

## JOINT STOCK COMPANIES UNDER PHILIPPINE LAW

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"A survey of recent cases in the Philippine Reports, and particularly those of the last few years, shows an increasing reliance upon English and American authorities in the formation of what may be termed as a Philippine common law, as supplemental to the statute law of this jurisdiction. An analysis of two groups of recent cases—the first, those under the subjects covered by Spanish statutes, and the second, those covered by American-Philippine legislation and affected by the change in sovereignty—shows that Anglo-American case law has entered leading subjects in the field of law and in a large majority of such subjects has formed the sole basis for the guidance of this court in developing the local jurisprudence.

The past twenty years have developed a Philippine common law or case law, based almost exclusively, except where conflicting with local customs and institutions, upon Anglo-American Law. The Philippine common law supplements and amplifies our statute law.

The jurisprudence of this jurisdiction is based upon English common law in its present-day form of Anglo-American common law to an almost exclusive extent."

George A. Malcolm, Founder and Dean of the University of the Philippines, College of Law, later Justice of the Supreme Court of the Philippine Islands, and as such writing the opinion of the Court in the case, *In re Shoop*, 41 Phil. 213 (1920)

When the Philippines passed to the sovereignty of the United States, the attention of the Philippine Commission was early drawn to the fact that there was no entity in Spanish law exactly corresponding to the notion of the corporation in English and American law.<sup>1,2</sup> In the Philippine Bill, approved on 1st July, 1902, the Con-

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<sup>1</sup> The *sociedad anónima* of Spanish law had certain similarities with but no correspondence to, the corporation of American law (see: David, *Are Sociedades Anónimas Corporations?* The Fred Harden Case, 17 Phil. L.J. (1937).

<sup>2</sup> On the interaction and overlapping of Spanish Civil law and Anglo-American Common law in the Philippine Islands there is a variety of opinions: thus in *United States v. Cuna*, 12 Philippine Reports (containing published decisions of the Supreme Court of the Republic of the Philippines—hereinafter referred to as Phil.) 241, the Supreme Court said that: "Neither English nor American common law is in force in these Islands; nor are the doctrines derived therefrom binding upon our courts, save only insofar as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law." But, later on, it held that: "... nevertheless, many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of

gress of the United States inserted certain provisions, under the head of Franchises, which were intended to control the lawmaking power in the Philippines in the matter of granting franchises, priv-

these laws can only be construed and applied through the aid of the common law from which they are derived, and that, to breathe the breath of life into many of the institutions, recourse must be had to the rules, principles, and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth." (*Alzua v. Johnson*, 21 Phil. 308). For a more recent analysis, see: *Fernandez, Sixty Years of Philippine Law*, 35 Phil. L.J. 1389 at 1391 (1960): "Under this arrangement [the constitutional framework of the Philippines], our legal system, strictly speaking, would begin with the fundamental rules in our constitution and in treaties to which we are a signatory and would end with statute law, consisting of legislative enactments. This puts us in the civil law tradition, which is to regard with something less than respect rules not enjoying the dignity of inclusion in some code. Nevertheless, the influence of Anglo-American law has not been wholly lost on us and we are willing to concede that the judges do their bit in building up the mosaic of the law. While we are not wholly prepared to dispense with the notion that courts never put anything into the law which was not there at the time they use it and that all they do is apply the received rules, yet we have gone so far as to include judicial decisions in our legal system. Consistently with the civil law approach, however, the courts are still thought to do no more than ascertain the intent of the legislature as to what is the law."

at 1392-1393:

"If we look at the history of our existing body of law and note carefully its development, we find patterns not only of change but of endurance and growth as well. Change is, of course, the most obvious. During the period that has elapsed since the end of Spanish sovereignty in the Islands, covering a period of over sixty years, our legal system has been in a state of constant flux. In terms of particular rules which make up its molecular content it has undergone unceasing change, whether in form, in content or in significance. All the major agencies of public power have played a part in this process of transformation. Our various legislatures, the Supreme Court, as well as the vast array of administrative instrumentalities have each subjected the legal corpus to the scalpel of reform, pruning away dead flesh and engrafting new tissue. Statutes are repealed or amended, even as new ones are enacted, increasing the bulk and complexity of existing law. Precedents are reversed or modified, either with frank avowal or without acknowledgment through convenient resort to legal fictions."

"The development of our law on a piece-meal and empirical basis, also helps explain the diversity of sources as to its rules. Like our culture of which it is an imperfect image, our law has been open to many influences. We find its fabric to be an indeterminate blend of rules derived from many legal systems, past and present. Many of the rules on family law, for instance when traced far back enough, may well bring us to the banks of the Tiber, in that ancient time when Rome was yet to embark upon conquests that would make the known world her domain and empire. The roots of many an ordinance in our Constitution reach into the dim beginnings of English constitutional history, when at Runnymede and elsewhere royal absolution was clipped with prerogative writs of liberty."

"From a look at the body of our law as a whole, it seems that we began with a nucleus of Spanish law and expanded it into a system with a steady accretion of American rules. Through the years, the Castilian element has remained static, even as Anglo-American influence advanced by leaps and bounds. Perhaps, this is chiefly due to our having been under American sovereignty until recently. The greater bulk of our rules have been derived immediately from American jurisdictions or enacted under American authority. This is specially evident in branches of the law dealing with our system of government, public administration, international relations, trade and commerce, social welfare, and procedure in our tribunals and other public bodies."

"Today, we stand as an independent republic, but the reception of American

ileges and concessions. The Philippine Commission then entered upon the enactment of a general law authorizing the creation of joint stock companies in the Philippines. This rather elaborate piece of legislation is embodied in what is called "The Corporation Law."<sup>3,4,5</sup>

The law, divided into two chapters, several parts and originally 192 sections, many of which have been amended,<sup>6</sup> inserted,<sup>7</sup> modified,<sup>8</sup>

rules into our law continues unabated. This holds true both as to its substance and to its methods. Much of the legislation of the past fourteen years is undisputedly of American origin."

at 1896-1897:

"As for judicial technique, our importations are equally evident. The behaviour of our courts exhibits the same patterns as their American counterparts, especially the federal tribunals. In fact, much of our Rules of Courts were taken from federal rules on procedures, practice, pleading and evidence. Our reliance on precedent, our insistence on actual controversies and our recognition of such doctrines as law of the case and *res judicata*, betray how deeply are our tribunals steeped in American judicial habits. We might as well mention also the propensity of our local courts to be persuaded by the pronouncement of American appellate courts. The official theory is that American decisions, being expressions of foreign law, are not binding on our courts, but our judges, nevertheless, behave as though they were. Many an argument has been able to push through a point across the threshold of judicial belief because it is buttressed with citation of American authorities. One is led to the suspicion that by a curious extension of the parity amendment, what the American judges say is in fact taken as the equal of local decisions in authoritativeness."

at 1897:

"Civil law is, of course, an exceptional area. For the rules dealing with the institution of family and property, our gratitude is rightly due to Spain, through her Civil Code. Other influences, nevertheless, must be acknowledged. Even here, the Anglo-American element is not wanting. We have already mentioned such areas as estoppel, trust, partnership and sales. As for the rest, we find that what is new in them exudes the spirit, if not the letter, of American law. In addition, particular doctrines have been taken from the codes of France, Argentina, Italy, Mexico and Switzerland."

<sup>3</sup> Act No. 1459, enacted on 1st March, 1906, effective as of 1st April, 1906, as amended (hereinafter referred to as the Law).

<sup>4</sup> *Harden v. Benguet Consolidated Minig Co.*, 58 Phil. 141.

<sup>5</sup> For a recent "re-examination of some of the provisions of Philippine Corporation Law, in the light of some other corporation laws, and with a view to improving it," see: Guevara, *The Philippine Corporation Law viewed from the Outside*, 36 Phil. L.J. 530-555 (1961). Prof. Sulpicio Guevara, A.B., LL.B., LL.M., of the College of Law of the University of the Philippines, is the author of (among others) a textbook on *The Philippine Corporation Law* (Atlas Publishing Company, Manila) 4th Ed. 1956; such textbook has been relied upon by the Supreme Court of the Philippine Islands in at least two decisions: *Zalcita v. Simmons*, No. L-7912, August 30, 1955 and *The Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission*, No. L-8451, December 20, 1957.

<sup>6</sup> Sec. 4 was amended by Sec. 1 of Act No. 3518; Sec. 5 was amended by Sec. 2 of Act No. 3518; Sec. 7 was amended by Sec. 1 of Act No. 1834 and by Sec. 4 of Act No. 3518; Sec. 8 was amended by Act No. 3518 and by Commonwealth Act No. 287, An Act to Transfer to the Securities and Exchange Commission the Powers, Duties and Functions of the Bureau of Commerce in Connection with the Registration of Corporations and Associations and to Authorize the Securities and Exchange Commission to Enforce the Provisions of all Laws affecting such Entities, approved on 3rd June, 1938, as amended; Sec. 9 was amended by Act No. 3518 and by Commonwealth Act No. 287; Sec. 10 was amended by Act No. 2728, and by Commonwealth Act No. 287; Sec. 11

repealed,<sup>9</sup> or superseded,<sup>10</sup> lays down general provisions for the organization of a company, the definition of its powers, of the duties of its directors and other officers, and contains further provisions with regard to the rights and liabilities of the shareholders, the transaction of business, the keeping of company's books and records, the dissolution of a company and, finally, special provisions concerning special types of companies.

was amended by Act No. 2728, and by Commonwealth Act No. 287; Sec. 13 was amended by Sec. 8 of Act No. 3518; Sec. 16 was amended by Act No. 2792, and by Act No. 3518; Sec. 17 was amended by Act No. 3518, and by Commonwealth Act No. 287; Sec. 18 was amended by Acts No. 3518 and 3610 and by Commonwealth Act No. 287 and Republic Act No. 337, known as The General Banking Act, approved on the 24th July, 1948, and Republic Act No. 3531; Sec. 19 was amended by Act No. 3849, by Commonwealth Act No. 287, and by Sec. 10 of Republic Act No. 337; Sec. 22 was amended by Commonwealth Act No. 287, and by Republic Act No. 944, An Act to Increase the Fees now charged by the Securities and Exchange Commission and to Authorize it to Collect and Receive Fees for Certain Services, approved on 20th June, 1953; Sec. 25 was amended by Sec. 12 of Act No. 3518; Sec. 28 was amended by Executive Order No. 90, Series of 1946; Sec. 30 was amended by Executive Order No. 90, Series of 1946; Sec. 31 was amended by Sec. 14 of Act No. 3518; Sec. 36 was amended by Sec. 15 of Act No. 3518; Sec. 37 was amended by Sec. 16 of Act No. 3518; Sec. 52 was amended by Act No. 3741; Sec. 54 was amended by Act No. 3850 and by the Constitution; Sec. 68 was amended by Act No. 3610, by Secs. 88 and 89 of Republic Act No. 337, by Commonwealth Act No. 287, and by Secs. 14 and 89 of Republic Act No. 337; Sec. 70 was amended by Sec. 2 of Act No. 1565, and by Sec. 1 of Act No. 1610; Sec. 71 was amended by Commonwealth Act No. 287, and Sec. 17 of Republic Act No. 337; Sec. 82 was amended by Sec. 1 of Act No. 2100, and by the Constitution; Sec. 83 was amended by Sec. 2 of Act No. 2100; Sec. 85 was amended by Acts No. 2100 and 4007; Sec. 93 was amended by Sec. 5 of Act No. 2100; Sec. 160 was amended by Commonwealth Act No. 287; Sec. 166 was amended by Commonwealth Act No. 287; Sec. 190-1/7 was amended by Act No. 3518, and by Sec. 9 of Act No. 3610.

<sup>7</sup> Sec. 17½ was inserted by Commonwealth Act No. 287; Sec. 28½ was inserted by Sec. 13 of Act No. 3518; Sec. 190-3/7 was inserted by Act No. 3610, and by Secs. 88 and 89 of Republic Act No. 337.

<sup>8</sup> Sec. 6 was modified by Act No. 3518, and by Commonwealth Act No. 287; Sec. 62 was modified by Sec. 1 of Rule 104 of the Rules of Court; Sec. 63 was modified by Sec. 1 of Rule 104 of the Rules of Court; Sec. 64 was modified by Sec. 1 of Rule 104 of the Rules of Court; Sec. 65 was modified by Secs. 2 and 3 of Rule 104 of the Rules of Court; Sec. 66 was modified by Secs. 2 and 3 of Rule 104 of the Rules of Court; Sec. 67 was modified by Sec. 4 of Rule 104 of the Rules of Court; Sec. 155 was modified by Commonwealth Act No. 287; Sec. 157 was modified by Commonwealth Act No. 287; Sec. 158 was modified by Commonwealth Act No. 287; Sec. 165 was modified by Commonwealth Act No. 287.

<sup>9</sup> Sec. 9½ was repealed by Act No. 2728, and by Commonwealth Act No. 287; Sec. 53 was repealed by Sec. 22 of Act No. 2362; Sec. 99 was repealed by Sec. 32 of Act No. 2362; Secs. 103 to 115 were repealed by Secs. 29 to 38 of Republic Act No. 337; Secs. 116 to 129 were repealed by Secs. 20 to 28 of Republic Act No. 337; Secs. 131 to 146 were repealed by Secs. 56 to 66 of Republic Act No. 337; Secs. 147 to 153 were repealed by Sec. 204 of Act No. 2427, known as The Insurance Act, enacted on 11th December, 1914, as amended; Secs. 171 to 190 were repealed by Secs. 34 to 35 of Republic Act No. 337; Sec. 190-2/7 was repealed by Sec. 74 of Republic Act No. 337; Secs. 190-4/7, 190-5/7 and 190-6/7 were repealed by Republic Act No. 337.

<sup>10</sup> Sec. 9½ was superseded by Act No. 2728, and by Commonwealth Act No. 287; Sec. 62 was superseded by Sec. 1 of Rule 104 of the Rules of Court; Sec. 63 was superseded by Sec. 1 of Rule 104 of the Rules of Court; Sec. 64 was superseded by Sec. 1 of Rule 104 of the Rules of Court; Sec. 65 was superseded

With the coming into force of the Law some articles of the Code of Commerce<sup>11</sup> were to be repealed, while the general purposes of the Law was to introduce the American corporation into the Islands as the standard commercial entity and to hasten the day when the *sociedad anónima* of the Spanish law would become obsolete.<sup>12</sup> The statute is a sort of codification of American corporate law,<sup>13</sup> thus it allows continuous reference to American precedents.

### 1. General provisions.

A joint stock company is an artificial being created<sup>14</sup> by operation of law, having the right of succession and the powers, attributes and properties expressly authorised by law or incident to its existence.<sup>15,16</sup>

A company comes into existence by operation of the law. It cannot therefore, contrary to a partnership,<sup>17</sup> be set up, exist, have

by Secs. 2 and 3 of Rule 104 of the Rules of Court; Sec. 66 was superseded by Secs. 2 and 3 of Rule 104 of the Rules of Court; Sec. 67 was superseded by Sec. 4 of Rule 104 of the Rules of Court; Secs. 103 to 115 were superseded by Secs. 28 to 38 of Republic Act No. 337; Sec. 116 to 129 were superseded by Secs. 20 to 28 of Republic Act No. 337; Secs. 131 to 146 were superseded by Secs. 56 to 66 of Republic Act No. 337; Sec. 190-2/7 was superseded by Sec. 74 of Republic Act No. 337; Secs. 190-4/7, 190-5/7, and 190-6/7 were superseded by Republic Act No. 337.

<sup>11</sup> Act No. 1459, Sec. 191.

<sup>12</sup> See, however, Act No. 1459, Sec. 191: ". . . Provided . . . That the existing corporations or *sociedades anónimas* lawfully organized as such, which elect to continue their business as such *sociedades anónimas* instead of reforming and reorganizing under and by virtue of the provisions of this Act, shall continue to be governed by the laws that were in force prior to the passage of this Act in relation to their organization and method of transacting business and to the rights of members thereof as between themselves, but their relations to the public officials shall be governed by the provisions of this Act."

<sup>13</sup> See case cited at note (4), *supra*.

<sup>14</sup> See: *Benguet Consolidated Mining v. Pineda*, 52 Official Gazette 1961, No. L-7231, March 28, 1956: "Organization," in reference to corporations, means executive structure, election of officers, providing for subscription and payment of capital, adoption of by-laws, and other types necessary to endow the legal entity with capacity to transact the business for which it was created." 2 Republic of the Philippines Digest (hereinafter referred to as Phil. Dig.) Sec. 8, 158.

<sup>15</sup> Art. No. 1459, Sec. 2.

<sup>16</sup> See also the famous definition by Chief Justice Marshall in *Dartmouth College v. Woodward*, 4 Wheat. (U.S.) 518, 4 L. ed. 629: a corporation is "an artificial being, invisible, intangible, and existing only in contemplation of law," frequently followed (in particular: *Bank of United States v. Deveraux*, 5 Cranch (U.S.) 61, 3 L. ed. 38; *Fietsam v. Hay*, 122 Ill. 293, 13 N.E. 501, 3 Am. St. Rep. 492; *Jones v. Williams*, 139 No. 1, 39 S.W. 486, 40 S.W. 353, 37 L.R.A. 682, 61 Am. St. Rep. 436) and approved (*7 Writers-Pierce Oil Co. v. Texas*, 177 U.S. 29, 44 L. ed. 657, 20 S.Ct. 518; *Higgins v. Downward*, 8 Hodst. (Del.) 227 14 A. 720, 32 A. 133, 40 Am. St. Rep. 141; *Coyle v. McIntire*, 7 Houst. (Del.) 44, 30 A. 728, 40 Am. St. Rep. 109; *Miller v. Ewer*, 27 Me. 509, 46 Am. Dec. 619; *McCandless v. Richmond & D.R. Co.* 38 S.C. 103, 16 S.E. 429, 18 L.R.A. 440).

<sup>17</sup> "By the contract of partnership two or more persons bind themselves, to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. Two or more persons may also form

or grant corporate powers by an agreement of the members. It may only come into existence by grant of the State,<sup>18</sup> exercised by the legislative branch of the government.<sup>19</sup>

As such, a company is not in fact and in truth a natural person but only a legal fiction with a personality separate and distinct from that of each and every member or shareholder thereof<sup>20,21</sup> and distinct also from subsidiaries and other organizations.<sup>22</sup> Although it

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a partnership for the exercise of a profession." Art. 1767 Civil Code (Philippines, 1949). The new Civil Code of the Republic of the Philippines was enacted on June 18, 1949 and has come into force one year after the publication of the full text in the Official Gazette, one year to be understood as meaning actual 365 days and reckoned from the day of full publication (Art. 13 of the Code): August 30, 1954.

<sup>18</sup> See: *Recreation and Amusement Association v. Manila*, 53 Official Gazette 2767, No. L-7922, February 22, 1957: "The right to be and to act as a corporation is not a natural or civil right, but a franchise requiring special authority from the state, and when there is no legal organization of a corporation, a mere association of persons of common interest does not become an entity apart from its members." 2 Phil. Dig. Sec. 4, 155.

<sup>19</sup> See: *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 277 U.S. 189.

<sup>20</sup> See: *Banque Generale Belge v. Walter Bull & Co.*, 47 Official Gazette 138 No. 48494, June 30, 1949. See also: *Salvatierra v. Carlitos*, No. L-11442, May 23, 1958: "There can be no question but that a corporation, when registered, has juridical personality separate and distinct from its component members or stockholders and officers, such that it cannot be held liable for personal indebtedness of a stockholder even if he is likewise its president." 2 Phil. Dig. Sec. 4, 155.

<sup>21</sup> For American precedents, see: *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 78 L. ed. 1348, 54 S. Ct. 788; *Puerto Rico v. Russell*, 288 U.S. 476, 77 L. ed. 903, 50 S. Ct. 477; *Burnet v. Commonwealth Improv. Co.*, 287 U.S. 415, 77 L. ed. 399, 53 S. Ct. 198; *Burnet v. Clark*, 287 U.S. 410, 77 L. ed. 397, 53 S. Ct. 207; *Dalton v. Bowers*, 287 U.S. 404, 77 L. ed. 389, 53 S. Ct. 205; *Flink v. Paladini*, 279 U.S. 59, 73 L. ed. 613, 49 S. Ct. 255; *United States v. Strang*, 254 U.S. 491, 65 L. ed. 368, 41 S. Ct. 165; *Eisner v. Macomber*, 252 U.S. 189, 64 L. ed. 521, 40 S. Ct. 189, 9 A.L.R. 1570; *Peterson v. Chicago, R.I. & P.R. Co.*, 205 U.S. 364, 51 L. ed. 841, 27 S. Ct. 513; *Van Allen v. Assessors Churchill v. Utica*) 3 Wall. 573, 18 L. ed. 229; *Louisville C. & C. R. Co. v. Letson*, 2 How. 497, 11 L. ed. 353; *Commissioner of Internal Revenue v. Edridge* (C.C.A. 9th), 79 F. (2d) 629, 102 A.L.R. 500; *Green v. Victor Talking Mach. Co.* (C.C.A. 2d) 24 F. (2d) 378, 59 A.L.R. 1091, writ of certiorari denied in 278 U.S. 602, 73 L. ed. 530, 49 S. Ct. 9; *Hall's Safe Co. v. Herring-Hall Marvin Safe Co.* (C.C.A. 6th 146 F. 37, 14 L.R.A. (N.S.) 1182, modified and affirmed in 208 U.S. 554, 52 L. ed. 616, 28 S. Ct. 350.

<sup>22</sup> See: *Behn, Meyer & Co. v. Hongkong & Shanghai Banking Corporation*, No. L-5537, May 29, 1953: "With respect to a highly complex controversy between defendant bank and plaintiff corporation concerning alleged liability of the latter to the former on a bill of exchange negotiated by it to the bank, in which the bank claimed that its delay in presenting the bill of exchange for acceptance by the drawee was due to complying with a circular from the steamship company aboard whose vessel the goods were being transported requiring delivery of the shipping documents to the steamship company, it was considered that the circular could not be considered as having been issued by plaintiff or with plaintiff's collusion merely because there were several corporate entities involved operating out of the same office with plaintiff and having interlocking directorates and officers, and the circular in question came from one of these." 2 Phil. Dig. Sec. 5, 156. See also: *Philippine Air Lines, Inc. v. Prieto*, "When the lessee of an airport snack bar from the National Airports Corporation

is an artificial person, the law grants to it the right of succession and certain powers, attributes and properties. However, it may exercise such powers, attributes and properties only within the limits authorized by law or incidental to its existence. It is, then, the only one responsible for such activities.

The principle<sup>23</sup> that a company is a legal entity, distinct and separate from the shareholders, and therefore liable exclusively for its own acts and not for those of said shareholders,<sup>24</sup> admits some exception.<sup>25</sup>

The disregard of corporate personality is confined to particular transactions, not extended to all cases and purposes.<sup>26</sup> It is possible to "pierce the veil" when the shareholders have committed illegal acts and cannot escape criminal or civil liability on illegal contracts or agreements in which their intent was to make the company liable for their acts and avoid individual liability, or to circumvent the

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counterclaimed, in an action brought against him for past due rent, for damages because the airport corporation violated his exclusive privilege by permitting Philippine Air Lines to lease out part of its building at the airport for the operation of a cooperative store by Philippine Air Lines Cooperative Association, an independent corporation, and the Airports Corporation brought in Philippine Air Lines Corporation as a third-party defendant insisting that liability, if any, under the counterclaim rested on the air lines for violating rules and regulations, the air line could not avoid liability on the score that the store in question was operated by the independent association." 2 Phil. Dig. Sec. 5. 156.

<sup>23</sup> To be interpreted within reason and according to the law, *Borja v. Vazquez*, 74 Phil. 560.

