *Provided in the By-Laws*
- *Approved by Shareholders*
- *Reasonable Per Diem*
- *Due to Other Functions* (such as Officership) – ***regardless of amount***

Self-Dealing Directors (Sec. 31)

One who deals or transacts business with his own corporation
(Including his/her spouse and relatives withing fourth civil degree)

General Rule:
Transactions are ***Voidable at the Option of the Corporation***

XPN: If ***ALL*** *are present, Transaction is* ***VALID***

- *Fair and reasonable contract*
- *Presence not required for quorum*
- *Vote not required for approval*
- ***(Additional only if Officer)*** *Previously authorized by the BOD*
- ***(Additional only if VPI)*** *Approved by ≥ 2/3 of Entire BOD and ≥ Majority of Independent Directors in case of Material Contracts*

XPN to XPN:
Can be ***ratified by 2/3 of OCS as long as*** ***Fair and Reasonable***

Interlocking Directors (Sec. 32)

Director in one corporation who deals or transacts with another corporation of which he is also a director (dual agency and divided allegiance)

General Rule:
Transactions are ***Valid***

XPN: In ***ANY*** *of the following,* ***VOIDABLE*** *(reverts to Self-Dealing Directors rule)*
- *If the contract is Unfair or Unreasonable*
- *If there is Fraud*
- *If the Interlocking Director* ***holds Substantial Interest (> 20%)*** *in ONE of the corporation, and only nominal (≤ 20%) to the other*

Committees

Executive, Management, and Other Special Committees (Sec. 34)

- *May be created by the BOD upon Majority Vote, if provided in the by-laws*
- *Composed of* ***at least 3 members***
- *Members of the committee* ***may act on specific matters*** *as delegated through a majority vote of such committee*

  XPNs (Cannot act alone):
  - *Approval of any action requiring shareholders' approval*
  - *Filling of vacancies in the BOD*
  - *Amend adopt, or repeal by-laws*
  - *Amend or repeal non-amendable board resolutions*
  - *Distribution of cash dividends*

Dissolution and Liquidation

DISSOLUTION

- *Extinguishment of corporate franchise and termination of corporate existence, preparatory to eventual liquidation*
- *Juridical personality* ***exists in limited capacity for 3 years*** *for liquidation purposes (realization and settlement)*

Voluntary Dissolution (Sec. 134-136)

<table>
<tr><th></th><th>No Creditors Affects</th><th>Creditors are Affected</th><th>Shortening the Term</th></tr>
<tr><td>Nature</td><td>Request</td><td>Petition</td><td>Amendment of AOI</td></tr>
<tr><td>Hearings</td><td>✗</td><td>✓</td><td>✓</td></tr>
<tr><td>Approval Requirement</td><td>Maj. BOD/T + Maj. OCS/M</td><td>Maj. BOD/T + 2/3 OCS/M</td><td>Maj. BOD/T + 2/3 OCS/M</td></tr>
<tr><td rowspan="2">Publication Requirement</td><td>Once (20 days prior)</td><td>Once a week for 3 weeks</td><td rowspan="2">✗</td></tr>
<tr><td>Notice of the meeting</td><td>SEC Order (which includes the deadline for objections)</td></tr>
<tr><td>Date of Dissolution</td><td colspan="2">Upon issuance of Certificate of Dissolution by the SEC under its official seal</td><td>The day following the expiration of term</td></tr>
</table>

Involuntary Dissolution (Sec. 138)

Upon the SEC motu proprio or upon filing of a verified complaint by any interested party

Grounds:
- *Non-use of corporate charter (5 years)*
- *Continuous inoperation (5 years)*
- *Upon receipt of a lawful court order dissolving the corporation*
- ***Final judgment*** *of incorporation through fraud*
- ***Final judgement*** *that the corporation was formed to commit or conceal any of the following acts, with* ***knowledge and repeatedly tolerated*** *by the stockholders:*
  - *Securities violations*
  - *Tax evasion*
  - *Graft and corrupt practices*
  - *Smuggling*
  - *Money laundering*