<sup>24</sup> The doctrine is laid down in the following American cases: *Western Battery & Supply Co. v. Hazelett Storage Battery Co.* (C.C.A. 8th) 61 F. (2d) 220 (writ of certiorari denied in 288 U.S. 608, 77 L. ed. 982, 53 S. Ct. 399); *Reel v. Crutcher* (C.C.A. 5th) 60 F. (2d) 440 (writ of certiorari denied in 287 U.S. 670, 77 L. ed. 578, 53 S. Ct. 314); *Brooks-Scanlon Co. v. Railroad Commission*, 144 La. 1086, 81 So. 727 (reversed on other grounds in 251 U.S. 396, 64 L. ed. 323, 40 S. Ct. 183); *Lucey Mfg. Corp. v. Oil City Iron Works*, 15 La. Ann. 12, 181 So. 57; *Montgomery v. Central Nat. Bank & T. Co.* 267 Mich. 142, 255 N.W. 274; *Parkside Cemetery Asso. v. Cleveland, B. & G. L. Traction Co.* 93 Ohio St. 161, 112 N.E. 596, Ann. Cas. 1918C. 1051; *State ex rel. Watson v. Standard Oil Co.* 49 Ohio St. 137, 30 N.E. 279, 15 L.R.A. 145, 34 Am. St. Rep. 541; *Stony Brook Lumber Co. v. Blackman*, 286 Pa. 305, 133 A. 556; *Kaplan v. Bagrier*, 12 Pa. D. & C. 693; *Fidelity Trust Co. v. Service Laundry Co.* 160 Tenn. 57, 22 S.W. (2d) 6; *Taylor Feed Pen Co. v. Taylor Nat. Bank* (Ter. Civ. App.) 181 S.W. 534 (modified in [Tex. Com. App.] 215 S.W. 850).

<sup>25</sup> For American precedents, see: *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 78 L. ed. 1348, 54 S. Ct. 788; *Burnet v. Clark*, 287 U.S. 410, 77 L. ed. 397, 53 S. Ct. 207; *Simmons Co. v. Crew* (C.C.A. 4th) 84 F. (2d) 82; *Metro-Nolitan Holding Co. v. Snyder* (C.C.A. 8th) 79 F. (2d) 263, 103 A.L.R. 912; *D.N. & E. Walter & Co. v. Zuckerman*, 214 Cal. 418, 6 P. (2d) 251, 79 A.L.R. 329; *Carozza v. Federal Finance & Credit Co.* 149 Md. 223, 131 A. 332, 43 A.L.R. 1; *Southern Electric Securities Co. v. State*, 91 Miss. 195, 44 So. 785, 60 L.R.A. 927, 108 Am. St. Rep. 716; *Guardian Development Co. v. Jones* (Tex. Civ. App.) 86 S.W. (2d) 466.

<sup>26</sup> See: *Koppel* (Phil.) Inc. v. *Yatco*, 43 Official Gazette 4604. For a recent analysis of the problem, see: *Centeno and Tayas, Piercing the Veil of Corporate Fiction*, 11 (U. of Santo Tomas) Law Review 24 (1960).

law and perpetrate deception,<sup>27</sup> or to subvert justice,<sup>28</sup> or to attempt tax evasion.<sup>29,30,31.</sup>

<sup>27</sup> See: *American Factors (Phil.) Inc. v. Murphy Tire Corporation (C.A.)*, 49 Official Gazette 189. See also: *Gregorio Araneta Inc. v. Tuason de Paterno*, 49 Official Gazette 45, No. L-2886, August 22, 1952. See also: *Dollente v. People*, 50 Official Gazette 3084, No. L-6675, May 26, 1954: "With respect to seven complaints of estafa by persons who deposited money with accused to obtain army surplus jeeps but who received no jeeps and whose money was not refunded, it was no defense that liability was civil rather than criminal and that of a corporation organized by accused and which carried his name, not individual, where it appeared that the registered and actual place of business of the corporation was the residence of accused, and the court found as a fact that the deposits required of would-be purchasers were intrusted to accused, that the complainants dealt directly with him, and that he had personally promised in writing to refund the deposit of at least one of them." 2 Phil. Dig. Sec. 6, 157. For more recent cases, see: *Matic*, *Survey of 1961-1962 Supreme Court Decisions in Commercial Law*, 10 Far Eastern L. Rev. 1-2 (1962): "As a general rule, a corporation is a distinct legal entity to be considered as separate and apart from the individual stockholders who compose it, and is not to be affected by the personal rights, obligations and transactions of its stockholders (1, Fletcher, 43). However, wherever circumstances have shown that the corporate entity is being used as an alter ego or business conduit for the sole benefit of the stockholders, or else to defeat public convenience, justify wrong, protect fraud or defend crime, our courts have held that the individual stockholders may be held liable for the obligations contracted by the Corporation. (*Koppel Phil. Inc. v. Yatco*, 77 Phil. 496; *Arnold v. Willitts and Paterson*, 44 Phil. 364). In the instant case, the Park Rite Co., Inc. (controlled by Cirilo Paredes and Ursula Tolentino) was found without any assets other than P550 upon execution of a judgment rendered against it; that it was a mere instrumentality of the individual stockholders; that the operations of the corporation were so merged with those of the stockholders as to be practically indistinguishable from them. The stockholders were adjudged responsible for the unsatisfied balance of the judgment. Said the court. "To hold the latter (the stockholders) liable for the corporation's obligations is not to ignore the corporation's separate entity, but merely to apply the established principle that such entity cannot be invoked or used for purposes that could not have been intended by the law that created that separate personality." (*M McConnel, et al. v. Court of Appeals, et al.*, L-10510, March 17, 1961). The mere fact that one or more corporations are owned and controlled by a single stockholder is not of itself sufficient ground for disregarding separate corporation entities. But "where a corporation is a dummy, is unreal or a sham and serves no business purposes and is intended only as a blind, the corporate form may be ignored for the law cannot countenance a form that is bald and a mischievous fiction." *Higgins v. Smith*, 308 U.S. 406 (1940). In the case of *Liddell & Co., Inc. v. Collector of Internal Revenue*, L-9627, June 30, 1961, *Liddell & Co.* was established in 1946 to engage in the business of importing and retailing passenger cars and trucks, with Frank Liddell owning 98% of the capital stock. Under the law then in force, the sales tax on original sales of cars (Secs. 184, 185 and 186, National Internal Revenue Code) was progressive, i.e., 10% of the selling price of the car if it did not exceed P5,000, 15% if more than P5,000 but not more than P7,000, and so forth. On November 22, 1948, the purpose clause of *Liddell & Co.* was amended so as to limit it to importation of cars and trucks and on December 20, 1948, *Liddell Motors, Inc.* was organized with Mrs. Irene Liddell, Frank Liddell's wife, as principal stockholder. The original capital of *Liddell Motors, Inc.* was supplied by Frank. Thereafter, *Liddell & Co.* ceased retailing cars and trucks to the public but instead conveyed them to *Liddell Motors, Inc.* which sold them to the public; *Liddell & Co.* computed its sales tax on the basis of its sales to *Liddell Motors, Inc.* which it considered as original sales for purposes of the computation of the sales tax. It was shown that Mrs. Liddell had little participation in the conduct of the business of *Liddell Motors, Inc.* of which she was supposed to be the principal stockholder. It was held that the Collector



The shareholders are liable *uti singuli*, when the corporate personality is a device for the purpose of defrauding creditors. Shareholders are personally liable, when a company is organized in such a way as to have its business controlled and conducted by another company and as to make it a mere instrumentality of the controlling company. In this case the personality of the company controlled is lost and absorbed by the controlling company.<sup>32</sup> Finally, when the capital of a company is owned or controlled by only one person so as to make the acts of the company the very acts of that person, the shareholders are personally liable.<sup>33,34</sup> In the paramount na-

of Internal Revenue may properly disregard the separate corporate personality of Liddell & Co. and Liddell Motors, Inc. and base the computation of the sales tax on the selling price obtained by Liddell Motors to the public after deducting the tax paid by Liddell & Co. in its sales to Liddell Motors, Inc.

<sup>28</sup> See: La Campana Coffee Factory, Inc. v. Kaisahan ng mga Manggagawa sa La Campana, 49 Official Gazette, No. L-5677, May 25, 1953. For a more recent case, see: Platon, Annual Survey of 1962 Supreme Court Decisions, Commercial Law, 38 Phil. L.J. 126 at 129 (1963): "Just as a corporation cannot escape its debts through dissolution, so can the stockholders not avoid their liability by claiming that they are what they are: sheer stockholders of a corporation whose personality is distinct and separate from theirs. For while a corporation once formed indeed assumes a juridical personality which is considered distinct and separate from the persons composing it, this legal fiction cannot be used to cover up some policy that is not recognized by law (Laguna Transportation Co., Inc. v. Social Security System, G.R. No. L-14606, April 28, 1960). So that, as happened in Gregorio Palacio, et al. v. Fely Transportation Co., G.R. No. L-15121, August 31, 1962, a person cannot make an exit from his subsidiary civil liability resulting from the conviction of his driver by forming a corporation which he presents to be the operator of the vehicle that cause the injury. Invoking an earlier decision (La Campana Coffee Factory, et al., v. Kaisahan ng Mga Manggagawa, et al., G.R. No. L-5677, May 25, 1953), the Court found the defendant in the Palacio case liable, the plaintiff having shown that the defendant incorporated the Fely Transportation with himself, his wife, his son and his daughters as the stockholders, evidently to avoid his subsidiary civil liability. This is one case, said the Court, where the corporation cannot be heard to say that it has a personality distinct and separate from that of its members when to allow it to do so would be to sanction the use of fiction of corporate entity as a shield to further an end subversive of justice."

<sup>29</sup> See: Marvel Building Corporation v. David, 50 Official Gazette 1050, No. L-5081, February 24, 1954.

<sup>30</sup> For American precedents, see: Ashby v. Peters, 128 Neb. 338, 258 N.W. 639, 99 A.L.R. 843; Jenkins v. Moyse, 254 N.Y. 319, 172 N.E. 521, 74 A.L.R. 205; Taylor v. Standard Gas & E. Co., 306 U.S. 307, 83 L. Ed. 669, 59 S. Ct. 543; First National Bank v. Gamble, 134 Tex. 112, 132 S.W. 2d 100, 125 A.L.R. 265; McIver v. Norman, 187 Or. 516, 205 P. 2d 137, 213 P. 2d 144, 13 A.L.R. 2d 749.

<sup>31</sup> For a case in which an American court held that inadequate capitalization may be considered as a factor in determining whether to disregard a corporate entity and hold the promoters personally liable as individuals, see: Automotriz del Golfo de California, S.A. de C.V. v. Erwin G. Resnick et al., 47 Cal. 2d 1, 63 A.L.R. 2d 1042, rehearing denied February 27, 1957; see Also: A.L.R. Digest, Corporations Secs. 4, 40.

<sup>32</sup> See: Koppel (Phil.) Inc. v. Yatco, 77 Phil. 496, No. 47673, October 10, 1946.

<sup>33</sup> See: Arnold v. Willitts, et al., 44 Phil. 634.

<sup>34</sup> For American precedents, see: First National Bank v. Winchester, 119 Ala. 168, 24 So. 351, 72 Am. St. Rep. 904; Walter v. Zuckerman, 214 Cal. 418,

tional interest, i.e., during the war, the nationality of a company has been held to be that of the majority of the shareholders.<sup>35</sup>

While the principle of criminal liability for violation of a penal law does not apply to companies,<sup>36</sup> some constitutional guarantees that *prima facie* would seem reserved to physical persons apply equally to juridical persons. Thus sec. 1(1) of the Philippine Bill of Rights, whereby no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws,<sup>37</sup> applies also to a company, insofar as its property is concerned.<sup>38,39</sup>

6 P. (2d) 251, 79 A.L.R. 329; D. I. Felsenthal Co. v. Northern Assurance Co. 284 Ill. 343, 120 N.E. 268, 1 A.L.R. 602; Spadra-Clarksville Coal Co. v. Nicholson, 93 Kan. 638, 145 P. 571, Ann. Cas. 1916 D, 652; Brooks-Scanlon Co. v. Railroad Commission, 144 Ia. 1086, 81 So. 727 (reversed on other grounds in 251 U.S. 396, 64 L.ed. 323, 40 C. Ct. 183); Pott v. Schmucker, 84 Md. 535, 36 A. 592, 35 L.R.A. 392, 57 Am. St. Rep. 415; Swift v. Smith, 65 Md. 428, 5 A. 534, 57 Am. St. Rep. 336; Hallett v. Moore 282 Mass. 380, 185 N.E. 474, 91 A.L.R. 572; Gardiner v. Treasurer, 225 Mass. 355, 114 N.E. 617.

<sup>35</sup> See: Filipinas Cia. de Seguros v. Christern Huenefeld & Co., Inc., General Register (of the Supreme Court) No. L-2294, May 25, 1951. See also: Winship v. Philippine Trust Co., No. L-3859, January 31, 1952; "For purposes of determining whether assets of a corporation in the Philippines during the Japanese occupation period were subject to segregation by the Japanese as enemy-owned, nationality of a private corporation was to be determined by the charter or citizenship of its controlling stockholders." 2 Phil. Dig. Sec. 50, 180.

<sup>36</sup> See: People v. Tan Boon Kong, 54 Phil. 605.

<sup>37</sup> Art. III, Constitution of the Philippines, adopted on 8th February, 1935, amended by resolutions of the Philippine National Assembly September 15, 1939, and April 11, 1940, approved by the President of the United States on 10th November, 1939, and 2nd December, 1940; further amended by resolution of Philippine Congress on 8th September, 1946, ratified by plebiscite on 11th March, 1947, as amended.

<sup>38</sup> See: Smith Bell & Co. Ltd. v. Natividad, 40 Phil. 145.

<sup>39</sup> See the Fourteenth Amendment to the Constitution of the United States, whereby no person shall be deprived of life, liberty, or property without due process of law (Louis K. Liggett Co. v. Baldridge, 278 U.S. 105, 73 L. ed. 204, 49 S. Ct. 57; Kentucky Finance Corp. v. Paramount Auto Exch. Corp. 262 U.S. 544, 67 L. ed. 1112, 43 S. Ct. 636 Mississippi R. Commission v. Mobile & O. R. Co. 244 U.S. 388, 61 L. ed. 1216, 37 S. Ct. 602; Lake Shore & M.S.R. Co. v. Smith, 173 U.S. 634, 43 L. ed. 858, 19 S. Ct. 565; Blake v. McClung, 172 U.S. 239, 43 L. ed. 432, 19 S. Ct. 165; Smith v. Ames, 169 U.S. 466, 42 L. ed. 819, 18 S. Ct. 418; Gulf, C. & S.F.R. Co. v. Ellis, 165 U.S. 150, 41 L. ed. 666, 17 S. Ct. 255; Covington & L. Turnp. Road Co. v. Standford, 164 U.S. 578, 41 L. ed. 560, 17 S. Ct. 198; Charlotte, C. & A.R. Co. v. Gibbes, 142 U.S. 386, 35 L. ed. 1051, 12 S. Ct. 255; Chicago, M. & St. P.R. Co. v. Minnesota, 134 U.S. 418, 33 L. ed. 970, 10 S. Ct. 462, 702; Minneapolis & St. L.R. Co. & Herrick, 127 U.S. 210, 32 L. ed. 109, 8 S. Ct. 1176; Missouri P.R. Co. & Mackey, 127 U.S. 205, 32 L. ed. 107, 8 S. Ct. 1161; Santa Clara County v. Southern P.R. Co. 118 U.S. 394, 30 L. ed. 118, 6 S. Ct. 1132; Kirven v. Virginia-Carolina Chemical Co. (C.C.A. 4th) 145 F. 288, 7 Ann. Cas. 219). The provision also applies to a private company, (Louis K. Liggett Co. v. Lee, 288 U.S. 517, 77 L. ed. 929, 53 S. Ct. 481, 85 A.L.R. 699; Frost v. Corporation Commission, 278 U.S. 515, 73 L. ed. 483, 49 S. Ct. 235; Quacker City Cab Co. v. Pennsylvania, 277 U.S. 389, 72 L. ed. 927, 48 S. Ct. 553; Kentucky Finance Corp. v. Paramount Auto Exch. Corp. 262 U.S. 544, 67 L. ed. 1112, 43 S. Ct. 636; Atchison, T. & S.F.R. Co. v. Vosourg, 238 U.S. 56, 59 L. ed. 1199, 35 S. Ct. 675, L.R.A. 191E, 953; Louisville & N.R. Co. v. Gaston, 216 U.S. 418, 54 L. ed. 542, 3 S. Ct. 291; Southern

Right of succession means not the right of inheritance but the power of a company to survive the change or the death of one or more shareholders, directors or officers.<sup>40</sup> As Blackstone said:

" . . . , when they [individuals] are consolidated and united into a corporation, they and their successors are then considered as one person in law: as one person, . . . the privileges and immunities, the estates and possessions, of the corporation, when once vested in them, will be forever vested, without any new conveyance to new successions; for all the individual members that have existed from the foundation to the present time, or that shall ever hereafter exist, are but one person in law, a person that never dies: in like manner as the river Thames is still the same river, though the parts which compose it are changing every instant".<sup>41</sup>

Said right last a period of fifty years<sup>42</sup> and cannot be extended to a longer period by amendment of the articles of incorporation.<sup>43</sup> Only the powers expressly authorized by law or incident to its existence may be exercised by a company.<sup>44</sup> Moreover a company may exercise those powers which, being implied from those expressly granted by law, still remain within the purpose for which the company has been created. Short of authorization by the articles of incorporation or by implication because within the company's purpose, an act may be *ultra vires*. "The doctrine of *ultra vires* should not be allowed to prevail where it would defeat the end of justice or work a legal wrong."<sup>45</sup>

R. Co. v. Greene, 216 U.S. 400, 54 L. ed. 536, 30 S. Ct. 287, 17 Ann. Cas. 1247; Northwestern Nat. L. Ins. Co. v. Riggs, 203 U.S. 243, 51 L.ed. 168, 27 S. Ct. 126, 7 Ann. Cas. 1104; Lake Shore & M.S.R. Co. v. Smith, 173 U.S. 684, 43 L. ed. 858, 19 S. Ct. 565; Blake v. McClung, 172 U.S. 239, 43 L. ed. 432, 19 S. Ct. 165; Smyth v. Ames, 169 U.S. 466, 42 L. ed. 819, 18 S. Ct. 418; Gulf C. & S.F.R. Co. v. Ellis, 165 U.S. 150, 41 L. ed. 666, 17 S. Ct. 255; Covington & L. Turnp. Road Co. v. Sandford, 164 U.S. 578, 41 L. ed. 560, 17 S. Ct. 198; Charlotte, C. & A.R. Co. v. Gibbs, 142 U.S. 386, 35 L. ed. 1051, 12 S. Ct. 255; Home ins. Co. v. New York, 134 U.S. 594, 33 L. ed. 1025, 10 S. Ct. 593; Minneapolis & St. L.R. Co. v. Beckwith, 129 U.S. 26, 32 L. ed. 109, 8 S. Ct. 207; Minneapolis & St. L.R. Co. v. Herrick, 127 U.S. 210, 32 L. ed. 109, 8 S. Ct. 1176; Missouri P.R. Co. v. Mackel, 127 U.S. 205, 32 L. ed. 107, 8 S. Ct. 1161; Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania, 125 U.S. 394, 30 L. ed. 8 S. Ct. 7737; Santa Clara County v. Southern P.R. Co. 118 U.S. 394, 30 L. ed. 118, 6 S. Ct. 1132.

<sup>40</sup> For American precedents, see: Old Dominion Copper Min. & Smelting Co. v. Lewisohn, 210 U.S. 206, 52 L. ed. 1025, 28 S. Ct. 634; Kansas P.R. Co. v. Atchinson, T. & S.F.R. Co., 112 U.S. 414, 28 L. ed. 794, 5 S. Ct. 208; Milwaukee & M.R. Co. v. Soutter, 13 Wall. (U.S.) 517, 20 L. ed. 543; Providence Bank v. Bilings, 4 Pet. (U.S.) 514, 7 L. ed. 939.

<sup>41</sup> See: 1 Blackstone, Commentaries on the Laws of England, 468.

<sup>42</sup> Act No. 1459, Sec. 6, par. 4.

<sup>43</sup> Act No. 1459, Sec. 18, as amended by Act Nos. 3518 and 3610; by Commonwealth Act No. 287, and by Republic Act No. 337. [Ed.'s Note: Under Republic Act No. 3531, approved June 20, 1963, the corporate life may be extended by amendment of the articles of incorporation but the extension shall not exceed fifty years in one instance.]

<sup>44</sup> Act No. 1459, Sec. 2.

<sup>45</sup> See: Coleman v. Hotel de France Corporation, 29 Phil. 323.

Companies may be public or private. Public companies are those formed or organised for the government of a portion of the State.<sup>46</sup> Private companies are those formed for some private purpose, benefit, aim, or end, as distinguished from public companies which have for their purpose the general good and welfare.<sup>47</sup> Private companies are further divided into stock companies and non-stock companies, the former being those which have a capital stock divided into shares and are authorised to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held by each of them, private companies being all others.<sup>48</sup> Private companies may be further classified as foreign and domestic, depending on the law under which the company is organised,<sup>49</sup> open and close according to whether that membership or subscription to the capital be unlimited or limited, respectively, to a particular kind or group of people. When the company is composed of more than one person, it is called aggregate.<sup>50</sup> In the words of Blackstone:

"Corporations sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had."<sup>51, 52</sup>

<sup>46</sup> For American cases, see: *Dartmouth College v. Woodward*, 4 Wheat (U. S.) 518, 4 L. ed. 629; *Coyle v. Gray*, 7 *Houst. (Del.)* 44, 30 A. 728, 40 Am. St. Rep. 109; *Yarmouth v. North Yarmouth*, 34 Me. 411; 56 Am. Dec. 666; *University of Maryland v. Williams*, 9 Gill & J. (Md.) 365, 3 Am. Dec. 72; *Tisman v. Belvidere Delaware R.C.* 26 N.J.L. 148, 69 Am. Dec. 565; *Ten Eyck v. Delaware & R. Canal Co.*, 18 N.J.L. 200, 37 Am. Dec. 233.

<sup>47</sup> For American precedents, see: *Coyle v. Gray*, 7 *Houst. (Del.)* 44, 30 A. 728, 4 Am. St. Rep. 109; *Forbes Pioneer Boat Line v. Everglades Drainage Dist.* 77 Fla. 742, 82 So. 346; *Washingtonian Home v. Chicago Live Stock Exch.* 143 Ill. 210, 32 N.E. 274, 18 L.R.A. 190, 36 Am. St. Rep. 385; *Downing v. Indiana State Bd. of Agri.* 129 Ind. 443, 28 N.E. 123, 614, 12 L.R.A. 664; *Brown v. South Kennebec Agri. Soc.*, Me. 275, 74; 47 Am. Dec. 484; *Yarmouth v. North Yarmouth*, 34 Me. 411, 56 Am. Dec. 666; *University of Maryland v. Williams*, 9 Gill & J. (Md.) 365, 3 Am. Dec. 72; *Newcomb v. Boston Protective Dept.* 151 Mass. 215, 24 N.E. 39, 6 L.R.A. 778; *Arrison v. Company D. North Dakota Nat. Guard*, 12 N.D. 554, 98 N.W. 83, 1 Ann. Cas. 368; *Oldroyd v. McCrea*, 65 Utah. 142, 235 P. 580, 40 A.L.R. 230.

<sup>48</sup> Act No. 1459, Sec. 3.

<sup>49</sup> See: *People v. Padilla*, 40 *Official Gazette Supp.* (13th), 58: However, when at least 75% of the capital of a company is owned by citizens of the Republic of the Philippines, the company is considered domestic.

<sup>50</sup> According to Blackstone: "Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever . . . ." See: 1 Blackstone, *Commentaries on the Laws of England*, 469. See also: *Terrett v. Taylor*, 9 *Cranch (U.S.)* 43, 3 L. ed. 650.

<sup>51</sup> See: 1 Blackstone, *Commentaries on the Laws of England*, 469. See also: *Terrett v. Taylor*, 9 *Cranch (U.S.)* 43, 3 L. ed. 650.

<sup>52</sup> See: *Roman Catholic Apostolic Administrator of Dacao, Inc. v. Land Registration Commission, General Register (of the Supreme Court) No. L-8451, December 20, 1957*: a corporation "sole" consists of one person only and his successors in some particular office or station, and is a special form of corporation designed to facilitate exercise of functions of ownership carried on by clerics for and on behalf of the church represented by them.

An eleemosynary company is one organised for the sole purpose of charity,<sup>53</sup> while a civil one is set up merely for civil purposes.<sup>54</sup> Companies may also be religious or lay. Ultimately they can be quasi-public, if granted a privilege ordinarily belonging to the State or if dedicated to public welfare, and government controlled.<sup>55</sup> This fact, however, does not make a private company public.<sup>56</sup>

Those who compose the company are called corporators, whether they be shareholders or members, or both. Incorporators are those members or shareholders, or both, mentioned in the articles of incorporation as originally forming and composing the company. Only natural persons are allowed by law to become incorporators,<sup>57, 58</sup> the only exception to this rule being art. 4 of Republic Act No. 720<sup>59</sup> which provides for the establishment and organisation of rural banks. According to this article, duly established cooperatives may organise rural banks and/or subscribe to the shares of stock of any rural bank. The owners of shares in a company which has capital stock are called stockholders or shareholders. Corporators of a company which has no capital stock and corporators of a company who do not own capital stock are members.<sup>60</sup>

## 2. Organisation of a company.

Five or more persons, not exceeding fifteen, a majority of whom

<sup>53</sup> See: State of Ohio Ex Rel. J. F. Russell, Jr. et al. v. Charles F. Sweeny, 153 Ohio St. 66, 91 N.E. 2d 13, 16 A.I.R. 2d 1337; see also: A.L.R. Digests, Corporations Sec. 9.

<sup>54</sup> See: Dartmouth College v. Woodward, 4 Wheat. (U.S.) 518, 4 L. ed. 629.

<sup>55</sup> Such as: the Philippine National Bank (created by Act No. 2612, as amended by Acts Nos. 2747, 2938, 4170 and by Commonwealth Acts Nos. 6, 318, 352, and 460); the Rehabilitation Finance Corporation (created by Republic Act No. 85); the National Power Corporation (created by Commonwealth Act No. 120, as amended by Republic Act No. 358); the National Airport Corporation (created by Republic Act No. 224); the National Development Corporation (created by Act No. 2705, as amended by Act No. 2822); the Cebu Portland Cement Corporation, established on January 15, 1922 as a subsidiary of the National Development Corporation (created by Act No. 2849, as superseded by Commonwealth Act No. 182, as amended by Commonwealth Act No. 311); the Insular Sugar Refinery, incorporated on November 26, 1929, equally a subsidiary of the National Development Corporation; the Metropolitan Water District (created by Act No. 2832, as amended by Commonwealth Acts Nos. 60 and 384); the Manila Railroad Corporation (created by Act No. 2752, and following Acts Nos. 1510, 2836, 3116, 3399 and Commonwealth Acts Nos. 174 and 314); etc.

<sup>56</sup> See: National Coal Co. v. Collector of Internal Revenue, 46 Phil. 583.

<sup>57</sup> See: Government of the Philippine Islands v. El Hogar Filipino, 50 Phil. 399.

<sup>58</sup> In the United States it has been held that a statute providing for the formation of corporations by two or more "persons" refers to natural persons and that a corporation cannot, therefore, become an incorporator under such statute (See: State v. Rutland R. Light & P. Co., 85 Vt. 91, 81 A. 252, Ann. Cas. 1914A, 1305; Denny Hotel Co. v. Schram, 6 Wash. 134, 32 P. 1002, 36 Am. St. Rep. 130).

<sup>59</sup> Known as The Rural Banks' Act, approved on 6th June, 1952, as amended.

<sup>60</sup> Act No. 1459, Sec. 4, as amended by Sec. 1 of the Act No. 3518.

are residents of the Philippines,<sup>61</sup> may form a private company for any lawful purpose or purposes by filing with the Securities and Exchange Commission articles of incorporation duly executed and acknowledged before a notary public,<sup>62</sup> setting forth:

<sup>61</sup> The incorporators, who must be natural persons [See, text at footnote (48) *supra*], need not be citizens of the Philippines, except in the case of companies organized for the purpose of agriculture, exploitation of natural resources and operation of public utilities. According to Art. XIII, Sec. 1 of the Constitution of the Philippines: "All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution," Constitution of the Philippines (1935), as amended. As parity rights are recognized to citizens of the United States of America, this provision is satisfied if sixty *per centum* of the capital of a company is owned by American citizens. The capital of companies for the exercise of activity of carriage by land or inland and by air must be owned and controlled for at least sixty *per centum* by citizens of the Philippines or, under the "Parity Act", of the United States. (See: 16(a) of Commonwealth Act No. 146. An Act to recognize the Public Service Commission, Prescribe its Powers and Duties, Define and Regulate Public Services, Provide and Fix Rates and Quota of Expenses to Be Paid by the Same and for Other Purposes, approved on 7th November, 1936, known as The Public Service Act, as amended; and Sec. 3(r) of Republic Act No. 776, An Act to Reorganize the Civil Aeronautics Administration, to Provide for the Regulation of Civil Aeronautics in the Philippines and authorizing the Appropriation of Funds therefor, approved on 20th June, 1952, known as The Civil Aeronautics Act). At least sixty *per centum* of the capital stock of any banking institution which may be established according to The General Banking Act must be owned by citizens of the Philippines. (See: Sec. 12 of the Republic Act No. 337, known as The General Banking Act). And at least two-thirds of the members of the board of directors of any such bank or banking institution must be citizens of the Philippines. (See: Sec. 13 of the Republic Act No. 337, known as The General Banking Act). Sixty *per centum* of the capital stock of rural banks must also be owned and controlled by citizens of the Philippines and no rural bank can be operated without a Certificate of Authority of the Monetary Board of the Central Bank. (See: Sec. 4 of Republic Act No. 720, An Act providing for the Creation, Organization and Operation of Rural Banks, and for Other Purposes, known as The Rural Banks' Act, as amended by Republic Act No. 1097 of June 15, 1954). Companies organized for the carrying out of an activity of coast-wise trade or water transportation must have at least seventy-five *per centum* of the capital stock or of any interest in said capital owned and controlled by citizens of the Philippines or of the United States. (See: Arts. XIII, Sec. 1 and XIV, Sec. 8 of the Constitution of the Philippines (1935) as amended and Arts. 1172 and 1175 of the Revised Administrative Code of the Philippines). Companies which undertake an activity of construction of public works must have seventy-five *per centum* of their capital stock owned and controlled by citizens of the Philippines. (See: Commonwealth Act No. 541).

<sup>62</sup> See: Securities & Exchange Commission v. Pimentel, No. L-3228, January 23, 1952: "While the President possesses visitatorial power over corporations under Secs. 54 and 55 of the Corporation Law, Philippine Annotated Laws Title 25, Secs. 55 and 56, his power is not exclusive and does not impair the functions of the Securities and Exchange Commission under Commonwealth Act No. 287 Sec. 1 Philippine Annotated Laws Title 67 and 46, in relation to enforcement of all laws affecting corporations and associations." 2 Phil. Dig. Sec. 3, 154-155. And also: "Since under Sec. 1 of Commonwealth Act No. 287, Philippine Annotated Laws Title 67 and 46, the Securities and Exchange Commission is not only entrusted with the powers and functions formerly per-

1) the name of the company.

The incorporators must carefully avoid choosing a name which is similar to, or may ingenerate confusion with, the name of another company whether this be a domestic or even a foreign one, if the name of the foreign company is so well known as to claim world-wide juridical protection.<sup>63</sup> A company, being a juridical person, and more precisely a "body politic and corporate under the name stated in the certificate"<sup>64</sup> is not free to change its name; this can be altered only by following the procedure laid down by the law.<sup>65</sup>

2) the purpose or purposes for which the company is formed.

The Securities and Exchange Commission has the duty and the power to deny registration of the articles of incorporation if it finds the purpose or purposes of the company to be unlawful. Otherwise it must issue a certificate of incorporation. The Securities Act<sup>66</sup> was enacted primarily to prevent exploitation of the public by the sale of unsound, fraudulent, and worthless securities through misrepresentation; to place adequate and true information before the investor; and to protect honest enterprises, seeking capital by honest presentation, against competition, afforded by dishonest securities offered to the public through crooked promotion.<sup>67</sup> To attain these goals it has very broad powers of investigation, even beyond the statements made by the applicants for incorporation, subject, however, to judicial review.<sup>68</sup> However, no company formed for the purpose of engaging in the business of transportation, by land or by water, or of maintaining a telephone, a telegraph, or wireless communication system, can, except as otherwise provided by law, exercise any powers other than those necessary or incidental to the accomplishment of its purpose. The restriction provided by the

formed by the Bureau of Commerce with respect to corporations and associations, but also with enforcement of all laws affecting them (with certain exceptions), the Commission clearly has power to investigate an alleged violation of Sec. 51 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 53, in failing to keep proper records of all business transacted." 2 Phil. Dig. Sec. 3, 155.

<sup>63</sup> See: *Western Equipment and Supply Co. v. Reyes*, 51 Phil. 115.

<sup>64</sup> Act No. 1459, Sec. 11.

<sup>65</sup> See: *Red Line Transportation Co. v. Rural Transit Co.*, 60 Phil. 549.

<sup>66</sup> Patterned after the Federal Securities Act of the United States, 1933, as amended, and the Federal Exchange Act, 1934, and after the provisions of the Uniform Sales of Securities Act drafted by the Conference of Commissioners of Uniform State Laws of the United States, it was received under Commonwealth Act No. 83, as amended known as The Securities Act, and approved by the National Assembly on 26th October, 1936. It was further amended by Commonwealth Act Nos. 283, 287 and 290 and Republic Act No. 635.

<sup>67</sup> See: Francisco, *Understanding the Securities Act*, 1.

<sup>68</sup> See *Asuncion v. De Yriarte*, 28 Phil. 68.

Law also applies to foreign companies licensed to do business in the Philippines.

- 3) the place where the head office of the company is to be established, which place must be within the Philippines.

The expression of the law "place of the principal office" does not mean necessarily the place of management of the company, but the place where the accounting documents, books and records are kept.

- 4) the term for which it is to exist not exceeding fifty years except as provided for by the law.<sup>69,70,71</sup>

This term can be reduced, but not increased. The prohibition contained in Sec. 18 of the Law against extending the period of corporate existence by amendment of the original articles of incorporation, was intended to apply, and does apply, to *sociedades anónimas* already formed, organised, and existing at the time of the coming into effect of the Law in 1906.<sup>72</sup>

- 5) the name and residence of the incorporators.<sup>73</sup>
- 6) unless otherwise provided by the Law, the number of directors of the company, not less than five nor more than eleven.

The directors named in the articles of incorporation remain in office until their successors are elected and qualified as provided in the by-laws. However, at anytime during the existence of the company the number of directors may be increased to any number not exceeding fifteen or reduced to any number not less than five in the case of a non-stock company by the formal assent of a majority of the members at a regular or special meeting of the members. In the case of a stock company the number of directors may be increased to any number not exceeding eleven or diminished to any number not less than five by the formal as-

<sup>69</sup> See also: Act No. 1459, Secs. 11, 18, 62, 77, 190-1/7.

<sup>70</sup> See: *Tan Tiong Bio v. Bureau of Internal Revenue*, 52 Official Gazette 6517, No. L-8800, October 23, 1956: "The Government cannot insist on making a tax assessment against a corporation that no longer exists, its term of existence, including the three-year winding up period, having expired under Secs. 77 and 78 of the Corporation Law, Philippine Annotated Laws Title 25 Secs. 77 and 78, and at the same time oppose an appeal questioning the legality of the assessment on the ground that the corporation, being non-existent, lacks capacity to sue and therefore lacks capacity to appeal." 2 Phil. Dig. Sec. 12, 160.

<sup>71</sup> For an American case dealing with reinstatement of repealed, forfeited, expired or suspended corporate charter as validating acts in interim, see: *J. B. Wolfe, Inc. v. Leon Salkind et al.*, Individually and as Co-partners Trading under the Firm Name of Leading Embroidery Co., 3 N.J. 312, 70 A. 2d 72, 13 A.L.R. 2d 1214; see also: A.L.R. Digests, Corporations Secs. 41, 44, 329, 340.

<sup>72</sup> See: *Benguet Consolidated Mining Co. v. Pineda*, 52 Official Gazette 1961 No. L-7231, March 28, 1956.

<sup>73</sup> See also: Act No. 1459, Sec. 165.



sent of the shareholders of the company at a regular or special meeting of shareholders representing or holding a majority of the stock. Furthermore, a certificate setting out such increase or reduction in the number of directors of any company must be duly signed and sworn to by the president, managing agent, secretary or clerk, or treasurer of such company and forthwith filed with the Securities and Exchange Commission.<sup>74</sup> Directors named in the articles of incorporation need not be incorporators. Ownership of shares is not a condition for the appointment to the office of directors named in the articles. The provision whereby: "Every director must own in his own right at least one share of the capital stock of the stock corporation of which he is a director, which stock shall stand in his name on the books of the corporation . . ." <sup>75</sup> applies only to directors elected after incorporation.

- 7) If it be a stock company, the amount of its capital stock, in currency of the Philippines, and the number of shares into which it is divided, and if such stock be in whole or in part without par value, then, such fact must be stated. As to stock without par value, the articles of incorporation need only state the number of shares into which said capital stock is divided.
- 8) If it be a stock company, the amount of capital stock or number of shares of no-par stock actually subscribed, the amount or number of shares of no-par stock subscribed by each and the sum paid by each on his subscription.<sup>76, 77, 78</sup> In addition, the articles

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<sup>74</sup> See Act No. 1459, Sec. 6(6).

<sup>75</sup> See Act No. 1459, Sec. 30.

<sup>76</sup> "The Securities and Exchange Commissioner shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of the treasurer elected by the subscribers, showing that at least twenty *per centum* of the entire number of authorized shares of capital stock has been subscribed, and that at least twenty-five *per centum* of the subscription has been either paid to him in actual cash for the benefit and to the credit of the corporation or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five *per centum* of the subscription; *Provided*, That it shall be the duty of the Securities and Exchange Commissioner immediately after the filing of the articles of incorporation of a corporation, to publish, at the expense of said corporation, the assets and liabilities of the same once in a newspaper of general circulation in the locality where the corporation is domiciled, if any, or in default thereof in a newspaper of general circulation in the City of Manila." See: Act No. 1459, Sec. f, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>77</sup> "Subscription" has been defined in *Bayla v. Silang Traffic Co., Inc.*, 1 Official Gazette 449, a case decided in 1942 by the Supreme Court of the Philippines, as "the mutual agreement of the subscribers to take and pay for the stock of a corporation."

In the case of *Trillana v. Quezon College, Inc.* No. L-5003, June 27, 1953, the Court held that "There was no valid and enforceable subscription to stock in a corporation where the application form for subscribing was not simply signed and returned with an initial payment as required by the terms of the

of incorporation of railroad, tramway, wagon road, and telegraph and telephone companies must state:

- a) the starting point and terminus of the railroad, tramway, wagon road, or telegraph or telephone line, its estimated length, the provinces through which it will pass, and all of its intermediate branches and connections;
- b) in the case of railroads or tramways, the gauge of the road, the motive power to be used and the means of applying it, and the materials to be used in the construction;
- c) in the case of wagon roads, the width of the road, the method of construction, and the construction material to be used;
- d) in the case of telegraph or telephone lines, the construction material, appliances, method of construction and system to be used.<sup>79</sup>

The Securities and Exchange Commissioner cannot register the articles of incorporation of any bank, or any amendment thereto, unless accompanied by a certificate of authority issued by the Monetary Board (of the Central Bank<sup>80</sup>), under its official seal. Such certificate cannot be issued unless the Monetary Board is satisfied from the evidence, submitted to it: a) that all the requirements of existing laws and regulations to engage in the business for which the applicant is proposed to be incorporated have been complied with, b) that the public interest and economic conditions, both general and local, justify the authorisation, and c) that the amount of capital, the financing, organisation, direction and administration, as well as the integrity and responsibility of the organisers and administrators reasonably assure the safety of the interests which the public may entrust to them.<sup>81</sup>

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offer but, instead, with a note written thereon promising to pay the price of the subscription after "she had caused fish to be caught," as, because of the difference in terms, no contract could exist until acceptance of the counter-proposal, and, no acceptance having been made before death of the "subscriber," no contract came into being." 2 Phil. Dig. Sec. 38, 172.

<sup>78</sup> See: *Lingayen Gulf Electric Power Co. v. Baltazar*, 49 Official Gazette 2809, No. L-4824, June 30, 1953: "For release, or partial release, of the obligation of a subscriber to stock of a corporation, unanimous consent of the stockholders is required." 2 Phil. Dig. Sec. 40, 172-173 and also: "Where at least seven stockholders of a corporation were absent from a stockholders' meeting at which a resolution providing for partial release of stock subscriptions were adopted, the resolution was ineffective." 2 Phil. Dig. Sec. 4, 173.

<sup>79</sup> Act No. 1459, Sec. 6, as modified by Act No. 3518 and Commonwealth Act No. 287.

<sup>80</sup> See Republic Act No. 265, approved on 15th June, 1948, An Act Establishing the Central Bank of the Philippines, Defining its Powers in the Administration of the Monetary and Banking System, amending the Pertinent Provisions of the Administrative Code with Respect to the Currency and the Bureau of Banking, and for Other Purposes, known as The Central Banking Act.

<sup>81</sup> See Sec. 9 of the Republic Act No. 337, known as The General Banking Act.

A copy of any articles of incorporation filed with the Securities and Exchange Commission and duly certified by the Commissioner shall be received in the courts and all other places as *prima facie* evidence of the facts therein stated.<sup>82, 83</sup>

The Securities and Exchange Commissioner, on the filing of articles of incorporation must issue to the incorporators a certificate,<sup>84</sup> under the seal of his office, stating that such articles of in-

<sup>82</sup> Act No. 1459, Sec. 10, as amended by Act No. 2728 and Commonwealth Act No. 287. See: *Castillo v. Securities and Exchange Commission*, No. L-6913, October 30, 1954: "The time limit imposed by Sec. 2 of Republic Act No. 62, as amended by Republic Act No. 350, Philippine Annotated Laws Title 47 Sec. 120, for reconstitution of lost articles of incorporation and by-laws, was not applicable to a corporation which, though its own copies had been destroyed, could produce authentic copies which were in custody of a bank with which it had been doing business, and the articles of incorporation could properly be reconstituted, after expiration of the limitation date in Sec. 2, by reference to Sec. 3 of Republic Act No. 62, Philippine Annotated Laws Title 47 Sec. 121, and presentation of the preserved copy to the Securities and Exchange Commission." 2 Phil. Dig. Sec. 15, 161, and also: *Castillo v. Securities and Exchange Commission*, No. L-6913, October 30, 1954: "The fact that the Securities and Exchange Commission, in reconstituting the articles of incorporation of a corporation under Republic Act No. 62, Philippine Annotated Laws Title 47 Secs. 119 et seq., on the basis of an authentic copy secured by the corporation from a third person, mistakenly used a standard form of certificate certifying that the reconstituted articles were a true and correct copy of the signed duplicate copy of the original, can be considered as immaterial, it being sufficient that the commission was satisfied that the copy submitted to it was authentic." 2 Phil. Dig. Sec. 15, 161.

<sup>83</sup> See: *Detective & Protective Bureau Inc. v. Guevara*, No. L-8738, May 31, 1957: "Where articles of incorporation are filed with the Securities and Exchange Commission for the organization of a corporation by designated incorporators and with a designated name, but the application for a certificate of incorporation is not granted or denied, but merely held up for a considerable length of time because of failure to comply with some of the commission's requirements, during which time various original incorporators withdraw for one reason or another and others take their place, with the result that the corporation to which a certificate of incorporation is eventually granted has entirely different officers and stockholders than those originally contemplated, the eventual entity may nevertheless be considered the same as the one originally started, at least for purposes of liability under an award of the Court of Industrial Relations." 2 Phil. Dig. Sec. 10, 159.

<sup>84</sup> See: *Hall v. Piccio*, 47 Official Gazette No. 12 Supp. 220, No. L-2598, June 29, 1950: "Under Sec. 11 of the Corporation Law, Philippine Annotated Laws, Title 25 Sec. 11, personality of a corporation begins to exist only from the moment its certificate of incorporation is issued by the Securities and Exchange Commission," 2 Phil. Dig. Sec. 8, 158. As to when a stock company exists for the purpose of tax payment, see: *Platon*, Annual Survey of 1962 Supreme Court Decisions, Commercial Law, 38 Phil. L.J. 126 at 129 (1963): "Section 3 of Act 1459 distinguishes between a stock and a non-stock corporation. This distinction acquires special relevance in the matter of tax payments. The law defines stock corporations as those which have a capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held. These then are the requisites for the existence of stock corporations: First, there must be a capital stock divided into shares; Second, there must be an authority to distribute to the holders of such shares dividends or allotment of the surplus profits. Where these requisites are absent, a corporation cannot be considered as a stock corporation and, accordingly, the Bureau of Internal Revenue cannot impose

corporation have been duly filed in his office in accordance with law. Thereupon<sup>85</sup> the persons signing the articles of incorporation and their associates and successors shall constitute a body politic and corporate, under the name stated in the certificate, for the term specified in the articles of incorporation, not exceeding fifty years, unless sooner legally dissolved or unless provided in the Law.<sup>86, 87</sup> If, owing to the irregularity or a defect in the organisation or to the omission of some requirements, a company is set up not absolutely in compliance with all legal requirements, but there has been a colourable compliance with the requirements of some law under which an association might be lawfully incorporated for the purposes and power assumed, and a user of the rights claimed to be conferred by the law, that company is called a *de facto* company.<sup>88</sup> According to the rule, a *de facto* company possesses all the powers of a *de jure* company except that it is open to a direct attack by the State in *quo warranto* proceedings. The following elements are essential to the existence of a *de facto* company:

a) a valid law under which a company with the powers assumed therein might be organised, b) a *bona fide* attempt to comply with the law according to which a company may be set up, and, finally, c) an actual exercise of corporate powers.

the tax pertaining to stock corporations. This rule holds true even if the entity possesses a corporate form or is engaged in an undertaking that is commercial in nature. For the actual purpose of a corporation is not determined by these standards. Extrinsic evidence, including the by-laws and the method of operation of the corporation, may be shown to prove that it is in truth non-stock. Hence, since the two aforementioned requisites were not present in Collector v. Club Filipino, Inc., G.R. No. L-12719, May 31, 1962, the Club was declared by the Court as non-stock and free from the Collector's assessment."

<sup>85</sup> Act No. 1459, Sec. 11, as amended by Act No. 2728 and Commonwealth Act No. 287.

<sup>86</sup> See: *Salvatierra v. Garlitos*, No. L-11442, May 23, 1958: "While a stockholder or member of a corporation cannot be held personally liable for any financial obligation of the corporation in excess of his unpaid subscription this rule applies only to registered corporations and is not applicable to liability of members of unincorporated associations." 2 Phil. Dig. Sec. 36, 171.

<sup>87</sup> In contrast with a *de jure* company, which is one regularly created in compliance with all legal requirements and the right of which to exercise a corporate franchise is therefore invulnerable against attack by the state in *quo warranto* proceedings (See: *Capps v. Hastings Prospecting Co.* 40 Neb. 470, 58 N.W. 956, 24 L.R.A. 259, 42 Am. St. Rep. 677).

<sup>88</sup> See: *Hall v. Piccio*, 47 Official Gazette No. 12 Supp. 220, No. L-2598, June 29, 1950: "Persons acting as a corporation may not claim status even as a corporation 'de facto,' if they have not obtained a certificate of incorporation." 22 Phil. Dig. Sec. 9, 158. See also: *Salvatierra v. Carlitos*, No. L-11442, May 23, 1958: "An organisation which, before the law, is nonexistent, has no personality and cannot appropriate for itself powers and attributes of a corporation as provided by law, create agents, or confer authority upon others to act in its behalf, and anyone acting, or purporting to act as its representative or agent does so without authority and at his own risk." 2 Phil. Dig. Sec. 9, 158-159.