LIQUIDATION

- *Assets are collected and sold*
- *Creditors' rights and claims are settled*
- *Distribution of remaining assets, if any, to the stockholders*

Merger and Consolidation (Sec. 75-79)

Merger	**A + B = A or B** *The absorbing or surviving corporation is not dissolved*
Consolidation	**A + B = C** *(Consolidated Corporation)* *All constituent corporations are dissolved*

Approval of Merger or Consolidation

- *Majority of BOD/T + 2/3 of OCS/M, and*
- *SEC's issuance of Certificate of Merger or Consolidation*

Effectivity

General Rule:
Upon SEC's issuance of the Certificate

XPN:
Constituent corporations provided for a ***date later than the issuance of certificate*** *(but may not be earlier)*

Summary of Voting Requirements

<table>
<tr><th>Transaction</th><th>Directors or Trustees</th><th>Outstanding Capital Stock or Members</th></tr>
<tr><td>Deny Pre-emptive Right</td><td rowspan="12">Majority</td><td rowspan="12">2/3
PS + Mgt. Contract
Voting Shares only
T + I'M DAISI
Voting AND Non-Voting Shares</td></tr>
<tr><td>Declaration of Stock Dividends</td></tr>
<tr><td>Extend or Shorten Corporate Term</td></tr>
<tr><td>Increase or Decrease Authorized Capital Stock</td></tr>
<tr><td>Merger or Consolidation</td></tr>
<tr><td>Dissolution (Voluntary with Affected Creditors)</td></tr>
<tr><td>Amendment of AOI</td></tr>
<tr><td>Incur, Create, or Increase Bonded Indebtedness</td></tr>
<tr><td>Sale or Disposition of All or Substantial All Corporate Assets</td></tr>
<tr><td>Investment of Corporate Funds in Another Corporation (for Secondary Purpose)</td></tr>
<tr><td>Entering into Management Contracts with Interlocking Directors or Officers</td></tr>
<tr><td></td></tr>
<tr><td>Entering into Management Contracts without Interlocking Directors or Officers</td><td rowspan="3">Majority</td><td rowspan="3">Majority of Voting and Non-Voting Shares
(XPN: Management Contracts include Voting Shares only)</td></tr>
<tr><td>Amendment or Adoption of By-Laws</td></tr>
<tr><td>Dissolution (Voluntary without Affected Creditors)</td></tr>
<tr><td>Delegate power to amend by-laws to the BOD/T</td><td rowspan="3">N/A</td><td rowspan="3">2/3 of Voting Shares
"DRR"</td></tr>
<tr><td>Removal of a director (Vote)</td></tr>
<tr><td>Ratification of transaction by self-dealing directors, interlocking directors, and those under corporate opportunity doctrine</td></tr>
<tr><td>Fixing director's Compensation</td><td rowspan="5">N/A</td><td rowspan="5">Majority of Voting Shares
"CRIM + F"</td></tr>
<tr><td>Revoke delegate power to amend by-laws</td></tr>
<tr><td>Fixing the Issue price or stated value of no-par value shares</td></tr>
<tr><td>Call a special Meeting to remove directors (quorum)</td></tr>
<tr><td>Fill vacancy of directors or trustee in cases due to REID or if remaining without quorum</td></tr>
<tr><td>Fill vacancy of directors or trustees in cases other than REID and with remaining quorum</td><td rowspan="3">Majority of ALL
"REF"</td><td rowspan="3">N/A</td></tr>
<tr><td>Election or Appointment of Corporate Officers</td></tr>
<tr><td>Removal of Corporate Officers</td></tr>
<tr><td>Sale or Disposition of Assets in the Ordinary Course of Business</td><td rowspan="5">Majority of Present</td><td rowspan="5">N/A</td></tr>
<tr><td>Investment of Corporate Funds in Primary or Incidental Purpose</td></tr>
<tr><td>Incurring Debt in the Ordinary Course of Business</td></tr>
<tr><td>Declaration of Dividends Other than Stocks (Cash, Property, etc.)</td></tr>
<tr><td>Creation of Executive and Special Committees</td></tr>
<tr><td>UNIQUE:
Material Contracts of Self-Dealing Directors of a VPI Corporation</td><td colspan="2">2/3 of Entire BOD, and Majority of Independent Directors</td></tr>
</table>