### 3. General powers of a company.<sup>89</sup>

Every company has the power: <sup>90</sup>

- 1) of succession by its corporate name for the period of time limited in the articles of incorporation and not exceeding the time prescribed by law;
- 2) to sue and be sued in any court;<sup>91</sup>
- 3) to transact the business for which it was lawfully organised, and to exercise such powers and to perform such acts as may be reasonably necessary to accomplish the purpose for which the company was formed;<sup>92, 93</sup>
- 4) to make and use a common seal and to alter the same at pleasure;<sup>94</sup>
- 5) to purchase, hold,<sup>95</sup> convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property <sup>96</sup> as the

<sup>89</sup> With reference to Sec. 2. the powers of a company may be distinguished into: powers expressly granted by law, powers implied from those expressly granted and powers incidental to the existence of the company.

<sup>90</sup> See: *Gurrea v. Lezama*, No. L-10556, April 30, 1958: "Customs and corporate usages cannot prevail over the express provisions of the charter and by-laws." 2 Phil. Dig. Sec. 16, 161.

<sup>91</sup> See: Act No. 1459, Sec. 77: "Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established."

<sup>92</sup> See also: Act No. 1459, Secs. 13, par. 9 and 14.

<sup>93</sup> See: *Carla v. De la Rama Steamship Co.*, 51 Official Gazette 755, L-5377, December 29, 1954: "Corporate acts which are merely *ultra vires*, but not contrary to law, public morals or public policy, are voidable, not void, and become binding and enforceable when ratified by the stockholders." 2 Phil. Dig. Sec. 24, 165.

And also: "Ratification by the stockholders of an *ultra vires* act which is not illegal cures infirmity of the corporate act and makes it valid and enforceable, especially if it is not merely executory but already consummated and no creditors are prejudiced thereby." 2 Phil. Dig. Sec. 24, 165. See also: *Japanese War Notes Claimants Association v. Securities & Exchange Commission*, 54 Official Gazette 637, No. L-8987, May 23, 1957: "Where the articles of incorporation of petitioner, a private corporation, looked only to furthering claims of members based upon Japanese war notes and the possibilities of their redemption, authorizing collection of fees from members but not authorizing engaging in the general business of registering and accepting war notes for collection on a fee basis, or accepting or collecting fees for reparation claims, the corporation was properly prohibited from engaging in the latter activities by order of the Securities and Exchange Commission," 2 Phil. Dig. Sec. 24, 165.

<sup>94</sup> See: Act No. 1459, Sec. 34.

<sup>95</sup> See: *Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission*, No. L-8451, December 20, 1957, two justices dissenting: "The Roman Catholic Apostolic Church in the Philippines had no nationality and therefore its dignitaries, acting as corporation sole, and as administrators of property for the church, were never intended to be, and are not, restricted from acquiring agricultural land in the Philippines under Sec. 5 in conjunction with Sec. 1 of Art. XIII of the Constitution either because of their personal

purposes for which the company was formed may permit, and the transaction of the lawful business of the company reasonably and necessarily require,<sup>97</sup> unless otherwise prescribed in the Law.<sup>98</sup> However, the Law provides that no company can be authorized to conduct the business of buying and selling public land<sup>99</sup> or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created, and every company authorized to engage in agriculture is restricted to the ownership and control of no more than one thousand and twenty-four hectares of land.<sup>100</sup>

The Law lays down the following prohibitions:

—for any company organized for the purpose of engaging in agriculture or in mining, to be in anywise interested in any other company organized for the purpose of engaging in agriculture or in mining;  
—for any person owning stock in more than one company organized for the purpose of engaging in agriculture or in mining, to own more than fifteen *per centum* of the capital stock then outstanding and entitled to vote of each of such companies;<sup>101</sup>

lack of citizenship, or because 60% of the capital of the corporation is not owned by Filipino citizens." 2 Phil. Dig. Sec. 138, 162.

<sup>96</sup> See: Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission, No. L-8451, December 20, 1957: "Under Sec. 13(5) of the Corporation Law (Act No. 1459, Philippine Annotated Laws Title 25 Sec. 13(5) corporations are only entitled to purchase, convey, etc., real property in pursuance of the purposes for which they are formed and when transaction of lawful business reasonably and necessarily so requires," 2 Phil. Dig. Sec. 17, 162. And also: "In view of Sec. 13 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 13, giving every corporation the power to purchase, hold, etc., real and personal property for the purposes of its organization and the transaction of its lawful business, there can be no controversy as to the powers of a duly registered corporation sole in this connection," 2 Phil. Dig. Sec. 17, 162.

<sup>97</sup> See: Collector of Internal Revenue v. Manila Jockey Club, Inc., No. L-7273, May 30, 1956: "There is authority for the proposition that if the business of a corporation is such as to render it necessary for it to own a certain kind of property, and at times such property is not necessary in its business, it may employ it in a business or for a purpose not strictly within the objects of its creation," 2 Phil. Dig. Sec. 19, 162.

<sup>98</sup> Act No. 1459, Sec. 13(5), as amended by Sec. 8 of Act No. 3518. For an American case dealing with the power of a business corporation to donate to a charitable or similar institution, see: A.P. Smith Manufacturing Company v. Ruth F. Barlow et al., 13 N.J. 145. 98 A. 2d 581, 39 A.L.R. 2d 1179; see also: A.L.R. Digests, Corporations Sec. 52.5.

<sup>99</sup> See: Government of the Philippine Islands v. El Hogar Filipino, 50 Phil. 399.

<sup>100</sup> Limitation to the holding of land, whether public or private, is provided for by the Constitution of the Philippines (Art. XIII, Sec. 2) and the only way through which a company may hold more than 1024 hectares is by the exercise of the power which is conferred by the Constitution upon the government for the setting up of government-owned or government-controlled corporations (Art. XIV, Sec. 7), Constitution of the Philippines (1935) as amended.

<sup>101</sup> This paragraph corresponds to Sec. 75 of a Law of 1st July, 1902, as amended by Sec. 7 of Act No. 3518 of 1st March, 1929. Originally the provision read: ". . . it shall be unlawful for any member of a corporation engaged

—for any company, to own in excess of fifteen *per centum* of the capital stock then outstanding and entitled to vote of any company organised for the purpose of engaging in agriculture or in mining.<sup>102</sup>

Any shareholder of more than one company organised for the purpose of engaging in agriculture or in mining cannot hold his stock in such companies either for reasons other than investment or for the purpose of bringing about or attempting to bring about a combination to exercise control of such companies, or to directly or indirectly violate any of the provisions of the Public Land Law, and any company holding stock in any company organised for the purpose of engaging in agriculture or in mining cannot hold such stock either for reasons other than investment, or for the purpose of bringing about or attempting to bring about a combination to effect control of such company, or to directly or indirectly violate any of the provisions of the Public Land Law.<sup>103</sup> Companies, however, may loan funds upon real estate security and purchase real estate when necessary for the collection of loans but they must dispose of real estate so obtained within five years after receiving the title.<sup>104</sup>

6) to appoint and dismiss such subordinate officers or agents as the business or welfare of the company may demand, and to allow such subordinate officers and agents suitable compensation; <sup>105, 106</sup>

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in agriculture or in mining and for any corporation organized for any purpose except irrigation to be in anywise interested in any other corporation engaged in agriculture or in mining." As modified, the restriction was aiming at prohibiting a shareholder of a company from holding more than fifteen per cent of the outstanding capital of another company engaged in the same line of activity. See also: *Harden v. Benguet Consolidated Mining Corporation*, 58 Phil. 141.

<sup>102</sup> Act No. 1459, Sec. 13(5), as amended by Sec. 8 of Act No. 3518.

<sup>103</sup> Act No. 1459, Sec. 13(5), as amended by Sec. 8 of Act No. 3518.

<sup>104</sup> Act No. 1459, Sec. 13(5), as amended by Sec. 8 of Act No. 3518.

<sup>105</sup> Act No. 1459, Sec. 13(6), as amended by Sec. 8 of Act No. 3518.

<sup>106</sup> See: *Carla v. De la Rama Steamship Co.*, 51 Official Gazette 755, No. L-5377, December 29, 1954: "Where a corporation is given broad powers to carry out the purposes of its organization, including power 'to aid in any other manner any person' in whose affairs and prosperity it has an interest, it is not *ultra vires* to grant a gratuity to the heirs of its deceased president in recognition of the latter's great service in contributing to growth of the business," 2 Phil. Dig. Sec. 21, 163. And also: "Corporate action, resting on several resolutions of the directors, confirmed by the stockholders, and concurred in by its only creditor, authorizing a donation to the minor children of its late president, expressly in recognition of the latter's services in developing and expanding the business, is not subject to rescission," 2 Phil. Dig. Sec. 21, 163-164. And further in the same case: "Where a corporation had insured the life of its president in large amount because of the value of his services in expanding the business, but paid only four years' premiums out of corporate funds at the time of his death, when it came into the insurance proceeds, action of the directors, confirmed by the stockholders, in distributing stock and some of the insurance proceeds to the deceased president's heirs, expressly in recognition of his services to the corporation, was not a revocable donation, being within the broad scope of the corporate powers and approved by its sole creditor," 2 Phil. Dig. Sec. 21, 164. For an American case dealing with the power of a corpo-

7) to make by-laws<sup>107</sup>, not inconsistent with any existing law, for the fixing or changing of the number of its officers and directors within the limits prescribed by law, and for the transferring of its stock, the administration of its corporate affairs, the management of its business, and the care, control, and the disposition of its property;<sup>108</sup>

8) to admit members to the company; if it be a stock company to issue shares to shareholders and to sell stock or shares of shareholders for the payment of any indebtedness of the shareholders to the company.<sup>109</sup>

Shares of stock are personal property and may be transferred by delivery of the certificate endorsed by the owner or his attorney-in-fact or other person legally authorised to make the transfer. However, transfer of shares of stock against which the company holds any unpaid claim cannot be possible.<sup>110</sup> Only on the latter shares may the company exercise the power provided for by the law. The expression "any indebtedness of the stockholders to the corporation" refers only to the relationship between shareholders and company arising out of the subscription unless the company has acquired a valid lien on said unpaid subscription through a pledge, mortgage, or attachment.<sup>111</sup>

9) to enter into any obligation or contract<sup>112</sup> essential to the proper administration of its corporate affairs or necessary for the proper

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ration or of its officers with respect to payment of remuneration, bonus, and the like, to widow or family of deceased officer, see: *Caroline Moore v. Keystone Macaroni Manufacturing Company et al.*, 370 Pa. 172, 87 A. 2d 295, 29 A.L.R. 2d 1256; see also: A.L.R. Digests, Corporations, Secs. 52.5, 118, 126.

<sup>107</sup> See Act No. 1459, Sec. 22: "The owner of the majority of the subscribed capital stock, or a majority of the members if there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any by-law or adopt new by-laws. The owners of two-thirds of the subscribed capital stock may delegate to the board of directors the power to amend or repeal any by-law or to adopt new by-laws: *Provided, however*, That any power delegated to the board of directors to amend or repeal any by-law or to adopt new by-laws shall be considered as revoked whenever a majority of the shareholders or the members of the corporation shall so vote at a regular or special meeting; *And Provided, further*, That the Securities and Exchange Commissioner shall not hereafter file any amendment to the by-laws of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Central Bank to the effect that such amendments are in accordance with law." (As amended by Act No. 3610 and Commonwealth Act No. 287, and by Republic Act No. 337, Sec. 10).

<sup>108</sup> Act No. 1459, Sec. 13(7), as amended by Sec. 8 of Act No. 3518.

<sup>109</sup> Act No. 1459, Sec. 13(8), as amended by Sec. 8 of Act No. 3518.

<sup>110</sup> Act No. 1459, Sec. 35.

<sup>111</sup> See: *Bank of the Philippine Islands v. Caridad Estates, Inc. (C.A.)*, 40 Official Gazette Supp. 265 (August 23, 1941).

<sup>112</sup> See: *Johnlo Trading Corporation v. Flores*, No. L-3987, May 18, 1951: "The courts will not sanction a doctrine that a corporation can deny the power of an agent when an advantage is to be obtained by denying it, and share in the fruits of the contract when it is to its interest to consider the contract



transaction of the business or accomplishment of the purpose for which the company was organized.<sup>113</sup> The power to enter into contracts cannot be recognised in a company which is being formed and therefore does not possess juridical capacity,<sup>114, 115</sup> and after the organisation of the company is restricted to the powers expressed or implied in the articles of incorporation,<sup>116</sup> including the power to incur liabilities for the organisation of the company. Accordingly, an insurance company cannot undertake insurance of risks which were not expressly provided for in the charter, it cannot incur, create, or increase any bonded indebtedness unless, at a shareholders' meeting regularly called for the purpose, a majority of the subscribed capital stock favour the incurring, creating, or increasing, of a bonded indebtedness.<sup>117</sup>

10) except as otherwise provided, and in order to accomplish its purpose or purposes as stated in the articles of incorporation, to acquire, hold, mortgage, pledge or dispose of shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign com-

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binding," 2 Phil. Dig. Sec. 22, 164. See also: *A. Magsaysay, Inc. v. Cebu Portland Cement Corporation*, 53 Official Gazette 663, No. L-9098, November 26, 1956: "The fact that a managing officer of a corporation is given authority, by the board of directors, to enter into a contract with a designated person on specified terms, does not, of itself, give rise to a contract between the corporation and such person, where details are left to be "worked out" by the management and the managing officer deems it advisable not to exercise his authority, but to refer the matter back to the board," 2 Phil. Dig. Sec. 22, 164. As for the possibility of entering into a partnership or a joint venture, see: *J. M. Tuason & Co. v. Bo'anos*, No. L-4935, May 28, 1954: "The true rule is that, though a corporation has no power to enter into a partnership, it may enter into a joint venture with another where the nature of the venture is in line with the business authorized by its charter," 2 Phil. Dig. Sec. 23, 165. For an American case dealing with the powers of a corporation to enter into partnership or joint venture, see: *Port Arthur Trust Company et al. v. A. M. (Al) Muldrow*, 291 S.W. 2d 312, 60 A.L.R. 2d 913; see A.L.R. Digests, Corporations, Sec. 47. For an American case dealing with the validity of a contract between corporations as affected by directors or officers in common, see: *Duncan Shaw Corporation, et al. v. Standard Machinery Company, et al.*, 196 F 2d 147, 33 A.L.R. 2d 1050; see also: A.L.R. Digests, Corporations, Sec. 141.

<sup>113</sup> Act No. 1459, Sec. 13(9), as amended by Sec. 8 of Act No. 3518.

<sup>114</sup> See: *Cagayan Fishing Dev. Corporation, Inc. v. Sandiko*, 65 Phil. 223.

<sup>115</sup> See *Saulog v. del Rosario*, No. L-11054, May 23, 1958: "Where an individual, owning and operating a bus line, organized a corporation to take over the business and transferred the assets to the corporation after one of his employees sustained injuries resulting in a workman's compensation claim, in the absence of proof that the transfer of assets to the corporation included liability on this claim there was no legal ground to make the corporation pay it and the former owner of the business could not object to a compensation award against him personally on the ground that it should have been against the corporation, notwithstanding the award was not made until after the corporation came into being and the assets were transferred to it, the compensation claimant not having consented to the transfer of liability, even if there was one," 2 Phil. Dig. Sec. 10, 159.

<sup>116</sup> See: *Batangas Transportation Corporation, Inc. v. Manila Railroad Co.*, 64 Phil. 312.

<sup>117</sup> Act No. 1459, Sec. 17.

pany.<sup>118</sup> Unless the purchase of shares of another company is done for investment, such transaction need not be approved by the shareholders of the purchasing company.<sup>119</sup> Purchase of shares does not mean subscription. The Law forbids subscription for new shares in a company yet to be incorporated and limits the powers of a company to acquire shares or securities of another company to shares already issued and outstanding.<sup>120</sup>

A company has the power to purchase its own capital stock issued and outstanding when any shareholder who did not vote to authorise the action of the board of directors to invest the company's funds in any other company or business,<sup>121</sup> or did not vote in favour of an amendment to the articles of incorporation which would entail any change in the rights of holders of shares,<sup>122</sup> or did not vote to authorise the action of the board of directors to sell, exchange, lease or otherwise dispose of all or substantially all of the company's property and assets, including its goodwill, wishes, within forty days after the date upon which such action was authorised, to object thereto in writing and demand payment for his shares,<sup>123</sup> or when at the sale of stock for unpaid subscription, no bidder offers to pay the amount due with expenses of advertising and cost of sale, provided in such case that the company bids through the secretary or clerk or president or any shareholder thereof.<sup>124</sup>

The Law provides furthermore that no company can possess or exercise any corporate powers except those conferred by the Law itself and except such as are necessary to the exercise of the powers so conferred,<sup>125</sup> and that no company doing business in the Philippines or receiving any grant, franchise, or concession from the government of the Philippines can use, employ, or contract for the labour of persons claimed or alleged to be held in involuntary servitude. Any company violating these provisions is liable to forfeit all charters, grants, franchises, and concessions for doing business in

<sup>118</sup> Act No. 1459, Sec. 13(19), as amended by Sec. 8 of Act No. 3518.

<sup>119</sup> Act No. 1459, Sec. 17½, as inserted by Commonwealth Act No. 437.

<sup>120</sup> See: *Government of the Philippine Islands v. El Hogar Filipino*, 50 Phil. 399.

<sup>121</sup> Act No. 1459, Sec. 17½, as inserted by Commonwealth Act No. 437.

<sup>122</sup> Act No. 1459, Sec. 18, as amended by Acts No. 3518 and 3610, by Commonwealth Act No. 287 and by Republic Act No. 337, known as The General Banking Act.

<sup>123</sup> Act No. 1459, Sec. 28½, as inserted by Sec. 13 of Act No. 3518.

<sup>124</sup> Act No. 1459, Sec. 44. For an American case dealing with the rights of creditors of a corporation with respect to its purchase or acquisition of its own stock, see: *Jarroll Coal Company, Inc. v. John L. Lewis, et al*, Trustees of the United Mine Workers of America Welfare & Retirement Fund, 210 F. 2d 578, 47 A.L.R. 2d 753; see also: A.L.R. Digests, Corporations Secs. 77, 90.

<sup>125</sup> Act No. 1459, Sec. 14.

the Philipines, and, in addition, to be deemed guilty of an offense and punished by a fine of twenty thousand pesos.<sup>126</sup>

No Philippine company can create or issue bills, notes, or other evidence of debt for circulation as money, and no company can issue stock or bonds except in exchange for: (a) actual cash paid to the company; (b) property actually received by it at a fair valuation equal to the par or issued value of the stock, or bonds so issued;<sup>127</sup> or, (c) profits earned by it, but not distributed among its shareholders or members. No stock or bond dividend can be issued without the approval of shareholders representing not less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the company or at a special meeting duly called for the purpose.<sup>128</sup>

When stock is issued by a company for no consideration or for an inadequate consideration and when the company records said stock in its books as fully and adequately paid, the stock is called "watered stock".<sup>129</sup> The Law provides that any officer of any company consenting to the issue of stock or bonds in exchange for property valued in excess of its real fair cash value, or who, having knowledge thereof, does not forthwith express his disapproval in writing, shall be jointly and severally liable to the company and its creditors for the difference between the real present cash value of the property at the time of the issue of the stock and the issued or par value of the same, as the case may be.<sup>130</sup>

No Philippine company can make or declare any dividend except from the surplus profits arising from its business, or distribute its capital stock or property other than actual profits among its members or shareholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution. However banking, savings and loans, and trust companies may receive deposits and issue certificates of deposit, checks, drafts, and

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<sup>126</sup> Act No. 1459, Sec. 15.

<sup>127</sup> Act No. 1459, Sec. 16, as amended by Act No. 2792 and by Act No. 3518. "In case of disagreement as to their value, the same shall be presumed to be the assessed value or the value appearing in invoices or other commercial documents, as the case may be; and the burden of proof that the real present value of the property is greater than the assessed value or value appearing in invoices or other commercial documents, as the case may be, shall be upon the corporation."

<sup>128</sup> Act No. 1459, Sec. 16, as amended by Act No. 2792 and by Act No. 3518.

<sup>129</sup> For an American case dealing with the meaning of "book value" of corporate stock, see: *Ernest Aron v. Florence Gillman, et al., Admrxs., etc., of Dora Ostroff, Deceased*, 309 N.Y. 157, 128 N.E. 2d 284, 51 A.L.R. 2d 598; see also: A.L.R. Digests, Corporations Sec. 177.5.

<sup>130</sup> Act No. 1459, Sec. 16, second part, as amended by Act No. 2792 and by Act No. 3518.

bills of exchange, and the like in the transaction of the ordinary business of banking, savings and loan, and trust companies.<sup>131</sup>

Dividends are that part of the surplus profits, namely the profits which remain after deduction of the operational expenses or losses, of a company which has been set aside for the purpose of distribution among the shareholders in proportion to their respective stock participation in the company. Only in the case of liquidation of a company, may dividends be declared and paid out from non-surplus profits.<sup>132</sup> When payable in cash, the dividend is called cash dividend. When the payment of dividend is made by a company through issue of its own shares to shareholders, in such a way that the form of a shareholder's investment in the company changes but the aggregate value of the company's stock does not change, the dividend is called stock dividend.

When a company has net profits not in the form of cash, if the company so wishes, it may distribute certificates or scripts to the shareholders, stating that they are entitled to receive cash at a later date. This is called script dividend.<sup>133</sup>

Under Philippine law, no company can increase or reduce its capital stock, or incur, create, or increase any bond indebtedness unless, at a shareholders' meeting regularly called for the purpose, two-thirds of the entire subscribed capital favour the increase or reduction of the capital stock, or a majority of the subscribed capital stock

<sup>131</sup> Act No. 1459, Sec. 16, last part, as amended by Act No. 2792 and by Act No. 3518.

<sup>132</sup> See: *Wise & Co., Inc. v. Meer*, 78 Phil. 655.

<sup>133</sup> See: *Wise & Co. v. Meer*, 78 Phil. 655, No. L-48231, June 30, 1947: "As between successive owners of shares of stock, the general rule is that dividends belong to the owner of the stock at the time the dividend is declared, without regard to when the money was earned from which the dividend is to be paid," 2 Phil. Dig. Sec. 41, 173. See also: *Bachrach v. Seifert*, 48 Official Gazette 569, No. L-2659, October 12, 195: "As between the two views prevalent in the United States, known as the "Massachusetts" and the "Pennsylvania" rules, with respect to right to stock dividends as between a life tenant [usufructuary] and remainderman, the Pennsylvania view, that all dividends in whatever form declared during the lifetime of the usufructuary belong to him, best accords with Philippine statutory law, under which a corporation can only declare a dividend, cash or stock, out of surplus profits (Sec. 16 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 16) and a usufructuary is entitled to all fruits of the property (Civil Code Art. 471)." 2 Phil. Dig. 41, 173. See also: *Perkins v. Benguet Consolidation Mining Co.*, 50 Official Gazette 3089, May 28, 1954: "Dividends on corporate stock are accessories to the stock, like interest on capital, and the owner of the stock is the owner of the dividends unless otherwise disposed of." 2 Phil. Dig. Sec. 41, 173-174. See also: *Pirovano v. de la Rama Steamship Co.*, No. L-6817, July 31, 1958: "A corporation is entitled to set off against dividends declared the amount of advances made to a stockholder by the corporation," 2 Phil. Dig. Sec. 41, 174. For an American case dealing with validity of cancellation of accrued dividend on preferred corporate stock, see: *Western Foundry Company v. Albert G. Wicker, Jr.*, 403 Ill. 260, 85 N.E. 2d 722, 8 A.L.R. 2d 878; See also: A.L.R. Digests, Corporations Sec. 255. For an American case dealing with overpay-

favour the incurring, creating or increasing of any bonded indebtedness. Written or printed notice of the proposed increase or reduction of the capital or of the incurring, creating, or increasing of any bonded indebtedness, and of the time and place of the shareholders' meeting at which the proposed increase or reduction of the capital or the incurring, creating, or increasing of any bonded indebtedness is to be considered, must be addressed to each shareholder at his place of residence as shown by the books of the company and registered and deposited so addressed in the post-office with postage prepaid.