Securities Regulations Code (RA 8799 - SRC)

***Purpose**: To protect the investing public through a system of disclosure and provide punishment for fraudulent practices*

Securities *(Must be Within PH to be Covered by SRC)*

- *Shares, participation, or interests in a corporation evidenced by a certificate or instrument, written or electronic*
- *Contracts giving **passive income or asset appreciation***
- *Includes shares of stocks, bond, debentures, investment contracts, derivatives, certificates, fractional undivided interests, among others*

Investment Contract

- *Investment of money*
- *In a common enterprise*
- *With expectation of profits*
- ***Primarily (not solely)** from the efforts of others*

Broker	*Persons engaged in the business of buying and selling securities for the account of others*
Dealer	*Persons who buy and sell securities for his/her own account in the ordinary course of business*
Prospectus	*Document made by or on behalf of an issuer, underwriter or dealer to sell or offer securities for sale to the public through a registration statement filed with the Commission*
Registration Statement	*Application for the registration of securities required to be filed with the Commission.*

REGISTRATION AND REPORTORIAL REQUIREMENTS

Guide: Required only for Public Offerings (to ≥ 20 persons)

Exempt Securities "GRIB"

a. *Issued by the Government or any of its political subdivision or agency*
b. *Issued by a Receiver or Trustee in a Duly-Approved Bankruptcy*
c. *Securities under the regulation of the Insurance Commission, Housing and Land Use Rule Regulator Board, or the BIR*
d. *Issued by a Bank (Except is Own Shares of Stock)*

Exempt Transactions "BISCEPS SMILE"

a. *Broker's Transaction (only if executed upon customer's orders)*
b. *Isolated Transaction*
c. *Stock Dividend*
d. *Pursuant to a Right of Conversion*
e. *Exclusive Sale (Capital Stocks to its Own Stockholders Exclusively)*
f. *Private Placement (Sale to Fewer Than 20 Persons)*
g. *Subscriptions for share **prior to incorporation** or due to an **increase in authorized capital stock***
h. *Sale to Sophisticated or Qualified Buyers*
(Banks, Registered Investment House, Insurance Company, Gov't Maintained Pension Fund or Retirement Plan, Investment Company, etc.)
i. *Mortgage-Backed Securities (Sold to a **Single Purchaser at a Single Date**)*
j. *Judicial Sale in Insolvency or Bankruptcy*
k. *Liquidation of a Bonafide Debt*
l. *Exchange of Securities with Existing Security Holders Exclusively*

Non-Exempt Transactions and Securities

Subject to Registration, with the following process:

- *File **Sworn Registration Statement and Prospectus***
(Prospectus must be under oath only AFTER registration or once registered)
- *Payment of **Filing Fees** ≤ 1/10 of 1% of Aggregate Price of Securities*
- ***Publication of Notice** of Filing in Two Newspapers of General Circulation, Once for Two Consecutive Weeks*
- ***Within 45 days from filling**, the SEC shall give an order as effective or rejecting it (permit to sell upon approval)*

Reportorial Requirements

Applies to	• Issuer selling securities ***pursuant to a Registration*** • Issuer with securities ***listed for trading in an Exchange*** • Issuer with ***assets of ≥ 50M, ≥200 shareholders each holding ≥ 100 shares***
Reportorial Requirements	• ***Annual Report*** *- CPA-Certified BS, P/L, and SCF* *- Management Discussion and Analysis of Operation Results* • ***Other Periodical Reports*** for Interim Fiscal Periods and Current Reports on Significant Developments of the Issuer