A certificate in duplicate must be signed by a majority of the directors of the company and countersigned by the chairman and secretary of the shareholder's meeting, stating:

a) that the requirements of Sec. 17 of the Law have been complied with;

b) the amount of the increase or reduction of the capital stock;

c) if there is an increase of the capital, the amount of capital or number of shares of no-par stock thereof actually subscribed, the names and residences of the persons subscribing, the amount of capital or number of shares of no-par stock subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital or number of shares of no-par stock allotted to each shareholder if such increase is for the purpose of making effective a stock dividend therefore authorised;

d) any indebtedness to be created, incurred, or increased;

e) the actual indebtedness of the company on the day of the meeting;

f) the amount of stock represented at the meeting;

g) the vote authorising the increases or reduction of the capital stock, or the incurring, creating, or increasing of any bonded indebtedness.

One of the duplicate certificates is kept on file in the office of the company and the other is filed with the Securities and Exchange Commissioner and attached by him to the original articles of incor-

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ments of dividends on preferred stock as deductible in payment of dividends for later years, see *Austin Agnew, et al. v. American Ice Company, et al.*, 2 N.J. 291, 66 A. 2d 330, 10 A.L.R. 2d 232; see also: A.L.R. Digests, Corporations Sec. 255. For an American case dealing with the rights of preferred shareholders as to passed or accumulated dividends in a going concern, see: *Alexander Guttman v. Illinois Central Railroad Company*, 189 F. 2d 927, 27 A.L.R. Digests, Corporations Secs. 255-257. For an American case dealing with the right as between life beneficiaries and remaindermen, or successive life beneficiaries, in corporate dividends or distributions, see: *Mary P. Bowles et al. v. J. P. Stille's Exr. et al.*, (Ky) 267 S.W. 2d 707, 44 A.L.R. 2d 1273.

poration. From and after the filing of the duplicate certificate with the Securities and Exchange Commissioner, the capital stands increased or reduced, and the incurring, creating, or increasing of any bonded indebtedness authorised as the certificate may declare.

The Securities and Exchange Commissioner is entitled to collect and receive, for filing such duplicate certificate of increase of capital, fees according to the amount of the increase of capital at the same rate as is collected for the filing of the original articles of incorporation.<sup>184</sup> However, if the said duplicate certificate increases the amount of capital stock, the Securities and Exchange Commissioner can not file such certificate unless accompanied by the sworn statement of the treasurer of the company lawfully holding office at the time of the filing of the certificate, showing that at least twenty *per centum* of such increased capital stock has been subscribed and that at least twenty-five *per centum* of the amount subscribed has been paid in actual cash to the company or that there has been transferred to the company property the fair valuation of which is equal to twenty-five *per centum* of the subscription.<sup>185</sup>

No company organised in the Philippines can invest its funds in any other company or business, or for any purpose other than the main purpose for which it was organised, unless its board of directors has been so authorised in a resolution by the affirmative vote of shareholders holding shares in the company entitling them to exercise at least two-thirds of the voting power on such a proposal at a shareholders' meeting called for that purpose. However, for this purpose, the business described in the prospectus issued by the company upon its organisation and duly filed in the Securities and Exchange Commission prevails over the purpose clause of its articles of incorporation. Notice of such meeting must be given to all of the shareholders on record of the company whether or not they be entitled to vote thereat. Any shareholder who did not vote to authorise the action of the board of directors may, within forty days after the date upon which such action was authorised, object thereto in writing and demand payment for his shares. If, after such a demand by a shareholder, the company and the shareholder cannot agree upon the value of his share or shares at the time such corporate action was authorised, such value must be ascertained by three disinterested persons, one to be named by the shareholder, another by the company, and the third by the two thus chosen. The findings of the appraisers are final and no action can be taken by the

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<sup>184</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>185</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

company upon said resolution until after payment has been made of said award, within thirty days thereafter. In addition to any civil remedy on the part of the shareholder, the directors of the company are subject to criminal prosecution for any violation of the law and in accordance with Sec. 191-1/7 of the Law. Upon payment by the company to the shareholder of the agreed or awarded price of his shares, the shareholder must forthwith transfer and assign the share or shares held by him as directed by the company.<sup>136</sup>

Any company may amend its articles of incorporation by a majority vote of its board of directors or trustees and the vote or written assent of two-thirds of its members, if it be a non-stock company, or, if it be a stock company, by the vote or written assent of the shareholders representing at least two-thirds of the subscribed capital stock of the company. However, if such amendment to the articles of incorporation should consist in any change in the rights of holders of shares of any class, or would authorise shares with preferences in any respect superior to those of outstanding shares of any class, or would restrict the rights of any shareholder, then any shareholder who did not vote for such corporate action may, within forty days after the date upon which such action was authorised, object thereto in writing and demand payment for his shares. If, after such a demand by a shareholder, the company and the shareholder cannot agree upon the value of his share or shares at the time such corporate action was authorised, such value must be ascertained by three disinterested persons, one to be named by the shareholder, another by the company and the third by the two thus chosen. The findings of the appraisers are final, and if their award is not paid by the company within thirty days after it is made, it may be recovered in an action by the shareholder against the company. Upon payment by the company to the shareholder of the agreed or awarded price of his share or shares, the shareholder must forthwith transfer and assign the share or shares held by him as directed by the company. However, shares of their own stock purchased or otherwise acquired by banks, trust companies, and insurance companies should be disposed of within six months after acquiring title thereto.

Unless and until such amendment to the articles of incorporation shall have been abandoned or the action rescinded, the shareholder making such demand in writing ceases to be a shareholder and has no rights with respect to such shares, except the right to receive payment thereof as aforesaid.

A shareholder is not entitled to payment for his shares under the provisions of the Law unless the value of the corporate assets

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<sup>136</sup> Act No. 1459, Sec. 17½, as amended by Commonwealth Act No. 437.

which would remain after such payment would be at least equal to the aggregate amount of its debt and liabilities exclusive of capital stock.

A copy of the articles of incorporation as amended, duly certified to be correct by the president and the secretary of the company and a majority of the board of directors or trustees, is filed with the Securities and Exchange Commissioner, who must attach the same to the original articles of incorporation, on file in his office. From the time of filing such copy of the amended articles of incorporation, the company shall have the same powers and it and the members or shareholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation. However, the life of said company cannot be extended by said amendment beyond the time fixed in the original articles; the original articles, together with the amended articles, contain all provisions required by law to be set out in the articles of incorporation. No provision can be construed to authorize any company to increase or reduce its capital or so as to affect any rights or actions which accrued to others between the time of filing the original articles of incorporation and the filing of the amended articles.

The Securities and Exchange Commissioner is entitled to collect and receive the sum of ten pesos for filing said copy of the amended articles of incorporation.

The Securities and Exchange Commissioner cannot file any amendment to the articles of incorporation of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Monetary Board (Central Bank) to the effect that such amendment is in accordance with law.<sup>137</sup>

Every company formed under Philippine law must, within one month after the filing of articles of incorporation with the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with the Law. For the adoption of any by-laws by the company, the affirmative vote of the shareholders representing a majority of all the subscribed capital, whether paid or unpaid, or of a majority of the members if there be no capital stock, is necessary. The by-laws are signed by the shareholders or members voting for them and kept in the head office of the company, subject to the inspection of the shareholders or members during office hours. A copy thereof, duly certified to by a majority of the di-

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<sup>137</sup> Act No. 1459, Sec. 18, as amended by Acts No. 3518 and 3610, by Commonwealth Act No. 287 and by Republic Act No. 337, known as The General Banking Act.



rectors and countersigned by the secretary of the company, is filed with the Securities and Exchange Commissioner, who must attach the same to the original articles of incorporation and collect and receive a fee of two pesos for the filing.

The Securities and Exchange Commissioner can not file the by-laws of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Monetary Board (of the Central Bank) to the effect that such by-laws are in accordance with law.<sup>138</sup>

A company may, unless otherwise prescribed by the Law,<sup>139</sup> provide in its by-laws for the time, place, and manner of calling and conducting regular or special meetings of its directors, and the time and manner of calling and conducting regular or special meetings of shareholders or members necessary to constitute a *quorum* for the transaction of business at meetings of shareholders or members; the conditions upon which members of non-stock companies shall be entitled to vote; the mode of securing proxies of shareholders or members and voting them; the qualification, duties, and compensation of directors, officers, and employees; the time for holding the annual election of directors and the mode and manner of giving notice thereof; the manner of election and the term of office of all officers other than directors and those elected by the directors or trustees; the penalties for violation of the by-laws, not exceeding in any case the sum of two hundred pesos; in the case of stock companies, the manner of issuing stock certificates or shares of stock; and such other matters not otherwise provided for by the Law as may be ne-

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<sup>138</sup> Act No. 1459, Sec. 20, as amended by Act No. 3610, Commonwealth Act No. 287.

<sup>139</sup> The Law lays down provisions for the amendment and repeal of the by-laws in Sec. 22. "The owners of the majority of the subscribed capital stock, or a majority of the members if there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any by-laws or adopt new by-laws: *Provided, however*, That any power delegated to the board of directors to amend or repeal any by-law or adopt new by-laws shall be considered as revoked whenever a majority of the stockholders or the members of the corporation shall so vote at a regular or special meeting; *And provided, further*, That the Securities and Exchange Commissioner shall not hereafter file any amendment to the by-laws of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Monetary Board (of the Central Bank) to the effect that such amendments are in accordance with law." As amended by Act No. 3610, Commonwealth Act No. 287 and Sec. 18 of Republic Act No. 337, known as The General Banking Act, and in Sec. 23. "Whenever any amendment or new by-law is adopted, such amendment or by-laws shall be attached to the original by-laws in the office of the corporation and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary or clerk of the corporation, shall be filed with the Securities and Exchange Commissioner, who shall attach the same to the original articles of incorporation and original by-laws on file in his office and collect and receive the sum of five pesos for the service." As amended by Commonwealth Act No. 287 and Republic Act No. 944.

cessary for the proper or convenient transaction of the business of the company.<sup>140</sup>

A company may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets,<sup>141</sup> including its goodwill, upon such terms and conditions and for such considerations, which may be money, stock, bonds, or other instruments for the payment of money or other property or considerations, as its board of directors deem expedient, when and as authorised by the affirmative vote of as many shareholders in the company as may exercise at least two-thirds of the voting power on such a proposal at a meeting called for that purpose. Notice of such meeting must be given to all the shareholders of record of the company whether or not they be entitled to vote thereat. However, any shareholder who did not vote to authorise the action of the board of directors, may, within forty days after the date upon which such action was authorised, object thereto in writing and demand payment for his shares. If, after such a demand by a shareholder, the company and the shareholder cannot agree upon the value of his share or shares at the time such corporate action was authorised, such value must be ascertained by three disinterested persons, one to be named by the shareholder another by the company, and the third by the two thus chosen. The finding of the appraisers is final and if their award is not paid by the company within thirty days after it is made, it may be recovered in an action by the shareholder against the company. Upon payment by the company to the shareholder of the agreed or awarded price of his share or shares, the shareholder must forthwith transfer and assign the share or shares held by him as directed by the company.

<sup>140</sup> Act No. 1459, Sec. 21.

<sup>141</sup> See: *Reyes v. Blouse*, No. L-4420, May 19, 1952: "Where the purpose of a resolution of the Board of Directors of a corporation, approved by 92½% of the stockholders, is not to dissolve the corporation, but merely to transfer its assets to a new corporation in exchange for stock of the latter, the old corporation not to be dissolved but to continue until the stockholders decide to dissolve it, the action taken is squarely within the purview of §28½ of the Corporation Law, Philippine Annotated Laws Title 25 §30, providing for sale or exchange of all property and assets of a corporation upon such terms and conditions as the Board of Directors may deem expedient, when authorized by affirmative vote of two-thirds of the stockholders." 2 Phil. Dig. Sec. 20, 163. For an American case dealing with the applicability of statutes regulating sale of assets or property of a corporation as effected by the purpose or the character of the corporation, see: *Frank Jeppi, et al., v. Brockman Holding Company, Inc., et al.*, 34 Cal. 2d (Adv. 10), 206 P. 2d 847, 9 A.L.R. 2d 1297; see also: A.L.R. Digests, Corporations, Sec. 79. For an American case dealing with who may assert invalidity of sale, mortgage, or other disposition of corporate property without approval of the shareholders, see: *United States of America v. Glenn Jones, Trustee of the Independent Plow, Inc., Bankrupt*, 229 F. 2d 84, 58 A.L.R. 2d 778, certiorari denied by the United States Supreme Court, 351 U.S. 939, 100 L. ed. 1466, 76 S. Ct. 835; see also: A.L.R. Digests, Corporations, Secs. 87-92.

Unless and until such sale, lease, or exchange shall be abandoned, the shareholder making such demand in writing ceases to be a shareholder and has no rights with respect to such shares except the right to receive payment therefor as aforesaid.

A shareholder can not be entitled to payment for his share under the provisions of the Law unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of capital stock.

Nothing in the Law can be intended to restrict the power of any company, without the authorisation thereof by the shareholders, to sell, lease, exchange, or otherwise dispose of, any of its property if thereby the corporate business be not substantially limited, or if the proceeds of such property be appropriated to the conduct or development of its remaining business.<sup>142</sup>

The board of directors or trustees of any stock company, formed, organised, or existing under Philippine law may at any time declare due and payable to the company unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscription as it may deem necessary.

The order of the board of directors declaring payable any unpaid subscription to the capital stock must state what percentage of the unpaid subscription is due and payable, when, where, and to whom payable, the date of delinquency, which must be subsequent to the full terms of publication of the notice of call for unpaid subscriptions and not less than thirty days nor more than sixty days from the date of the order of the board calling for the payment of unpaid subscriptions, and the date on which the delinquent stock will be sold, which must not be less than fifteen days nor more than sixty days from the date the stock become delinquent.<sup>143</sup>

Notice of the order declaring unpaid subscriptions to the capital stock due and payable must be given by the secretary or clerk of the company,<sup>144</sup> and must be either personally served upon each share-

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<sup>142</sup> Act No. 1459, Sec. 28½, as inserted by Sec. 13 of Act No. 3518.

<sup>143</sup> See also: Act No. 1459, Sec. 46. "The date fixed in any call for unpaid subscription or in any notice of delinquency and sale of stock for unpaid subscription, published according to the provisions of this article, may be extended from time to time, for a period of not more than thirty days, by order of the board of directors entered upon the records of the corporation, but no order extending the time for the performance of any act specified in such notice is effectual unless the notice of such extension or postponement is appended to the notice to which the order relates, and is thereafter published with the notice."

<sup>144</sup> Act No. 1459, Sec. 38.

holder or deposited in the post-office, postage prepaid, addressed to him at his place of residence, if known, and if not known, addressed to the place where the head office of the company is situated. The notice must also be published once a week for four successive weeks in some newspaper of general circulation devoted to the publication of general news in the Philippines.<sup>145, 146, 147</sup>

From and after the publication of the notices of delinquency and sale of stock for unpaid subscriptions the company acquires jurisdiction to sell and convey all of the stock described in the notices of sale, but the company must sell no more of the stock mentioned in the notices than is necessary to pay the amount of the subscription due, with interest accrued, and the expenses of advertising and the costs of sale.<sup>148</sup>

On the day and at the place and hour of sale specified in the notices of delinquency and sale of stock for unpaid subscriptions the secretary or clerk must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder, for cash so many shares of the stock described in the notices as may be necessary to pay the amount due on the subscription, with interest accrued, expenses of advertising, and costs of sale.<sup>149</sup>

The person offering at such sale to pay the unpaid subscription, for the smallest number of shares or fraction of a share, must be the highest bidder, and the stock purchased must be transferred to him on the stock books of the company on payment of the amount due on the unpaid subscription, together with the expenses of advertising and costs of sale.

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<sup>145</sup> Act No. 1459, Sec. 40.

<sup>146</sup> See also: Act No. 1459, Sec. 41. "Notices of delinquency and sale of stock for unpaid subscriptions must be published in the newspapers specified in the section immediately preceding, and, when published in a daily newspaper, must be published in ten successive issues of said newspaper previous to the day of sale, and, when published in a weekly newspaper, must be published two weeks previous to the sale and the first publication must be fifteen days prior to the day of sale."

<sup>147</sup> See: *Lingayen Gulf Electric Power Co. v. Baltazar*, 49 Official Gazette No. L-4824, June 30, 1953: "Unless the corporation is insolvent, the Corporation Law (Act No. 1459 Sec. 40, Philippine Annotated Laws Title 25 Sec. 42) makes publication of notice of any call for the payment of unpaid stock subscriptions mandatory, and, without such notice, an action against a subscriber to collect is premature." 2 Phil. Dig. Sec. 39, 172, and also: "Personal notice to a subscriber of stock to pay the balance of his subscription will not suffice as ground for an action by the corporation to collect, in the absence of a call, with published notice of same, as required by Sec. 40 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 42." 2 Phil. Dig. Sec. 39, 172, and finally: "Where a corporation is insolvent, all unpaid stock subscriptions become payable upon demand, without necessity for prior publication of notice of call." 2 Phil. Dig. Sec. 39, 172.

<sup>148</sup> Act No. 1459, Sec. 42.

<sup>149</sup> Act No. 1459, Sec. 43.

If, at the sale of the stock for unpaid subscription, no bidder offers to pay the amount due, the same may be bid in by the company, through the secretary or clerk or president or any shareholder thereof, and the amount of subscription due must be credited as paid in full on the books of the company and entry of the transfer of the stock to the company made.<sup>150</sup>

The legal title to all stock purchased by the company at sales of stock for unpaid subscription is vested in the company and the stock so purchased may be disposed of by the shareholders in accordance with law and the by-laws of the company by a majority vote of all the remaining shares.<sup>151</sup>

No action can be sustained to recover stock sold for delinquent unpaid subscription upon the ground of irregularity or defect in the calls for such unpaid subscription, or irregularity or defect in the notice of delinquency and sale, or in the sale itself of stock for unpaid subscription, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, together with all subsequent calls which may have been paid upon the stock so sold, with interest from the date of payment at the rate of seven *per centum per annum*; and no such action can be maintained unless it is commenced by the filing of a complaint and the issuance of summons within six months from date of sale.<sup>152</sup>

The posting of the notices of call for unpaid subscriptions and notices of delinquency and sale of stock for unpaid subscriptions may be proved *prima facie* by affidavit of the secretary or clerk or other officer of the company, and the publication of such notices may be proved to the same extent by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the notices were published. The time and place of sale of the stock, the quantity of the stock sold, its particular description, the person to whom the stock was sold, the price for which it was sold, and the amount of the purchase money paid may be proved *prima facie* by the affidavit of the secretary or clerk or other officer of the company, and the publication of such notices may be proved to the same extent by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the notices were published. The time and place of sale of the stock, the quantity of the stock sold, its particular description, the person to whom the stock was sold, the price for which it was sold, and the amount of the purchase money paid may be proved *prima facie* by the affidavit of the auctioneer or of the secretary or clerk or of the treasurer of the company.

<sup>150</sup> Act No. 1459, Sec. 44.

<sup>151</sup> Act No. 1459, Sec. 45.

<sup>152</sup> Act No. 1459, Sec. 47.

The abovementioned affidavits must be filed in the office of the company, and copies thereof certified to be true and correct by the secretary of the company, may be received by the courts, and others, as *prima facie* evidence of the facts therein stated.<sup>153</sup>

Nothing in the Philippine Law can prevent the directors from collecting, by action in any court of proper jurisdiction, the amount due on any unpaid subscription, together with accrued interest and costs and expenses incurred.<sup>154</sup>

No stock delinquent for unpaid subscription can be voted or entitled to a vote or representation at any shareholders' or directors' meeting, or for any company purpose whatever.<sup>155</sup>

If a company does not formally organise and commence the transaction of its business or the construction of its works within two years from date of its incorporation, its corporate powers cease. The due incorporation of any company claiming in good faith to be a company under Philippine law and its right to exercise corporate powers cannot be inquired into collaterally in any private suit to which the company may be a party, but such inquiry may be had at the suit of the government on information of the Solicitor General. However, every company organised or registered under the Law must, before the fifth day of January of each year, report to the Securities and Exchange Commissioner any cessation or discontinuance of business or change of address, if any, in such company. Any company violating the above-mentioned provisions of the Law is subject to a fine of not less than one hundred pesos nor more than one thousand pesos.<sup>156</sup>

#### 4. *Company's capital and its protection*

The capital of a stock company is divided into shares for which certificates<sup>157</sup> signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the company, are issued in accordance with the by-laws.<sup>158</sup>

The shares of any company formed under Philippine Law may be divided into classes with such rights, voting powers, preferences,

<sup>153</sup> Act No. 1459, Sec. 48.

<sup>154</sup> Act No. 1459, Sec. 49.

<sup>155</sup> Act No. 1459, Sec. 50.

<sup>156</sup> Act No. 1459, Sec. 19, as amended by Act No. 3849 and Commonwealth Act No. 287.

<sup>157</sup> A stock certificate is a written acknowledgment, issued by a company through the proper officer, under the corporate seal, stating that the person mentioned therein is the owner of the shares for which the certificate has been issued. It constitutes written evidence of the ownership of such shares and of the rights and liabilities ensuing therefrom (14 C.J., Sec. 698).

<sup>158</sup> Act No. 1459, Sec. 35.

and restrictions as may be provided for in the articles of incorporation. Any or all of the shares may have a par value or have no par value, as provided in the articles of incorporation.<sup>159</sup>

Banks, trust companies, insurance companies, and building and loan associations are not permitted to issue no-par value shares of stock. Subject to the laws creating and defining the duties of the Public Service Commission, shares of capital stock without par value may be issued from time to time: a) for such consideration as may be prescribed in the articles of incorporation, or, b) in the absence of fraud in the transaction, for such consideration as, from time to time, may be fixed by the board of directors pursuant to authority conferred in the articles of incorporation, or c) for such consideration as may be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the by-laws, provided the call for such meeting contain notices of such purposes. Any or all shares so issued must be deemed fully paid and non-assessable and the holder of such shares cannot be liable to the company or its creditors in respect thereto. Shares without par value cannot be issued for a consideration less than the value of five pesos per share. Except as otherwise provided in the articles of incorporation, and stated in the certificate of stock, each share must be in all respects equal to every other share.

Preferred shares of stock issued by any company, the holders of which are entitled to any preference in the distribution of the assets of the company in case of liquidation, may be issued only with a stated par value and, in all certificates of such shares of stock, the amount that the holder of each of such preferred shares is entitled to receive from the assets of the company in preference to holders of other shares must be stated.

The entire consideration received by the company for its no-par value shares must be treated as capital, and cannot be available for distribution as dividends.<sup>160</sup>

The issue of shares within the Philippines is governed by the Securities Act.<sup>161</sup> The Act distinguishes between speculative, non-speculative and exempt securities.<sup>162</sup>

<sup>159</sup> See: *Bonnevie v. Hernandez*, No. L-5837, May 31, 1954: "The real value of shares of stock of a corporation depends upon the value of its assets over and above its liabilities, not upon the face value of the shares," 2 Phil. Dig. Sec. 34, 170.

<sup>160</sup> Act No. 1459, Sec. 5 as amended by Sec. 2 of Act No. 3518.

<sup>161</sup> See Commonwealth Act No. 83. An Act to Regulate the Sale of Securities, to Create a Securities and Exchange Commission to Enforce the Provisions of the same, and to Appropriate Funds therefor, enacted by the National Assembly and approved on 26th October, 1936, except chapters I, II, and IV which took effect on 1st January, 1937, and further amended by Commonwealth Acts

Speculative securities <sup>163</sup> mean and include:

1) all securities to promote or induce the sale <sup>164</sup> of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised;

2) all securities the value of which materially depends upon proposed or promised future promotion or development rather than on present tangible assets and conditions;

3) all securities for promoting the sale of which a commission of more than five *per centum* is offered or paid;

No. 283, 290, Republic Act No. 635, and in particular by Commonwealth Act No. 287, approved on 3rd June, 1938; Republic Act No. 62, approved on 17th October, 1946; Republic Act No. 201, approved on 19th April, 1948; Republic Act No. 944, approved on 20th June, 1953; Republic Act No. 1143, approved on 17th June, 1954; and Rules of the Securities and Exchange Commission, as promulgated on 15th April, 1958, as amended.

<sup>162</sup> Securities include: . . . "stock certificates, treasury stock certificates, bonds, debentures; certificates of participation in, or right to subscribe to, any of the foregoing; certificates of participation, collateral trust certificates, investment contracts, voting trust certificates, certificates of deposit for a security, premium or gift-sharing certificates or tickets, pre-organization certificates or subscriptions; certificates evidencing shares of, or interest in, trust estates or associations; certificates of interest or participation in any profit-sharing agreement or in an agreement to incorporate or to form an association or in mutual incorporation or association contracts involving more than fifteen proposed incorporators or associates; any certificate, contract, or instrument whatsoever representing or constituting evidence of, or secured by, title to, or interest in, or any lien or charge upon, the capital or any property or assets of the issuer thereof or in any oil, gas or mining lease and/or holding; and interest, units or shares in any such lease or leases and/or holdings or in an association, partnership, corporation, or combination of persons having interest in such lease or leases and/or holdings, contracts or bonds for the sale and conveyance of land on deferred payments or instalment plan, or other instruments in the nature thereof by whatsoever name they may be known or called; promissory notes of any individual, firm, partnership, corporation, or association of any kind, the proceeds from the sale of which are to be used in capitalizing, furthering or promoting any manufacturing, selling, distributing, industrial, mercantile, mining, drilling for oil or gas or development enterprise of any kind or nature whatsoever, where said promissory notes are accompanied by any oral or written promise or representation that the purchasers of said promissory note shall share in any of the profits of said enterprise, or benefit from the success of said enterprise either directly or indirectly; and, in general, certificates or instruments evidencing beneficial interest in title to property, profits, or earnings, or any other instrument commonly known as a security; including an interim or temporary bond, debenture, note certificate, or receipt for a security or for subscription to a security." Sec. 2(2) of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>163</sup> These securities cannot be issued or sold unless registered and licensed according to the Act; see Secs. 4 ff., and 9 ff.

<sup>164</sup> "(e) 'Sale' or 'sell' shall include every disposition, or attempt to dispose of a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" and "sell" shall also include a contract to sell, an exchange, an attempt to sell, an option of a sale, a solicitation of a sale, a subscription or an offer to sell directly or by an agent, or by a circular, letter, advertisement or otherwise; *Provided*, That a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issuer shall not be deemed a sale of such



4) all securities into the value of which the elements of change, or hazard or speculative profit or possible loss equals or predominates over the elements of reasonable certainty or safety of investment;

5) the securities of any enterprise or company which has included, or proposes to include, in its assets, as a material part thereof, patents, formulae, good-will, promotion or other intangible assets, or which has issued or proposes to issue a material part of its securities in payment for patents, formulae, good-will, promotion or other intangible assets;<sup>165</sup> and

6) the securities of any enterprise engaged in the business of promoting, exploring, developing, exploiting or operating mineral properties and/or mineral rights.

Non-speculative securities<sup>166</sup> mean and include:

1) securities issued by a person<sup>167</sup> owning a property, business or industry which has been in continuous operation not less than three years and which has shown during a period of not less than two years next prior to the close of its fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

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other security within the meaning of this definition, and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration or licensing under the provisions of this Act, but when such privilege of conversion shall be exercised, such conversion shall be subject to the limitations hereinafter provided in subsection (g) of Section six, Chapter III hereof: *And provided, further,* That the issue or transfer of a right pertaining to a security and entitling the holder of such right to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale of such other security within the meaning of this definition and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption of registration or licensing under the provisions of this Act; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this Act." Sec. 2, par. 6(1) (e) of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>165</sup> For an American case dealing with patent rights, copyrights, trademarks, secret processes, formulae, or the like as "property" within provisions of law or charter forbidding the issue of corporate stock except for money paid or property received, see: *Fred Trotta Admr., etc., of Albert Zifkin v. Metalmold Corporation, et al.*, 139 Conn. 668, 96 A 2d 798, 37 A.L.R. 2d 906; see also: *A.L.R. Digests, Corporations* Sec. 194.

<sup>166</sup> These securities cannot be issued or sold unless registered according to the Act; see Secs. 4 and ff.

<sup>167</sup> Defined as to mean and include any "natural person, firm, corporation, co-partnership, limited partnership, *sociedad anónima*, joint stock company, syndicate, unincorporated organization or association, trust and trustee of a trust, excepting a trust created or a trustee designated by law or by a last will or by judicial authority, or any public charitable trust; or a government or political sub-division thereof. As used herein, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security." Sec. 2, par. 6 (1) (d) of Commonwealth Act No. 83, known as The Securities Act, as amended.

a) in the case of interest-bearing securities, not less than one and one-half times the annual interest charged thereon and upon all other outstanding interest-bearing obligations of equal rank;

b) in the case of preferred stock, not less than one and one-half times the annual dividend requirements on such preferred stock and on all other outstanding stock of equal rank;

c) in the case of common stock, not less than five *per centum* upon all outstanding common stock of equal rank together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold.

Exempt securities include:

1) any security which, prior to the taking effect of the Law, has been sold or disposed of by the issuer,<sup>168</sup> or *bona fide* offered to the public;

2) any security issued or guaranteed by the government of the Philippines, or by any political subdivision or agency of said government, or by any of its public instrumentalities, or by any person controlled or supervised by, and acting as an instrumentality of said government, or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any banking institution authorised to do business in the Philippines, the business of which is substantially confined to banking, and is supervised by the Central Bank of the Philippines;<sup>169</sup>

3) any security issued or guaranteed by any foreign government with which the Philippines is, at the time of the sale or offer of sale thereof, maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment, which security is recognised at the time it is offered for sale in the Philippines as a valid obligation by such foreign

<sup>168</sup> "h) 'Issuer' means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), or of the fixed restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; and except that with respect to fractional undivided rights in oil, gas, or other mineral rights, or claims or properties, the term 'issuer' means the owner of any such right or property or of any interest therein (whether whole or fractional) who creates fractional interests therein for the purpose of public offering." Sec. 2, par. 6 (1) (h) of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>169</sup> Sec. 5(a) (2) of Commonwealth Act No. 83, known as The Securities Act, as amended by Republic Act No. 635, approved on 9th June, 1951.

government or by such state, province or political subdivision thereof of issuing the same;<sup>170</sup>

4) any security issued or guaranteed either as to principal, interest or dividend by a company owning or operating public service, whose financial transactions, including the issue and guaranteeing of securities, are subject to regulation and supervision by the Public Service Commission or by a board or officer of the government of the Philippines;

5) any security issued by a building and loan association, savings and loan association, or similar institution, the business of which is substantially confined to the making of loans to members (but the foregoing exemption does not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of three *per centum* of the face value of such security), or any security issued by rural credit associations or by cooperative marketing associations;

6) certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

8) any security exchanged by the issuer with its existing security holders exclusively, where no commission or other remuneration is said or given directly or indirectly for soliciting such exchange;

9) certificates or titles issued to its members by any charitable or mutual aid and benefit society or association, where such society or association is provided with a permit issued by the Treasurer of the Philippines under the provisions of the Administrative Code.<sup>171, 172, 173, 174</sup>

<sup>170</sup> Sec. 5(a) (3) of Commonwealth Act No. 8, known as The Securities Act, as amended by Republic Act No. 635, approved on 9th June, 1951.

<sup>171</sup> Sec. 5(a) (9) of Commonwealth Act No. 83, known as The Securities Act, as inserted by Commonwealth Act No. 290, approved on 9th June, 1951.

<sup>172</sup> Sec. 5 of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>173</sup> Sec. 5(b) "The Commission may, from time to time, by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of the securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds two hundred thousand pesos," of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>174</sup> The Administrative Code was enacted on 10th March, 1917, as Act No. 2711 of the Philippine Legislature.

The following transactions are exempt from registration by operation of the law:

a) any judicial, executor's, administrator's, guardian's or any sale by a receiver or trustee in insolvency or bankruptcy;

b) by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of the Securities Act, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt;

c) an isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security;

d) the distribution by a company, actively engaged in the business authorised by its charter, of securities to its shareholders or other security holders as a stock dividend or other distribution out of earning or surplus; or the issuance of securities to the security holders or other creditors of a company in the process of a *bona fide* reorganisation of such company made in good faith and not for the purpose of avoiding the provisions of the Securities Act, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional capital stock of a company sold or distributed by it among its own shareholders, exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock;

e) the transfer or exchange by one company to another company of their own securities in connection with a consolidation or merger of such companies;

f) bonds or notes secured by mortgage upon real estate or tangible personal property when the entire mortgage together with all of the bonds or notes secured are sold to a single purchaser at a single sale;

g) the issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion, provided that the security so surrendered has been registered or its sale licensed under the Securities Act or was, when sold, exempt from the provisions of said act, and that the security

issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration and licensing under said act. Upon such conversion, the par value of the security surrendered in such exchange is deemed to be the price at which the securities issued and delivered in such exchange are sold;

h) the sale, transfer or delivery of any securities to any bank<sup>175</sup>, savings institution, trust company, insurance company or to any company or to any broker<sup>176</sup> or dealer<sup>177</sup>, if such broker or dealer is actually engaged in buying and selling securities as a business;

i) broker's transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders;

j) subscriptions for shares of the capital stock of a company prior to the incorporation thereof under the Law, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking, of such subscriptions is to comply with the requirements of such Law as to the percentage of the capital stock of a proposed company which should be subscribed before it can be registered and duly incorporated, and only to such extent.

All securities must be registered through the filing by the issuer or by any dealer interested in the sale thereof, in the office of the

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<sup>175</sup> Sec. 2(n) "'Bank' means (1) a banking or trust institution organized under the laws of the Philippines or of the United States, or any state, territory or possession thereof, or of a foreign country, whether incorporated or not, doing business in the Philippines, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers, and which is not operated for the purpose of evading the provisions of this Act, and (2) a receiver, or other liquidating agent of any banking or trust institution," of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>176</sup> Sec. 2(j) "'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Cf. Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>177</sup> Sec. 2(g) "'Dealer' shall include every person other than a salesman who engages either for all or part of his time, directly or through an agent, in the business of selling any securities issued by another person or purchasing or otherwise acquiring such securities from another for the purpose of reselling them or of offering them for sale to the public, or offering, buying, selling or otherwise dealing or trading in securities for a profit, or who deals in futures or differences in market quotations of price or values of any securities, or accepts margins on purchases or sales or pretended purchases or sales of securities: *Provided*, That the word 'dealer' shall not include a person having no place of business for the purpose, who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business." Cf. Commonwealth Act No. 83, known as The Securities Act, as amended.

Commission,<sup>178</sup> of a sworn registration statement with respect to such securities, containing or having attached thereto the following:

- 1) name of issuer and, if incorporated, place of incorporation;
- 2) the location of the issuer's principal business office, and if such issuer is a nonresident or its place of office is outside of the Philippines, the name and address of its agent in the Philippines authorised to receive notice;
- 3) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen, if the issuer be a company, association, trust, or other entity; of all the partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed;
- 4) the names and addresses of the underwriters;
- 5) the general character of the business actually transacted or to be transacted by the issuer;
- 6) a statement of the capitalisation of the issuer, including the authorised and outstanding amounts of its capital stock and the proportion thereof paid up; the number and classes of shares in which such capital stock is divided; par value thereof, or if it has no par value, the stated or assigned value thereof; a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;
- 7) a copy of the security for the registration of which application is made;
- 8) a copy of any circular, prospectus, advertisement, letter, or communication to be used for the public offering of the security;
- 9) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof;
- 10) a statement of the amount of the issuer's income, expenses, and fix charges during the preceding fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business;

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<sup>178</sup> Sec. 2(p) "Commission" means the Securities and Exchange Commission established by this Act", of Commonwealth Act No. 83, known as The Securities Act, as amended.  
Act No. 287.

11) a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty days prior to the date of such balance sheet;

12) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to, (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them whenever such remuneration exceeded six thousand pesos during any such year;

13) the amount of issue of the security to be offered;

14) the estimated net proceeds to be derived from the security to be offered;

15) a statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such security;

16) the amount or estimated amounts, itemised in reasonable detail, of expenses, other than commissions specified in the preceding paragraph, incurred or to be borne by or for the amount of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal engineering, certification, authentication, and other charges;

17) a detailed statement showing the items of cash, property, services, patents, good-will, and any other consideration for which securities have been or are to be issued in payment;

18) the amount of cash to be paid as promotion fees, or of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as a promotion stock;

19) in connection with speculative securities issued by a person engaged in the business of developing, exploiting or operating mineral claims, a sworn statement of a mining engineer stating the ore possibilities of the mine and such other information in connection therewith as the Commission may, by regulations, require, which will show the quality of the ore in such claim, and the unit cost of extracting it;

20) unless previously filed and registered under the provisions of the Securities Act, and brought up to date, (a) a copy of the articles of incorporation, with all amendments thereof and the existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a company, (b) copy of all instruments by which the

trust is created or declared and in which it is accepted and acknowledged if the issuer is a trust, (c) a copy of the articles of partnership, or association and all the papers pertaining to the organisation, if the issuer is a partnership, unincorporated association, syndicate, or any other form of organisation.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission establishes rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

However, the Commission may by rules or regulations provide that any of the above information or document need not be included in respect of any class of issuer of securities, if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise included in a registration statement filed in accordance with such rules.

Upon filing of such registration statement, the issuer or dealer must pay to the Treasury of the Philippines a fee of one-tenth of one *per centum* of the maximum aggregate price at which such securities are proposed to be offered, but in no case can such fee be less than fifty pesos or more than one thousand pesos; and the fact of such filing must be immediately published by the Commission, at the expense of the issuer or dealer, in two newspapers of general circulation in the Philippines, one published in English and another, in Spanish, once a week for two consecutive weeks, reciting that the registration statement for the sale of such security has been filed with it, and that the aforesaid registration statement, as well as the papers attached thereto, are open to inspection during business hours, by interested parties, under such regulations as the Commission may prescribe. Copies thereof, photostatic or otherwise, must be furnished to every applicant at such reasonable charge as the Commission may prescribe.

The filing of such statement in the office of the Commission, the payment of the fee hereinabove prescribed, and the publication made as above stated, constitute the registration of such security. The registration takes effect seven days after the expiration of the period for publication above referred to, and the security, if not a specula-



tive security, may be sold in the Philippines, subject however, to the further orders of the Commission as hereinafter provided. The Commission, upon the filing of the registration statement above referred to, determines by order whether or not the security sought to be registered is speculative within the meaning of the Securities Act, and forthwith advises the issuer or dealer<sup>179</sup>.

If, at any time, in the opinion of the Commission, the information contained in the statement filed is or has become misleading, incorrect, inadequate or incomplete, or the sale or offering for sale of the security may work or tend to work a fraud, the Commission may require from the person filing such statement such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in Sec. 12.<sup>180</sup> The Commission may also suspend the right to sell such security pending further investigation, by entering an order specifying the grounds for such action, and by notifying by mail, personally, or by telephone confirmed in writing, or by telegraph, the person filing such statement and every dealer who shall have notified the Commission of an intention to sell such security. The refusal to furnish information required by the Commission within a reasonable time to be fixed by the Commission, may be a proper ground for the entry of such order of suspension. Upon the entry of any such order of suspension, no further sales of such security shall be made until the further order of the Commission.

In the event of the entry of such order of suspension, the Commission gives a prompt hearing to the parties interested. If upon such hearing, the Commission determines that the sale of any such security should be revoked on any ground specified in Sec. 12,<sup>181</sup> it enters a final order prohibiting sales of such security, with its findings with respect thereto. Until the entry of such final order, the suspension of the right to sell, though binding upon the persons notified thereof, is deemed confidential, and cannot be published, unless it appears that the order of suspension has been violated after notice. Appeals from such final order may be taken to the Supreme Court in the manner provided in the Securities Act.<sup>182</sup> If,

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<sup>179</sup> Sec. 7 of Commonwealth Act No. 83, known as The Securities Act, as amended.

<sup>180</sup> See text at footnote (398), *infra*.

<sup>181</sup> *Ibid*.

<sup>182</sup> See: Sec. 35 of Commonwealth Act No. 83, known as The Securities Act, as amended by Republic Act No. 635, approved on 9th June, 1951. See also: *Tan Tiong Gong v. Securities and Exchange Commission*, 40 Official Gazette 2nd Supp. 49; and *Tan Tiong Gong v. Securities and Exchange Commission*, 40 Official Gazette 6th Supp. 125.

however, upon such hearing the Commission finds that the sale of the security will neither be fraudulent nor result in fraud, it forthwith enters an order revoking such order of suspension, and such security is restored to its status as a security registered under the Securities Act, as of the date of such order of suspension<sup>183</sup>.

Shares of stock so issued are personal property and may be transferred by delivery of the certificate endorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer<sup>184</sup>, however, can be valid, except as between the parties, until the transfer is entered and noted upon the books of the company so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred<sup>185</sup>.

Only in the case of absolute transfer of the ownership of shares, and not also in the case of pledge, the annotation of said transfer in the books of the company is required by the law. A pledge<sup>186</sup> does not transfer the right of ownership of shares; its registration in the books of the company does not operate against attaching creditors<sup>187</sup> unless the pledge be properly registered pursuant with

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<sup>183</sup> Sec. 8 of Commonwealth Act No. 83, known as The Securities Act, as amended by Republic Act No. 635, approved on 9th June, 1951.

<sup>184</sup> For an American case dealing with the problem of construction and application of provisions of articles, by-laws, statutes, or agreements restricting alienation or transfer of corporate stock, see: Guaranty Laundry Company, et al. v. Evelyn Pulliam, 198 Okla. 667, P. 2d 1007, 2 A.L.R. 2d 738; see also: A.L.R. Digests, Corporations Secs. 24, 42, 204, 205. For an American case dealing with the rights, duties, and liability of a company in connection with the transfer of stock of infant or incompetent, see Carolina Telephone & Telegraph Company, Inc. v. Ernest Victor Johnson, Jr. et al., 168 F. 2d 489, v A.L.R. 2d 870; see also: A.L.R. Digests Corporations, Secs. 208, 214, 215. For American case dealing with the rights, duties and liability of a company in connection with the transfer of stock of decedent, see: Cora E. Mildendorf, et al. v. Kansas Power & Light Company, 166 Kan. 610, P. 2d 156, 7 A.L.R. 2d 1235; see also: A.L.R. 2d Digests, Corporations, Secs. 214, 215.

<sup>185</sup> Act No. 1459, Sec. 35.

<sup>186</sup> See: Santamaria v. Hongkong & Shanghai Banking Corporation, No. L-2806, August 31, 1951: "A *bona fide* pledgee or transferee of corporate stock from the apparent owner is not chargeable with knowledge of limitations placed on it by the real owner, or of secret agreements relating to use of the stock by the holder," 2 Phil. Dig. Sec. 35, 170. And also: "A purchaser of stock from a brokerage firm who took from that firm a certificate for the number of shares purchased on which the name of the firm appeared as purchaser and which was merely indorsed over in blank, on the basis of which she, the purchaser, could have obtained a new certificate in her own name from the corporation, but who failed to obtain a new certificate in her own name and, instead, turned the certificate, as it stood, over to a different brokerage firm as security for the amount due on a different purchase of stock from the latter firm, which pledged the stock certificate, still in the same form, as part of a general pledge of all assets to secure its overdraft account with a bank, was guilty of negligence precluding a claim for damages," 2 Phil. Dig. Sec. 35, 170-171.

<sup>187</sup> See: Fua Cun v. Summers, et al., 44 Phil. 705.

the Chattel Mortgage Law<sup>188, 189</sup>. Short of registration, all transfers not entered in the books of a company are absolutely void, except as between the parties<sup>190</sup>.

The shareholders cannot agree in the by-laws that they shall restrict their right to transfer their shares in any other way or manner not provided for by the law<sup>191</sup>. It was said that a clause in the by-laws of a company, whereby a shareholder is bound to offer the sale of shares to a company, before offering said shares to third parties, in compliance with a stipulation granting the company a pre-emption right, was void as an undue interference in the freedom of a shareholder to dispose of his shares as he pleases, constituting a restraint of trade<sup>192</sup>.

Similarly, the word "non-transferable" appearing on shares constitutes undue limitation of the right of transfer and is illegal<sup>193</sup>. However, provided that the regulation of transfer of shares does not amount to restriction, two parties may agree not to sell, transfer or otherwise dispose of any part of their stock in a certain company for a period of one year<sup>194</sup>. No shares of stock against which the company holds any unpaid claim can be transferable on the books of the company<sup>195</sup>.

If a company refuses to register the transfer of shares a *mandamus* may be sought to compel the secretary of the company to make the transfer on the books<sup>196</sup>, provided that evidences be supplied that he was requested to do so, either by the person in the

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<sup>188</sup> See: *Eachrach Motor Co., Inc. v. Ledesma, et al.*, 64 Phil. 681, and *Guan v. Samahang Magsasaka, et al.*, 62 Phil. 472.

<sup>189</sup> See: Act No. 1508, known as The Chattel Mortgage Law, enacted on 2nd July, 1906, as amended; and see also: Arts. 2140, 2141 and 2085 to 2123 of the Civil Code (Philippines, 1950).

<sup>190</sup> See: *Uson v. Diosomito, et al.*, 61 Phil. 535.

<sup>191</sup> For a recent study of the problem, see: Puno, *Are Restrictions on Transfer of Corporate Shares Valid Under Philippine Law?*, 9 Far Eastern L. Rev., 1-9 (1961). For an American case dealing with the problem of the validity of restrictions on alienation or transfer of corporate stock, see: *Melvin L. Allen, et al. v. Biltmore Tissue Corporation*, 2 N.Y. 2d 534, 161 N.Y.S. 2d 418, 141 N.E. 2d 812, 61 A.L.R. 2d 1309; see also: A.L.R. Digests, Corporations Sec. 204.

<sup>192</sup> See: *Fleischer v. Botica Nolasco Co.*, 47 Phil. 583.

<sup>193</sup> See: *Padgett v. Babcock & Templeton, Inc.*, 59 Phil. 232.

<sup>194</sup> See: *Lambert v. Fox*, 26 Phil. 588.

<sup>195</sup> Act No. 1459, Sec. 35.

<sup>196</sup> See: *Won v. Wack Wack Golf & Country Club, Inc.*, No. L-10122, August 30, 1958: "Where a membership certificate is assigned and bears a warning that no assignment 'shall be effective with respect to the club until such assignment is registered in the books of the club, as provided in the by-laws, and the by-laws fix no time limit on when an assigned certificate must be presented for registration, the assignee's right to institute suit to compel registration is not affected by delay in presenting the certificate for registration, and his time to sue will start to run until after he had made a demand and that demand has been denied," 2 Phil. Dig. Sec. 35, 171. For an American

name of which the shares are registered or by some other person who is in possession of a power of attorney issued by the owner of the shares to that effect<sup>197</sup>, provided furthermore that there be unpaid claims on the shares by the company and that a suit in equity against the company would be inadequate<sup>198, 199</sup>.

Only the transferor can compel a company to effect the registration.

The procedure for the issue by companies of new certificates of stock in lieu of those which have been lost, stolen or destroyed is the following:<sup>200</sup>

a) the registered owner of certificates of stock in a company or his legal representative must file an affidavit in triplicate with the company issuing said certificates stating, if possible, the circumstances as to how, when and where certificates were lost, stolen or destroyed, the number of shares represented by each certificate, the serial numbers of the certificates, and the name of the company which issued the same. He must also submit such other information and evidence which he may deem necessary;

b) after verifying the affidavit and other information and evidence with the books of the company, said company must publish a notice, in a newspaper of general circulation in the Philippines published in the place where said company has its head office, once a week for three consecutive weeks at the expense of the registered owner of the certificates which have been lost, stolen or destroyed. The notice must state the name of said company, the name of the registered owner and the serial numbers of said certificates, and the number of shares represented by each certificate, and that after the expiration of one year from the date of the last publication, if no contest has been presented to said company regarding said certificates, the right to make such contest is barred and said company

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case dealing with the remedy for refusal of a corporation or its agent to register or effectuate transfer of stock, see: *Ellen B. Wentworth v. Russell State Bank, et al.*, 167 Kan. 246, 205 P. 2d 972, 22 A.L.R. 2d 1; see also: A.L.R. Digests, Corporations Secs. 211, 213, 251.

<sup>197</sup> See: *Hager v. Bryan*, 19 Phil. 139.