Filing of General Information Sheet (GIS)

*Within **30 Calendar Days** from:*

Stock Corporations	Date of Annual Stockholders' Meeting
Non-Stock Corporations	Date of Annual Members' Meeting
Foreign Corporations	SEC License Issuance Anniversary Date

Filing of Annual Financial Statements (AFS)

Using Calendar Year	Dependent on Last Numerical Digit of SEC Registration or License Number
Using Fiscal Year	*General Rule:* ***120 Calendar Days from End of Fiscal Year*** *XPNs:* • ***Broker Dealers – 110*** Calendar Days • ***Listed and Public Companies – 105*** Days

INSIDER TRADING

Essential Elements of Insider Trading (Must meet ALL)

- *Transacts (Sale or Purchase) Securities*
- *By an Insider*
- *While in possession of Non-public Material Information (NPMI)*
  - *Information not available to the public, that will **affect the security price** or would **influence a reasonable person in deciding** whether to buy, sell, or hold a security*
- *About the Issuer or the Securities*

Insiders *"TRIGOD"*

Direct Insiders

- Issuer
- Director, Officer, or Person with Control over the Issuer
- Any person whose ***Relationship*** *(including former)* with the issuer **gives access** to the NPMI
- ***Government Employees*** and Directors or Officers of an Exchange, Clearing Agency, and/or Self-Regulatory Organization ***with access*** to the NPMI

Indirect Insiders

- Any person who learns the NPMI from any of the Direct Insiders ***(Tippee)***
  - Communication by the direct insider must be *intended to him* ***(not just by eavesdropping, but may be by accident)***
  - If learned ***from another tippee*** *(not from any direct insider)*, such person is *no longer considered an indirect insider*

> ***Note:***
> If the NPMI is ***about a tender offer***, ***ALL*** persons are not allowed to transact securities of the issuer *(whether insider or not)*

XPNs to Liability for Insider Trading

Either of the following:

- *Insider proves that the NPMI was not gained from such relationship*
- ***Other party is identified**, AND:*
  - *Insider proves that he disclosed the NPMI to the other party, **or***
  - *Insider had a reason to believe that the other party is also in possession of the NPMI (ex. Also present in the meeting)*

Fraudulent Transactions and Other Market Manipulations

Wash Sale	Series of **buy and sell by one beneficial owner**, not affecting ownership of shares transacted *(Fraudulent when used to create a false appearance of active trading, but not illegal per se)*
Matched Order	***Coordinated order/s*** for the purchase or sale of security with knowledge of such *to falsely show market activity (Fraudulent when used to create a false appearance of active trading, but not illegal per se)*
Marking the Close	***Trading near market close*** to influence closing prices and opening prices of the following day
Painting the Tape	***Fictitious buying activity during normal trading hours*** to mislead investors
Squeezing the Float	***Holding supply*** of the security to *sell it later at a higher prices* when demand rises
Boiler Room Operations	***Intensive selling campaign*** inducing purchase of securities through hard-sell techniques based on *unfounded predictions and mailing of misleading market letters*

Hype and Dump	Scheme of ***gaining control of a dormant shell company***, merge it with a private company, reverse-split and re-issuance of shares, ***hiring a broker-dealer and promoter to hype*** the company, and sell or dump the shares at the peak of price, exiting for profit
Circulating or Disseminating Information on Share Price Movement	People ***providing information of the rise or fall of prices*** to induce the purchase or sale of security
Making False or Misleading Statements	As to ***any material fact known or should've known as misleading*** to induce the purchase or sale of security
Pegging or Fixing (Stabilizing) the Security Price	***Manipulation of prices*** to keep at a certain level
Short Sale	***Selling securities not owned or properly borrowed*** *(Regulated only, not illegal per se)*

MANDATORY TENDER OFFER RULE

Primary Purpose:

To protect minority shareholders in terms of changes in ownership
(Chance to withdraw from the corporation under a fair price, similar to that of the majority)