<sup>198</sup> See: *Fleischer v. Botica Nolasco Co.*, 47 Phil. 583.

<sup>199</sup> See: *Bank of the Philippine Islands v. Caridad Estates, Inc.* (C.A.) 40 Official Gazette Supp. 265 (Aug. 23, 1941).

<sup>200</sup> See: *Castillo v. Securities and Exchange Commission*, No. L-6913, October 30, 1954: "Secs. 2 and 3 of Republic Act No. 62, Philippine Annotated Laws Secs. 120, 121, dealing with the reconstitution of lost or destroyed articles of incorporation and by-laws of corporations, do not necessarily require that lost or destroyed by-laws as well as lost or destroyed articles of incorporation be reconstituted, at least where they are not part of a single instrument, and a corporation whose by-laws have been destroyed is not necessarily thereby deprived of its corporate existence by inability to reconstitute them if an authentic copy of the articles of incorporation is available," 2 Phil. Dig. Sec. 13, 160.

must cancel in its books the certificates of stock which have been lost, stolen or destroyed and issue in lieu thereof new certificates, unless the registered owner files a bond or other security in lieu thereof as may be required, running for a period of one year for a sum and in such form and with such sureties as may be satisfactory to the board of directors in which case a new certificate may be issued even before the expiration of the one year period provided therein. If a contest has been presented to said company or if an action is pending in court regarding the ownership of said certificates of stock which have been lost, stolen or destroyed, the issuance of the new certificates in lieu thereof is suspended until final decision by the court regarding the ownership of said certificate of stock.<sup>201</sup>

As far as public service companies are concerned, it is unlawful, without previous permission of the Public Service Commission to sell or register in a company's books the transfer or sale of shares of capital, if the result of that sale in itself or in connection with another previous sale, amounts to vest in the transferee more than forty *per centum* of the subscribed capital of said public service.<sup>202</sup> Any transfer made in violation of this provision is void and of no effect and shall be sufficient cause for ordering the cancellation of the certificate.<sup>203</sup>

One or more shareholders of any company organised under the Law, may, pursuant to an agreement in writing, transfer their shares to any person or persons, or to a company having authority to act as trustee, for the purpose of vesting in such person or persons, or company, as trustee or trustees, voting or other rights pertaining to such shares for a period not exceeding five years, and upon the terms and conditions stated in the agreement. No such agreement can be entered into for the purpose of placing two or more companies organised for the purpose of engaging in agriculture or in mining, which by reason of their corporate purposes cannot be organised as one company in accordance with law, under the control or management of the same trustee or trustees, or for the purpose of lessening competition or creating a monopoly of any line of commerce.

A duplicate copy of such agreement must be filed in the head office of the company and must be open daily during business hours to the inspection of any shareholder or any depositor under said agreement, or the attorney of any such shareholder or depositor.

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<sup>201</sup> Sec. 1 of Republic Act No. 201, approved on 19th April, 1948.

<sup>202</sup> Sec. 20 par. (h) of Commonwealth Act No. 146, known as The Public Service Act, as amended by Commonwealth Act No. 454, approved on 8th June, 1939.

<sup>203</sup> Sec. 20, par. (i) of Commonwealth Act No. 146, known as The Public Service Act, as amended.

Any other shareholder may transfer his shares to the same trustee or trustees upon the terms and conditions stated in said agreement, and thereupon is bound by all provisions of said agreement.

The certificates of stock so transferred must be surrendered and cancelled, and new certificates therefor issued to such person or persons, or company as such trustee or trustees, in which new certificates it must appear that they are issued pursuant to said agreement.

In the entry of transfer on the books of the company, it must be noted that the transfer is made pursuant to said agreement.

The trustee or trustees must execute and deliver to the transferors voting trust certificates. Such voting trust certificates must be transferable in the same manner and with the same effect as certificates of stock under the provisions of the Law. They possess all voting and other rights pertaining to the shares so transferred and registered in his or their names subject to the terms and conditions of and for the period specified in said agreement.

Unless otherwise provided in said agreement, the trustee may vote in person or by proxy.<sup>204</sup>

Subscribers for stock must pay to the company quarterly on all unpaid subscription interest, from the date of subscription, at the rate of six *per centum per annum*, unless otherwise provided in the by-laws. No certificate of stock can be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in case of no-par stock, has been paid by him to the company. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent.<sup>205</sup>

##### 5. *Shareholders' meetings.*

Normally, corporate powers and administration of property of a Philippine company are exercised by a board of directors.<sup>206</sup> However, certain corporate powers cannot be exercised by the board of directors exclusively but can only be exercised by the shareholders' meeting.

In particular a shareholders' meeting must be called upon to:

- 1) elect the board of directors;
- 2) remove the board of directors;

<sup>204</sup> Act No. 1459, Sec. 36, as amended by Sec. 15, Act No. 3518.

<sup>205</sup> Act No. 1459, Sec. 37, as amended by Sec. 16, Act No. 3518.

<sup>206</sup> Act No. 1459, Sec. 28, as amended by Executive Order No. 90, Series of 1946.

- 3) increase or reduce the capital of the company;
- 4) create bonded indebtedness;
- 5) grant authority to the board of directors for the investment of the funds of the company in another business, purpose or company;
- 6) grant authority to the board of directors to sell all the corporate assets, including the goodwill of the company;
- 7) decide upon the dissolution of the company.

The meetings of the members or shareholders of a company must be held at the place where the head office of the company is situated and, where practicable in the head office of the company.<sup>207</sup>

Ordinarily, no notice of the meeting must be given to the shareholders when called to a general meeting, but notice is necessary for call to a special meeting.

In some cases, however, notice of the meeting must be sent to the shareholders, regardless as to whether the meeting to be convened is a general or a special one. This is the case of a meeting called to discuss one of the following items:

- a) the increase or reduction of the company's capital;<sup>208</sup>
- b) the creation of bonded indebtedness;<sup>209</sup>
- c) the granting of authority to the board of directors for the investment of the funds of the company in another company or business or for any other purpose;<sup>210</sup>
- d) the granting of authority to the board of directors to sell all the assets, including the goodwill of the company;<sup>211</sup>
- e) the election of the board of directors;<sup>212</sup>
- f) the removal of the board of directors;<sup>213</sup>
- g) the dissolution of the company.<sup>214</sup>

The proceedings had and the business transacted at any meeting of the shareholders or members of a company, if within the powers of the company, are valid even if the meeting be improperly held or called, provided that all the shareholders or members of the company are present or represented at the meeting. At any such meet-

<sup>207</sup> Act No. 1459, Sec. 24.

<sup>208</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>209</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>210</sup> Act No. 1459, Sec. 17½, as inserted by Commonwealth Act No. 437.

<sup>211</sup> Act No. 1459, Sec. 28½, as inserted by Sec. 13 of Act No. 3518.

<sup>212</sup> Act No. 1459, Sec. 29, as amended by Executive Order No. 90, Series of 1946.

<sup>213</sup> Act No. 1459, Sec. 34.

<sup>214</sup> Act No. 1459, Secs. 62 ff., as superseded and modified by Secs. 1, 2, 3 and 4 of Rule 104 of the Rules of Court.

ing, the shareholders or members of the company, may elect directors and fill vacancies then existing, and may transact such other business of the company as might lawfully be transacted at a regular meeting thereof.<sup>215</sup>

Whenever, for any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, any judge of a Court of First Instance, on the showing of good cause therefor, may issue an order to any shareholder or member of a company directing him to call a meeting of the company by giving proper notices required by the law or by the by-laws;<sup>216</sup> and if there be no person legally authorized to preside at such meeting the judge of the Court of First Instance may direct the person calling the meeting to preside at the same until a majority of the members or shareholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purpose of the meeting.<sup>217</sup>

If for any cause no meeting is held on the day fixed and appointed by law or by the by-laws of the company for holding the election of directors, a meeting may be called for that purpose either by the directors or as provided in the Law;<sup>218</sup> and at the meeting held in pursuance of such call the election may be had with the same effect as if it had taken place on the day fixed by Law or by the by-laws of the company.<sup>219</sup>

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<sup>215</sup> Act No. 1459, Sec. 25, as amended by Sec. 12 of Act No. 3518.

<sup>216</sup> See: *Ponce v. Encarnacion*, 53 Official Gazette 3477, No. L-5883, November 28, 1953: "Under the Corporation Law (Act No. 1459 Sec. 26, Philippine Annotated Laws Title 25 Sec. 27), a Court of First Instance may, upon showing of good cause by a stockholder, issue an order directing him to call a meeting of the corporation, and it is sufficient showing of good cause to apprise the court that the by-laws of the corporation require calling of a general meeting of stockholders to elect directors but no call for such a meeting has been made." 2 Phil. Dig. Sec. 26, 166, and also: "In connection with an application to a Court of First Instance, under Sec. 26 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 27, for an order directing applicant, as a stockholder, to call a corporate meeting "for good cause," the law does not require that the application be set for hearing with notice served on the board of directors, and there is no violation of the due process clause of the Constitution of summary issuance of the requested order, *ex parte*," 3 Phil. Dig. Sec. 43, 175. For an American case dealing with remedies to restrain or compel holding of a shareholders' meeting, see: *Joseph L. Auer, on His Own Behalf and on Behalf of All of Holders of Class A Stock of R. Hoe & Co., Inc., et al. v. Arthur Dressel, Individually, and as President of R. Hoe & Co., Inc., et al.* 306 N.C. 427, 118 N.E. 2d 590, 48 A.L.R. 2d 604; see also: A.L.R. Digests, Corporations Sec. 303.

<sup>217</sup> Act No. 1459, Sec. 26.

<sup>218</sup> And precisely by Sec. 29 of the Act No. 1459.

<sup>219</sup> Act No. 1459, Sec. 32.



Executors, administrators, guardians, or other persons<sup>220</sup> in a position of trust and legally authorized may vote as shareholders upon stock held in their representative capacity.<sup>221</sup>

One or more shareholders of any company organized under Philippine law may, pursuant to an agreement in writing, transfer their shares to any person or persons, or to a company having authority to act as trustee, for the purpose of vesting in such person or persons, or company, as trustee or trustees, voting or other rights pertaining to such shares for a period not exceeding five years, and upon the terms and conditions stated in the agreement.<sup>222</sup> However, no such agreement can be entered into for the purpose of placing two or more companies organized for the purpose of engaging in agriculture or in mining, which by reason of their corporate purposes cannot be organized as one company in accordance with the Law, under the control or management of the same trustee or trustees, or for the purpose of lessening competition or creating a monopoly of any line of commerce.

A duplicate copy of such agreement must be filed in the head office of the company and must be open daily during business hours to the inspection of any shareholder or any depositor under said agreement, or the attorney of any such shareholder or depositor.

Any other shareholder may transfer his shares to the same trustee or trustees upon the terms and conditions stated in said agreement, and thereupon shall be bound by all provisions of said agreement.

The certificate of stock so transferred must be surrendered and cancelled, and new certificates therefor issued to such person or persons, or company, as such trustee or trustees, in which new certificates it must appear that they are issued pursuant to said agreement.

In the entry of transfer on the books of the company, it must be noted that the transfer is made pursuant to said agreement.

The trustee or trustees must execute and deliver to the transferors voting trust certificates. Such voting trust certificates must

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<sup>220</sup> For an American case dealing with the right of a foreign personal representative or guardian to vote stock owned by estate or ward, see: *Beverly Beach Properties, Inc. v. Samuel Nelson, as Domiciliary Exr. etc. of Olof Zetertlund, Deceased, et al.*, see: (Fla) 68 So. 2d 604, 41 A.L.R. 2d 1071; see also: A.L.R. Digests, Corporations Sec. 317.

<sup>221</sup> Act No. 1459, Sec. 27.

<sup>222</sup> For an American case dealing with validity and effect of an agreement controlling the vote of corporate stock, see: *E. K. Buck Retail Stores, et al. v. Walter E. Harkert, et al.*, 157 Neb. 867, 62 N.W. 2d 288, 45 A.L.R. 2d 774; see also: A.L.R. Digests, Contracts, Sec. 377.

be transferable in the same manner and with the same effect as certificates of stock under the provisions of the Law.

The trustee or trustees must possess all voting and other rights pertaining to the shares so transferred and registered in his or their names subject to the terms and conditions of and for the period specified in said agreement.

Unless otherwise provided in said agreement, the trustee may vote in person or by proxy.<sup>223</sup>

Subscribers for the stock must pay to the company quarterly on all unpaid subscription interest, for the date of subscription, at the rate of six per centum *per annum*, unless otherwise provided in the by-laws. No certificate of stock can be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in case of no-par stock, has been paid by him to the company. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent.<sup>224</sup>

The law imposes on all business companies the duty of carefully preserving a record of all business transactions and a minute of all meetings of directors, members, or shareholders,<sup>225</sup> in which the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, its object, those present and absent, and every act<sup>226</sup> done or ordered done, at the meeting<sup>227, 228</sup> must be set forth in detail.

<sup>227</sup> Act No. 1459, Sec. 51.

<sup>228</sup> See: Securities and Exchange Commission v. Pimentel, No. L-4228, January 23, 1952: "The fact that Sec. 51 of the Corporation Law accords the

<sup>223</sup> Act No. 1459, Sec. 36, as amended by Sec. 15 of Act No. 3518.

<sup>224</sup> Act No. 1459, Sec. 37, as amended by Sec. 16 of Act No. 3518.

<sup>225</sup> On the reconstitution of lost or destroyed records, see: Castillo v. Securities and Exchange Commission, No. L-6918, October 30, 1954: "The time limit imposed by Sec. 2 of Republic Act No. 62, as amended by Republic Act No. 350, Philippine Annotated Laws Title 47 Sec. 120, for reconstruction of lost articles of incorporation and by-laws, was not applicable to a corporation which, though its own copies had been destroyed, could produce authentic copies which were in custody of a bank with which it had been doing business, and the articles of incorporation could properly be reconstituted, after expiration of the limitation date in Sec. 2, by reference to Sec. 3 of Republic Act No. 62, Philippine Annotated Laws Title 47 Sec. 121, and presentation of the preserved copy to the Securities and Exchange Commission," 2 Phil. Dig. Sec. 15, 161, and: "The fact that the Securities and Exchange Commission, in reconstituting the articles of incorporation of a corporation under Republic Act No. 62, Philippine Annotated Laws Title 47 Sec. 119 *et seq.*, on the basis of an authentic copy secured by the corporation from a third person, mistakenly used a standard form of certificate certifying that the reconstituted articles were a true and correct copy of the signed duplicate copy of the original, can be considered as immaterial, it being sufficient that the commission was satisfied that the copy submitted to it was authentic," 2 Phil. Dig. Sec. 15, 161.

<sup>226</sup> See: Pirovano v. de la Rama Steamship Co., No. L-6817, July 31, 1958: "Corporate acts of a corporation must appear in its books or records." 2 Phil. Dig. Sec. 14, 161.

Business companies must also keep a book known as the Stock and transfer book in which must be kept a record of all stock, the names of the shareholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made and the date of payment of any installment; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by whom and to whom made; and such other entries as the by-laws may prescribe. The Stock and transfer book and the record of all business transactions of the company and the minutes of any meeting are to be kept in the principal office of the company<sup>229</sup> and, must be open to the inspection<sup>230</sup> of any director, shareholder<sup>231</sup> or member of the company, even through an agent or an attorney-in-fact,<sup>232</sup> during business hours of a business day, throughout the year, any limitation of this right by the board of directors being against the law.<sup>233</sup> Shareholders also have the right to make excerpts and copies of the contents of company's books, as well as to obtain certified copies of minutes, provided that these have been recorded and approved by the directors.<sup>234</sup>

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right to inspect or examine corporate books only to stockholders or officers of the corporation does not impair the power of the Securities and Exchange Commission, under Sec. 1 of Commonwealth Act No. 287, Philippine Annotated Laws Title 67 Sec. 46, to order an investigation of the books and records of a corporation charged with violating Sec. 51 of the Corporation Law, Philippine Annotated Laws, Title 25 Sec. 53, by failing to keep complete records with respect to all business transactions, even upon charges filed by non-stockholders", 2 Phil. Dig. Sec. 14, 160-161.

<sup>229</sup> Act No. 1459, Sec. 52.

<sup>230</sup> For a rather recent view of the problem, see: Albao, *The Stockholders' Right of Inspection of the Book and Records of the Corporation*, 1 *University of the East L.J.* 74-88 (1958-59).

<sup>231</sup> See: *Lizares v. Financing Corporation*, No. L-3401, June 26, 1950: "The right of a stockholder to inspect the books and records of the corporation, under Secs. 51 and 52 of the Corporation Law, Philippine Annotated Laws Title 25 Secs. 53, 54, is clear, enforceable by mandamus, and may be exercised by the stockholder in person or by any proper representative either with or without the attendance of the stockholder himself", 2 Phil. Dig. Sec. 42, 174, and also: "The right of a stockholder to inspect the books and records of the corporation is not open to question on the ground of necessity for its exercise, and refusal of permission cannot be justified by sending him such information as he specifically requests or because the president of the company has furnished requested data and information, or even because the stockholder has already recently inspected the records." 2 Phil. Dig. Sec. 42, 174, and: "The fact that a demand by stockholders for leave to inspect the books and records of the corporation is addressed to some officer other than the secretary, such as to the general manager, is not sufficient ground for denying him the right of inspection." 2 Phil. Dig. Sec. 42, 174, and, finally, still in the same case: "It is the general rule that a demand made upon officers of the corporation personally is equally as effective as one addressed to the corporation itself, or to its board of directors, where the demanding stockholder is exercising a statutory right to inspect the books and records." 2 Phil. Dig. Sec. 42, 174.

<sup>232</sup> See: *Philpotts v. Philippine Manufacturing Corporation*, 40 Phil. 471.

<sup>233</sup> See: *Pardo v. Hercules Corporation*, 47 Phil. 964.

<sup>234</sup> See: *Veraguth v. Isabela Sugar Co.*, 57 Phil. 266.

The shareholders' right to inspect the books of a company is limited in the case that the company wishes to keep the secret over a formula or a manufacturing process<sup>235</sup> or in the case of a foreign company or of a company not formed, organized or existing under the laws of the Philippines.<sup>236</sup>

While any shareholder has the right to inspect corporate books and documents for the purpose of information on the business of a company and of guaranteeing the protection of his interests therein,<sup>237</sup> the President of the Philippines may, at any time, order the Solicitor-General, the Auditor-General, the National Treasurer, or any other officer of the Government, to make an examination into the business affairs, administration, and condition of any company transacting business in the Philippines, and it is the duty of those officers, or any other officer designated, to make examination. For the purpose thereof the Solicitor-General, the Auditor-General, the National Treasurer, or other official designated has the authority to administer oaths to the directors, officers, shareholders, or members of any company or the other persons, and to examine under oath or otherwise such directors, officers, shareholders, members, or other persons in relation to the business transacted by said company, the administration of its affairs and the condition thereof. For the purpose of such examination, the books, papers, letters and documents belonging to such company pertaining to its business administration or condition are opened to the Solicitor-General, the Auditor-General, the National Treasurer, or other officer designated, and a *subpoena* or *subpoena duces tecum* may be issued by the said officials directing any person in the Philippines to appear as a witness and to produce for the inspection of the Solicitor-General, the National Treasurer, or other officer designated, any books, papers, documents, letters, or other records in his possession.<sup>238</sup>

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<sup>235</sup> See case cited at footnote (233), *supra*.

<sup>236</sup> Act No. 1459, Sec. 73. "Any foreign corporation or corporation formed, organized, or existing under the laws of the Philippines, and lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, save and except such only as provide for the creation, formation, organization or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of members, stockholders, or officers of corporation to each other or the corporation: *Provided, however*, That nothing in this section contained shall be construed or deemed to impair any rights that are secured or protected by the Treaty of Peace between the United States and Spain signed at the city of Paris on December tenth, eighteen hundred and ninety-eight."

<sup>237</sup> For an American case dealing with the purpose for which a shareholder or an officer may exercise the right to examine corporate books and records, see: *Sawyers v. American Phenolic Corporation*, 404 Ill. 440, 89 N.E. 2d 374, 15 A.L.R. 2d 1; see also: A.L.R. Digests, Corporations, Secs. 118, 246.

<sup>238</sup> "Any witness failing to obey such subpoena shall, upon the application of the official who issued the same, be liable to punishment by the Supreme

The investigators must make a full and complete report to the President of the Philippines of the examination made by him, together with his recommendations, and the President of the Philippines, if he deems proper, shall direct the Solicitor-General, to take such proceedings as the report may seem to justify and the state of the case requires.<sup>239</sup>

The Solicitor-General, the Auditor-General, the National Treasurer, or other officer designated by the President of the Philippines to make the examination must not disclose to anyone other than the President of the Philippines, the details or results of the examination or investigation, and if the officer designated to make the examination discloses to any other than the President of the Philippines, the details or results of the examination or investigation, he is punishable by imprisonment for not less than one year nor more than five years or by a fine of not less than five hundred pesos nor more than two thousand pesos, or both such fine and imprisonment, in the discretion of the court.<sup>240</sup>

Shareholders of a Philippine company have the right <sup>241</sup> to:

a) determine the value of share of capital without par value and the consideration thereof, if such consideration was neither prescribed in the articles of incorporation <sup>242</sup> nor fixed by the board of directors pursuant to authority conferred in the articles of incorporation.<sup>243</sup> Consideration shall then be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the by-laws, provided that the call for such meeting contains notice of such purpose;<sup>244</sup>

b) increase to any number not exceeding fifteen or reduce to any number not less than five (in the case of a non-stock company), or increase to any number not exceeding eleven or reduce to any number not less than five (in the case of a stock company) the number of directors, such changes to take place upon the formal assent

Court or the Court of First Instance, as the case may be, in the same manner and to the same extent as if he had disobeyed a subpoena issued out of the Supreme Court or the Court of First Instance in a matter pending before either of said courts." Act No. 1459, Sec. 54, as amended by Act No. 3850 and by the Constitution.

<sup>239</sup> Act No. 1459, Sec. 54, as amended by Act No. 3850 and by the Constitution.

<sup>240</sup> Act No. 1459 Sec. 55.

<sup>241</sup> In particular for the minority shareholders' rights, see: Nollado, *The Rights of Minority Stockholders in a Corporation*, 9 *Far Eastern L. Rev.* 463-471 (1961).

<sup>242</sup> Act No. 1459, Sec. 5(a), as amended by Sec. 2 of Act No. 3518.

<sup>243</sup> Act No. 1459, Sec. 5(b), as amended by Sec. 2 of Act No. 3518.

<sup>244</sup> Act No. 1459, Sec. 5(c), as amended by Sec. 2 of Act No. 3518.

<sup>245</sup> Act No. 1459, Sec. 6(6), as modified by Act No. 3518 and Commonwealth Act No. 287.

of a majority of the members at a regular or special meeting of the members, in the former case, and by the formal assent of the shareholders of the company at a regular or special meeting of the shareholders representing or holding a majority of the shares, in the latter case;<sup>245</sup>

c) issue stock or bond dividend with the approval of as many shareholders as represent not less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the company or at a special meeting duly called for the purpose;<sup>246, 247</sup>

d) increase or reduce <sup>248</sup> the company's capital, provided that this be done by a shareholders' meeting regularly called for the purpose, and the resolution be passed with the favourable vote of two-thirds of the entire company's capital;<sup>249</sup>

e) incur, create, or increase any bonded indebtedness, provided that this be done by a shareholders' meeting regularly called for the purpose, and the resolution be passed by a majority of the subscribed company's capital;<sup>250</sup>

f) invest the funds of the company in any other company or business, or for any purpose other than the main purpose for which the company was organized, provided that said operation has been so authorized in a resolution passed by the affirmative vote of shareholders holding shares in the company entitling them to exercise at least two-thirds of the voting power on such proposal at a shareholders' meeting called for the purpose;<sup>251</sup>

g) amend the company's articles of incorporation by the vote or written assent of two-thirds of its members, if it be a non-stock company, or, if it be a stock company, by the vote or written assent of the shareholders representing at least two thirds of the subscribed capital of the company;<sup>252</sup>

h) adopt by-laws for the government of the company, not inconsistent with the Law, provided that that take place by the affirmative

<sup>246</sup> Act No. 1459, Sec. 16, as amended by Act No. 2792 and Act No. 3518.