Requisites for Application of the Rule:

Must then tender an offer to the other shareholders

- Involves ***Equity Securities of a Listed or Public Corporation*** *(Assets ≥ 50M, with ≥ 200 Shareholders, holding ≥ 100 Shares each)*
- Acquired either:
  - ***≥ 35%*** *of the Equity Securities within 12 months, or*
  - ***Any percentage****, resulting to an* ***aggregate share of > 50%*** *at any point in time*

Exempt Transactions from Mandatory Tender Offer Rule *(Private)*

- *From Unissued Capital Stock, not resulting to ≥50% ownership (Control)*
- *From Increase in Authorized Capital Stock*
- *From a Foreclosure Proceedings of a Valid Pledge or Security Arrangement*
- *From Government Privatization*
- *From Court-Supervised Corporate Rehabilitation*
- *From Open-Market Purchases at Prevailing Market Price*
- *Mergers or Consolidation*

Processes Related to Tender Offer

- *Must be made through an* ***announcement*** *of intention in a newspaper of general circulation prior to commencement of the offer*
- ***Tender Offer Form (SEC Form 19-1)*** *must be filed to the SEC at least 2 Business Days prior to commencement of the tender offer*
- ***Hand deliver copies*** *of such form to the target company and to each exchange where the shares are listed and traded*
- ***Report the results of the tender offer*** *to the SEC within 10 calendar days after the termination of the tender offer*

Corporate Governance

- Adopted using a ***"Comply or Explain" Approach*** *(not "One Size Fits All")*
- Arranged as:
  - *Principles*
  - *Recommendations*
  - *Explanations*

Principles	***High-level statements*** of corporate governance good practice, applicable to all companies
Recommendations	***Objective criteria*** intended to identify the specific features of corporate governance good practice that are recommended for companies operating according to the Code • ***Alternatives may be justified*** *if good governance can be achieved in other means* • *If not complied, the company must* ***disclose and discuss such, and explain how the principle was achieved***
Explanations	***Additional information*** on the recommended best practice

Key Terms

Corporate Governance	• ***System of direction, feedback and control using regulations, performance standards and ethical guidelines*** to hold the Board and senior management accountable for ensuring ethical behavior • To ***maximize the organization's long-term success***, creating sustainable value for its shareholders, stakeholders and the nation
Executive Directors	***Executive responsibility of the day-to-day operations*** of the organization
Non-Executive Directors	No executive responsibility and ***does not perform any work related to the operations*** of the corporation
Audit Committee	• Established to ***enhance oversight capability over the company's financial reporting, internal control system, audit processes, and compliance*** with laws and regulations • Responsible in overseeing the adequacy, effectiveness, and efficiency of internal controls
Corporate Governance Committee	• ***Assists the Board in performance of corporate governance responsibilities***, including that of the former Nomination and Renumeration Committee • Ensures ***compliance and proper observance*** of corporate governance principles and practices
Board Risk Oversight Committee	• Responsible for the ***oversight of the company's Enterprise Risk Management System*** as to its functionality and effectiveness
Related Party Transaction Committee	• ***Reviews all material related transactions*** of the company

Membership of Committees

	Composition	Independence of Members	Rule as to Chairmanship
Audit Committee	At least 3 *non-executive* directors	***Majority*** must be independent	Must be *Independent* and ***Not a Chairman of the Board or Other Committee***
Board Risk Oversight Committee	At least 3 members	***Majority*** must be independent	Must be *Independent* and ***Not a Chairman of the Board or Other Committee***
Corporate Governance Committee	At least 3 members	***ALL*** must be independent	Must be *Independent*
Related Party Transaction Committee	At least 3 *non-executive* directors	***Two*** must be independent	Must be *Independent*

Principles of Corporate Governance for Publicly-Listed Companies

The Board's Governance Responsibilities	
Principle 1 *Establishing a Competent Board*	▪ With ***relevant collective working knowledge, experience, or expertise*** ▪ Composed of *majority non-executive* directors ▪ Include a ***policy on training*** of its directors and about ***board diversity*** ▪ Assisted by a **Corporate Secretary**, primarily responsible to the corporation and the shareholders, not to the Chairman or President *(must be separate from the Compliance Officer)* ▪ Assisted by a **Compliance Officer** *(Rank of Senior VP, should* ***not be a member of a Board****, and should attend annual corporate governance training)*

Principle 2 *Establishing Clear Roles and Responsibilities of the Board*	▪ Act in ***fully informed basis***, in ***good faith***, with ***due diligence and care***, and in the best interest of the company and all shareholders ▪ Oversee, approve, and monitor company's business objectives and strategy ▪ Headed by a ***competent and qualified Chairperson*** ▪ Ensure and adopt effective *succession program* for directors, officers, and management ▪ Align *renumeration* of key officers and board members with the company's long-term interests ▪ Have and disclose a ***formal and transparent Board Nomination and Election Policy*** ▪ Overall responsibility to *ensure a group-wide policy and system governing RPTs* and other unusual transactions ▪ Approve ***management selection and assessment*** ▪ Establish *effective performance management framework* ensuring at par with standards performance of the management ▪ Oversee ***appropriate internal control system*** ▪ Oversee a ***sound Enterprise Risk Management (ERM) Framework*** ▪ Have a ***Board Charter*** formalizing and clearly stating its roles, responsibilities, and accountabilities

Principle 3 *Establishing Board Committees*	▪ Audit Committee ▪ Corporate Governance Committee ▪ Board Risk Oversight Committee ▪ Related Party Transaction Committee

Principle 4 *Fostering Commitment*	▪ ***Attend and actively participate in meetings*** ▪ *Non-executive directors* can only concurrently serve a ***maximum of 5 publicly-listed companies*** ▪ *Notification* to the Board before accepting *directorship in another company*

Principle 5 *Reinforcing Board Independence*	▪ Must have ***independent directors*** of whichever is *higher* between: - Three (3) - One-third (1/3) of the Board Members ***(Note: Only at least 2 are required)*** ▪ *Independent directors* must ***possess all qualifications and none of the disqualifications*** ▪ *Independent directors* must serve for a ***maximum cumulative term of 5 years*** *(perpetually barred thereafter)* ▪ The *Chairman of the Board and the CEO* must be held by ***separate individuals*** ▪ If the *Chairman is not independent*, a ***Lead Director must be designated*** among the Independent Directors *(**FUNCTIONS:** Intermediary when necessary, contributes to Chairman's performance evaluation, and convenes and chair non-executive directors' meeting)* ▪ A *director with material interest in any corporate transactions* should ***abstain*** from its deliberations ▪ *Non-executive Directors* should have ***periodic separate meetings*** with the external auditor and heads of the internal audit, compliance, and risk functions *(without the executive directors)*

Principle 6 *Assessing Board Performance*	▪ ***Annual self-assessment of Board performance*** *(including the Chairman, members, and Committees)* ▪ ***Every 3 years***, performance assessment of the Board must be *supported by an external facilitator* ▪ Have a *system* in place providing ***minimum criteria and process to determine Board performance***, allowing feedback mechanism from shareholders

Principle 7 *Strengthening Board Ethics*	▪ Adopt a ***Code of Business Conduct and Ethics*** as standards for professional and ethical behavior ▪ Ensure *proper and efficient implementation and monitoring* with compliance to the Code and internal policies

Disclosure and Transparency

Principle 8 *Enhancing Company Disclosure Policies and Procedures*	▪ Establish ***corporate disclosure policies and procedures*** ensuring comprehensive, accurate, reliable, and timely report ▪ Have a *policy* requiring all directors and officers to ***disclose to the company any dealings with company's shares within 3 business days*** ▪ ***Fully disclose all relevant and material information*** on individual board members and key executives to *evaluate their experience, qualifications, and potential conflicts of interest* ▪ Provide a ***clear disclosure of policies and procedure for setting remuneration*** (including its level and mix) *in the Annual Corporate Governance Report* ▪ Disclose its ***policies governing RPTs and other unusual transactions*** in their *Manual on Corporate Governance* ▪ Make a ***full, fair, accurate, and timely disclosure to the public of every material fact or event occurring*** (especially significant assets disposal and acquisition), which *could adversely affect shareholders viability or interest* ▪ Company's corporate governance policies, programs, and procedures should be contained in its Manual on Corporate Governance, and submitted to regulators and posted to the company's website

Principle 9 *Strengthening the External Auditor's Independence and Improving Audit Quality*	▪ Audit Committee should have a ***robust process of appointing, reappointing, removal, and approving fees of external auditors*** ▪ Audit Committee ***Charter*** should include its *responsibility to assess and monitor* the external auditor's ***integrity, independence, objectivity, and effectiveness of the audit process*** *(review and monitoring must be on an annual basis)* ▪ Audit Committee ***oversees overall relationship with the external auditor*** by evaluating any of its non-audit services and periodically review proportion of non-audit fees paid to the auditors, which may create potential conflict of interest

Principle 10 *Increasing Focus on Non-Financial and Sustainability Reporting*	▪ *Clear and focused policy* on the disclosure of non-financial information with ***emphasis on EESG issues of its business***, underpinning sustainability, *using globally recognized framework*

Principle 11 *Promoting a Comprehensive and Cost-Effective Access to Relevant Information*	▪ Include ***media and analysts' briefings*** as channels of communication to *ensure timely and accurate disclosure of material information shareholders and investors*

Internal Control System and Risk Management Framework

Principle 12 *Strengthening the Internal Control System and Enterprise Risk Management Framework*	▪ Have an adequate and effective ***internal control system*** and an ***enterprise risk management framework*** in the conduct of its business ▪ Have an ***independent internal audit function*** providing independent objective assurance and consulting services ▪ Have a ***qualified Chief Audit Executive*** appointed by the Board, responsible for the *internal audit activity* ▪ Have a ***separate risk management function*** to identify, assess, and monitor key risk exposures ▪ Have a ***Chief Risk Officer*** in managing the Risk Management System, as the ultimate champion of ERM

Cultivating a Synergic Relationship with Shareholders	
Principle 13 *Promoting Shareholder Rights*	▪ Ensure ***disclosure of basic shareholder rights*** in the Manual Corporate Governance and on the company's website ▪ Provide an ***alternative dispute mechanism to resolve intra-corporate disputes***, which should be included in the Manual on Corporate Governance ▪ Establish an ***Investor Relations Office (IRO)*** ensuring constant engagement and attendance at shareholders' meetings Encourage active shareholder participation by: ▪ ***Sending notice*** of meeting with sufficient information *at least 28 days before* the meeting ▪ Publish ***voting results*** *within the next working day* and post the ***minutes of the meeting*** *within the 5 business days*

Duties to Stakeholders	
Principle 14 *Respecting Rights of Stakeholders and Effective Redress for Violation of Stakeholder's Rights*	▪ Identify various stakeholders and ***promote cooperation in creating wealth, growth, and sustainability*** ▪ Establish clear policies and programs to ***provide a mechanism on the fair treatment and protection of stakeholders*** ▪ Adopt a ***transparent framework and process*** allowing stakeholders *to communicate with the company and obtain remedies* for violation of their rights

Principle 15 *Encouraging Employees' Participation*	▪ Establish *policies and programs* ***encouraging employee participation*** in company goals and governance ▪ Adopt ***anti-corruption policies in the Code of Conduct*** and through *employee training* ▪ Establish ***suitable whistleblowing framework*** that protects employees from retaliation and *allows direct access to an independent Board member or unit*

Principle 16 *Encouraging Sustainability and Social Responsibility*	▪ Recognize and place ***importance on the interdependence between business and society***, promoting a mutually beneficial relationship for the business growth while contributing to society advancement