<sup>247</sup> For an American case dealing with minority shareholders' rights to enjoin further or additional issuance of stock, see: *R.M. Gaines v. Long Manufacturing Company, Inc., et al.*, 234 N.C. 340, 67 S.E. 2d 350, 38 A.L.R. 2d 1359.

<sup>248</sup> For an American case dealing with reduction of capital stock and distribution of capital assets upon reduction, see: *Lester Martin, et al. v. American Potash & Chemical Corporation*, 92 A. 2d 295, 35 A.L.R. 2d 1140; see also: *A.L.R. Digests, Corporations*, Secs. 179, 182.

<sup>249</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>250</sup> Act No. 1459, Sec. 17, as amended by Act No. 3518 and Commonwealth Act No. 287.

<sup>251</sup> Act No. 1459, Sec. 17½, as inserted by Commonwealth Act No. 437.

<sup>252</sup> Act No. 1459, Sec. 18, as amended by Acts No. 3518 and 3610, Commonwealth Act No. 287, and Republic Act No. 337, known as The General Banking Act, as amended.

vote of the shareholders representing a majority of all subscribed capital, whether paid or unpaid, or of a majority of the members if there be no capital stock.<sup>253</sup>

i) amend or repeal any by-law or adopt new by-laws, with a resolution passed by the majority of the subscribed capital, or a majority of the members if there be no capital, passed at a regular or special meeting duly called for the purpose;<sup>254</sup>

j) delegate to the board of directors the power to amend or repeal any by-law or to adopt new by-laws, provided that that be done by a resolution passed with the favourable vote of two-thirds of the subscribed capital;<sup>255</sup>

k) sell, exchange, lease or otherwise dispose of all or substantially all of the company's property and assets, including its goodwill, authorizing the directors thereto with a resolution passed by the affirmative vote of shareholders holding as many shares in the company as entitle them to exercise at least two-thirds of the voting power on such proposal, at a shareholders' meeting called for the purpose;<sup>256</sup>

l) remove the directors of the company from the office by a vote of two-thirds of the members entitled to vote or, if the company be a stock company, by a vote of as many shareholders as represent two-thirds of the subscribed capital entitled to vote;<sup>257</sup>

m) dispose of the stock purchased by the company at sales of stock for unpaid subscription, provided that said disposition take place in accordance with law and the by-laws of the company by a majority vote of all the remaining shares;<sup>258</sup>

n) demand dissolution of the company by the Court of First Instance of the province where the head office of the company is situated, provided that said application be approved by a majority of the members or of the shareholders holding at least two-thirds of all shares of stock issued or subscribed.<sup>259</sup>

Shareholders have several types of actions available for the protection of their interests in a company, whether their interests

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<sup>253</sup> Act No. 1459, Sec. 20, as amended by Act No. 3610, by Commonwealth Act No. 287, and by Sec. 10 of Republic Act No. 337, known as The General Banking Act, as amended.

<sup>254</sup> Act No. 1459, Sec. 22, as amended by Act No. 3610, by Commonwealth Act No. 287 and by Sec. 18 of Republic Act No. 337, known as The General Banking Act, as amended.

<sup>255</sup> *Ibid.*

<sup>256</sup> Act No. 1459, Sec. 28½, as inserted by Sec. 13 of Act No. 3518,

<sup>257</sup> Act No. 1459, Sec. 34.

<sup>258</sup> Act No. 1459, Sec. 45.

<sup>259</sup> Act No. 1459, Sec. 62, as superseded and modified by Sec. 1 of Rule 104 of the Rules of Court.

be personal and direct, as shareholders *uti singuli*, or general and indirect, as shareholders as such or belonging to a class.

When a shareholder suffers a direct injury to his rights, such as denial of his right to inspect the company's books and records, or of his pre-emptive right, he may bring a personal action.

When more than one shareholder or all the shareholders belonging to a class (e.g., shareholders who are denied the same personal right) join together in a suit for themselves as a class or on behalf of all those deprived of the right, the action is called a representative one.<sup>260</sup>

A derivative action may be available when, in order to enforce a corporate right and to redress an injury to the company, one or more shareholders sue on behalf of and for the company.

In order to maintain a derivative suit,<sup>261</sup> which usually involves directors' or officers' fiduciary obligations, a shareholder must be a *bona fide* member of the company on behalf of which he sues, and either his membership must be antedating the time in which the wrong complained of was committed, or his right must be injured

<sup>260</sup> See: *Reyes v. Blouse*, No. L-4420, May 19, 1952: "A suit by minority stockholders of a land transportation corporation, to restrain its directors from carrying out a resolution approved by 92½ of the stockholders authorizing consolidation of the properties and franchises of the corporation with those of another land transportation company, was properly dismissed where it appeared from the evidence submitted that the plan of consolidation, instead of being harmful to the plaintiffs, would be beneficial to both corporations, the remedy of plaintiffs, if they did not approve, being to register their objections in writing and demand payment for their shares as provided in Sec. 28½ of the Corporation Law, Philippine Annotated Laws Title 28 Sec. 30." 2 Phil. Dig. Sec. 44, 175-176.

<sup>261</sup> See *Evangelista v. Santos*, 86 Phil. 387, No. L-1721, May 19, 1950: "Minority stockholders are entitled to bring an action for the benefit of the corporation, known as a "derivative" suit, if the officers of the corporation refuse to sue after being called upon to do so, or even without prior demand where the action is against one who has the controlling interest in the corporation, but the corporation itself is the real party in interest and the stockholder or stockholders instituting the action are merely nominal party plaintiffs for its benefit." 2 Phil. Dig. Sec. 45, 175, and: "A complaint against a principal officer of a corporation for maladministration of its affairs is necessarily one for the benefit of the corporation and can be brought by minority stockholders only under exceptional circumstances and for the benefit of the corporation." 2 Phil. Dig. Sec. 45, 176, and also: "A stockholder's suit is subject to motion to dismiss for failure to state a cause of action where it is brought against a principal officer of the corporation, who controls a majority of the stock, charging mismanagement of the corporate affairs, but seeks to have the damages recovered apportioned among the plaintiffs as stockholders." 2 Phil. Dig. Sec. 45, 176, and, finally, still in the same case: "Stockholders of a corporation may not directly recover damages for themselves against an officer of the corporation by reason of his mismanagement of its affairs, as, to do so, would amount to a distribution of corporate assets prior to dissolution and liquidation of its debts and liabilities in violation of Sec. 16 of the Corporation Law, Philippine Annotated Laws Title 28 Sec. 16." 2 Phil. Dig. Sec. 45, 176-177.



by subsequent devolution of such shares or acquisition thereof.<sup>262</sup> The acts of the directors' or officers' of the company must be either negligent, or *ultra vires* or fraudulent; all legal means afforded by the law must have been tried and exhausted, the company being unable or unwilling to remedy the wrong.

A shareholder who objects to some activity of the company and has properly filed his dissent or has supplied evidence of lack of meeting of the minds of the parties to a contract of subscription may withdraw from the company and demand payment for his shares.<sup>263</sup>

#### 6. *The board of directors.*

Unless otherwise provided by the Law, the corporate powers of all companies formed under Philippine law must be exercised, all business must be conducted and all property of such companies must be controlled and held by a board of not less than five nor more than eleven directors to be elected from among the holders of stock or, where there is no stock, from the members of the company. In this case the board of directors must be composed of not less than five more than fifteen members.<sup>264</sup> Directors' meetings may be held

<sup>262</sup> For a recent view of the problem, see: de la Cruz, *Some Aspects of Stockholders' Derivative Suits*, 9 *Far Eastern L. Rev.* 40-90 (1961).

<sup>263</sup> Act No. 1459, Secs. 17½, 18 and 28½. See also: *National Exchange Corporation v. Ramos*, 51 *Phil.* 310. For an American case dealing with valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, sale of its assets, and the like, see: *Robert D. Sterling, et al. v. Mayflower Hotel Corporation, et al.*, 93 A. 2d 107, 38 *A.L.R.* 2d 425; see also: *A.L.R. Digests, Corporations Secs.* 30, 36.

<sup>264</sup> Act No. 1459, Sec. 28, as amended by Executive Order No. 90, Series of 1946. For a recent case of judicial interpretation of the provision of this section, see: *Matic, Jr.*, *Annual Survey of Supreme Court Decisions, Commercial Law*, 8 *Far Eastern L. Rev.* 553 at 555-556 (1960): "In *Ramirez v. Orientalist Co., et al.*, 38 *Phil.* 534, it was held that the fact that the power to make corporate contracts is vested in the Board of Directors does not signify that a formal vote of the Board must always be taken before contractual liability can be fixed upon a corporation. It is enough that the transaction was had with the knowledge and acquiescence of the Board. In another case (*Zamboanga Trans. Co., Inc. v. Bachrach Motor Co., Inc.*, 52 *Phil.* 244) it was further held that when the president of a corporation, who is one of the principal stockholders and at the same time its general manager, auditor, attorney or legal adviser, is empowered by its by laws to enter into chattel mortgage contracts, subject to the approval of the Board of Directors, and enters into such contracts with the tacit approval of two members of the Board of Directors, one of whom is a principal shareholder, both of whom, together with the president, form a majority, and said corporation takes advantage of the benefits afforded by said contract, such acts are equivalent to an implied ratification of said contract by the Board of Directors and binds the corporation even if not formally approved by said Board of Directors as required by the by-laws of the aforesaid corporation. This sound principle was affirmed in the case of *Francisco U. Buenaseda v. Bowen & Co., Inc., et al.*, G.R. No. L-14985, Dec. 29, 1960. In said case, the president of said corporation acting in his personal capacity and also on behalf of the corporation contracted to pay plaintiff 37½% of the profits to be realized from the importation of certain materials, if the plaintiff

at the place fixed in the by-laws. Directors are entitled to compensation.<sup>265</sup>

A director of a stock company must own in his own right at least one share of the capital stock of the company, and said stock must stand in his name on the books of the company. If he ceases to be the owner of at least one share, he thereby ceases to be a director. At least two of the directors must be residents of the Philippines.<sup>266</sup>

A director of a non-stock company must be a member of the company. Two directors resident of the Philippines must be in the board. Directors of banking companies must meet the requirements of directors of stock companies, and, in addition, at least two-thirds of the members of the board of directors of any bank or banking institution which may be established after the date of approval of the General Banking Act <sup>267</sup> must be citizens of the Philippines. All members of the board of directors of the rural banks must be citizens of the Philippines.<sup>268</sup>

The abovementioned provisions do not apply to companies, other than banks, in which the United States has or may have a vested interest, pursuant to the powers granted or delegated by the Trading with the Enemy Act, as amended, and similar Acts of Congress of the United States relating to the same subject or by Executive

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could obtain the necessary amount to cover the cash marginal deposit required for the importation in order to open a letter of credit. At the time the said agreement was made, the Board of Directors of the corporation was composed of the president, his wife, the plaintiff, and two others, with the president and his wife controlling the majority of the stocks of the corporation. The Board did not repudiate the agreement but, on the contrary, acquiesced in and took advantage of the benefits afforded by said agreement. On the suit by plaintiff against the corporation to recover the promised 37½% of the profits, the court held that the acts of the Board are equivalent to an implied ratification of the agreement by the Board of Directors and binds the corporation even without formal resolution passed and recorded."

<sup>265</sup> For an American case dealing with the estoppel of a shareholder to recover back or to secure restoration of compensation of corporate officers claimed to be exorbitant or unauthorized, see: *John Uccello v. Gold'n Foods, Inc., et al.*, 325 Mass. 319, 90 N.E. 2d 530, 16 A.L.R. 2d 459. See: *Lichauco v. Atlantic, Gulf and Pacific Co.*, 47 Official Gazette 678, No. L-2016, August 23, 1949; "No principle of law requires that a corporation, during a long period of time when it was not in operation due to war conditions, and received no income, continue to pay the salaries of its officers, particularly while they were likewise incapacitated and performing no service; and any holding which would require that a corporation pay salaries accruing during such time and under such circumstances would be tantamount to depriving the corporation of its property without due process of law." 2 Phil. Dig. Sec. 28, 167.

<sup>266</sup> Act No. 1459, Sec. 30, as amended by Executive Order No. 90, Series of 1946.

<sup>267</sup> Sec. 13, of Republic Act No. 337, known as The General Banking Act, as amended.

<sup>268</sup> Sec. 4, Republic Act No. 720, known as The Rural Banks' Act, as amended by Republic Act No. 1097, approved on 15th June, 1954.

Order No. 9095 of the President of the United States, as amended, or both.

At the meeting for the adoption of the original by-laws, or at such subsequent meeting as may be then determined, directors must be elected to hold their offices for one year and until successors are elected and qualified. Thereafter, the directors of the company must be elected annually by the shareholders, if it be a stock company, or by the members of a non-stock company and if no provision is made in the by-laws for the time of election, the same must be held on the first Tuesday after the first Monday in January. Unless otherwise provided in the by-laws, two weeks' notice of the election of directors must be given by publication in some newspaper of general circulation devoted to publication of general news at the place where the head office of the company is established or located, and by written notice deposited in the post-office, postage pre-paid, addressed to each shareholder, or, if there be no shareholders, then to each member at his last known place of residence. If there be no newspaper published at the place where the head of the company is established or located, a notice of the election of directors must be posted for a period of three weeks immediately preceding the election in at least three public places, in the place where the head office of the company is established or located.<sup>269</sup>

At all elections of directors there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the subscribed capital entitled to vote, or, if there be no capital stock, then a majority of the members entitled to vote. The elections must be by ballots, and every shareholder entitled to vote has the right to vote in person or by proxy the number of shares of stock standing at the time fixed in the by-laws in his own name on the stock books of the company, and said shareholder may vote such number of shares for as many persons as there are directors or he may cumulate said shares and give one candidate as many votes as equal to the number of directors to be elected multiplied by the number of his shares, or he may distribute them on the same principle among as many candidates as he sees fit. The whole number of votes cast by a shareholder cannot exceed the number of shares owned by him as shown by the books of the company multiplied by the whole number of directors to be elected. Moreover no stock declared delinquent by the board of directors for unpaid subscriptions can be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of companies

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<sup>269</sup> Act No. 1459, Sec. 29.

which have no capital stock may cast as many votes as there are directors to be elected but cannot cast more than one vote for one candidate.<sup>270</sup> Directors receiving the highest number of votes are declared elected. Any meeting of the shareholders or members called for an election may adjourn from day to day or from time to time if, for any reason, no election is had or if there are not present or represented by a proxy, at the meeting, the owners of a majority of the subscribed capital entitled to vote, or, if there be no capital stock, a majority of the members entitled to vote.<sup>271</sup> If for any cause no meeting is held on the day fixed and appointed by law or by the by-laws of the company for holding the election of directors,<sup>272</sup> a meeting may be called for that purpose either by the directors or as provided by law.<sup>273</sup> At the meeting held in pursuance of such

<sup>270</sup> For an American case dealing with construction, application, and effect of constitutional provisions or statutes relating to cumulative voting of stock for corporate directors, see: *State of Ohio Ex Rel. Frank H. Kearns v. William Rindsfoos, et al.*, 161 Ohio St. 60, 118 N.E. 2d 138, 43 A.L.R. 2d 1316; see also: A.L.R. Digests, Corporations Sec. 310.

<sup>271</sup> Act No. 1459 Sec. v1, as amended by Sec. 14 of Act No. 3518.

<sup>272</sup> See: *Ponce v. Encarnacion*, 53 Official Gazette 3477, No. L-5883, November 28, 1953: "Where the by-laws of a corporation require the calling of a meeting of the stockholders every even year, for election of directors, the directors have no right to hold over on failure of one of their number to call the meeting," 2 Phil. Dig. Sec. 26, 166.

<sup>273</sup> Sec. 26, "Whenever, from any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, any judge of a Court of First Instance, on the showing of good cause therefore, may issue an order to any stockholder or member of a corporation directing him to call a meeting of the corporation by giving proper notice required by this Act or by the by-laws; and if there be no person legally authorized to preside at such meeting, the judge of the Court of First Instance may direct the person calling the meeting to preside at the same until a majority of the members or stockholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purpose of the meeting," of Act No. 1459. For a recent judicial interpretation of the provisions of this section, see: *Campos, Jr. and Catungal*, Annual Survey of 1959 Supreme Court Decisions, Commercial Law, 35 Phil. L.J. 805 (1960): "Whether the courts have the power to appoint an election committee to take charge of the elections of a board of directors was the question involved in the case of *Board of Directors & Election Committee of the SMB Workers' Savings and Loan Association, Inc., et al. v. Tan, de Castillo, et al.* G.R. No. L-12282, March 31, 1959. After setting aside the election of the new board of directors, the respondent court ordered a new election, and upon *ex parte* motion of the plaintiff, appointed a new election committee to supervise and conduct the elections in lieu of the incumbent committee. The new body was composed of representatives of the defendant, the plaintiff, and of the court. The defendant contended that this was in excess of its jurisdiction.

The Court held that courts in the exercise of its equity jurisdiction, may appoint such a committee, it having been shown that the election committee provided for in Section 7 of the by-laws of the association that conducted the elections annulled by the respondent court, if allowed to act as such, may jeopardize the rights of the respondents-plaintiffs. (citing 18 C.J.S. 270). The provisions of the Corporation Law with respect to the appointment of a master by the court to conduct the elections of the board of directors exclusively refers to a situation "when . . . there is no person authorized to call a meeting, or when the officer authorized to do so fails, refuses, or neglects to call a meeting

call the election may be had with the same effect as if it had taken place on the day fixed by law or by the by-laws of the company.<sup>274</sup>

Immediately after election, the directors of a company must organize the election of a president,<sup>275</sup> who must be one of their number, a secretary or clerk who must be a resident of the Philippines and a citizen of the Philippines or of the United States, and such other officers as may be provided for in the by-laws.<sup>276</sup> The directors and officers so elected must perform the duties enjoined on them by law and by the by-laws of the company.<sup>277</sup> A majority of

... " Section 26, Act No. 1459 as amended (Corporation Law); thus, the Supreme Court's recourse to equity."

<sup>274</sup> Act No. 1459, Sec. 32.

<sup>275</sup> See: *Lingayen Gulf Electric Power Co. v. Baltazar*, 49 Official Gazette 2809, No. L-4824, June 30, 1953: "A person is not entitled to any compensation for acting as president of a corporation where the by-laws are silent as to salary for that position and the stockholders and incorporators have provided salaries for the general manager and other officers and employees, but none for the president except a *per diem* for attending directors' meetings. The fact that the person serving as president has acted in that capacity for several years without claiming a right to salary may also be considered." 2 Phil. Dig. Sec. 28, 167.

<sup>276</sup> See: *Gurrea v. Lezama*, No. L-10556, April 30, 1958 (four justices dissenting): "In view of Sec. 33 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 35, designating the 'officers' of a corporation as the president, secretary, 'and such other officers as may be provided for in the by-laws,' only those holding positions so designated, or some other position designated as that of an 'officer' in the by-laws, can be considered an 'officer', the rest being merely employees or subordinate officials." 2 Phil. Dig. Sec. 25, 166 and: "As our law provides that only those enumerated in the charter or by-laws of a corporation are considered 'officers' thereof, a manager who has not been so enumerated therein, but is only incidentally mentioned, cannot be considered an officer of the corporation." 2 Phil. Dig. sec. 25, 166.

<sup>277</sup> For an American case dealing with the power of the president of a company to have litigation instituted by it where the board of directors has failed or refused to grant permission, see: *Sterling Industries, Inc. v. Ball Bearing Pen Corporation, et al.*, 298 N.Y. 483, 84 N.E. 2d 790, 10 A.L.R. 2d 694; see also: A.L.R. Digest, Corporation Secs. 24, 120. For an American case dealing with the authority of the president to subordinate corporation's claim, lien, or the like, see: *P. Warren Smith v. Shoreline Printers & Publishers, Inc., et al.*, 6 Ill. App. 2d 290, 127 N.E. 2d 677, 53 A.L.R. 2d 1413; see also: A.I.R. Digests, Corporations Sec. 120. For an American case dealing with authority of corporate officers to mortgage or pledge corporate personal property, see: *Sidney J. Kagan, Trustee in Bankruptcy v. Benjamin B. Levenson, et al.*, 334 Mass. 100, 134 N.E. 2d 415, 62 A.L.R. 2d 704; see also: A.I.R., Digests, Corporations Sec. 118. For an American case dealing with the power of a corporate officer or agent to hire employees for life, see: *Chesapeake & Potomac Telephone Company of Baltimore City v. Edward T. Murray*, 84 A. 2d 870, 28 A.L.R. 2d 920; see also: A.L.R. Digests, Corporations Sec. 118. For an American case dealing with the right of corporate officer to purchase corporate assets from a corporation, see: *H. K. Gilbert, et al., as Members of the Board of Trustees of McLeod Infirmary v. McLeod Infirmary, An Eleemosynary Corporation, et al.*, 219 S.C. 174, 64 S.E. 2d 524, 24 A.L.R. 2d 60; see also: A.I.R. Digests, Corporations, Sec. 137. For an American case dealing with the power of a particular office or agent of a business company to bind it by donation to a charity or similar institution, see: *Memorial Hospital Association of Stanislaus County, a Nonprofit Corporation v. Pacific Grape Products Company, a Corporation*, 45 Cal. 2d 634, 290 P. 2d 481, 50 A.L.R. 2d 442; see also: A.L.R. Digests, Corporations, Secs. 99, 118. See: *Grey v. Insular Lumber Co.*, 49 Official Gazette 4357,

the directors shall constitute a quorum for the transaction of corporate business<sup>278</sup> and every decision of a majority of the quorum duly assembled as a board shall be<sup>279</sup> valid as a corporate act.<sup>280,281</sup>

No. L1535, September 28, 1953: "Where there is nothing in the terms of a contract of employment involving a bonus clause to indicate that it is subject to approval of the board of directors, and it is entered into by the president of the corporation in its behalf with the employee, right to the bonus is not dependent upon the board's approval." 2 Phil. Dig. Sec. 29, 167-168. See also: *Republic v. Philippine Resources Development Corporation*, No. L-10141, January 31, 1958: "Power of a corporation to sue and be sued is lodged, by the Title 25 Sec. 13), in its board of directors, not in its president." 2 Phil. Dig. Corporation Law (Act No. 1459 Sec. 13, as amended, Philippine Annotated Laws, Sec. 29, 158 and: "Even though the attorney who attempted to file a complaint in intervention in behalf of a corporation, in an action brought by a third person against the president of the corporation individually, had not been actually authorized by the board of directors to appear for and in behalf of the corporation, where he was not Secretary-treasurer of the corporation and a member of its board of directors, and the other members of the board were the president and his wife, and the action involved corporate properties and interests, even a single stockholder could sue in behalf of the corporation, and there could accordingly be no ground for objecting to its representation by the attorney as an officer and director." 2 Phil. Dig. Sec. 29, 168. As far as the liabilities of directors and officers, see: *Banque Generale Belge v. Walter Bull & Co.*, 47 Official Gazette 138, No L-48494, June 30, 1949: "The president and manager of a corporation who enters into and signs a contract in his official capacity cannot be made personally liable thereon in the absence of stipulation to that effect." 2 Phil. Dig. Sec. 30, 168. See also: *Salvatierra v. Garlitos* No. L-11442, May 23, 1958: "A person acting or purporting to act on behalf of a purported corporation which has no valid existence assumes personal liability on contracts entered into or acts performed in the name of the corporation." 2 Phil. Dig. Sec. 30, 168. For a recent case dealing with breach of trust by the directors, see: *Reyes v. Tan*, No. L-16932, September 30, 1961: the company in question was granted dollar allocation by the Central Bank for the importation of raw materials. However, it imported finished goods instead of said raw materials. For this reason the Central Bank stopped the dollar allocation. The board of directors failed to take action which constitutes fraud or consent on their part. Therefore a breach of trust was committed which justifies the derivative suit brought by the minority shareholders.

<sup>278</sup> The directors and officers have the authority to carry out all business of the company, unless such transactions be expressly reserved to the shareholders by law (Secs. 5; (6); 17; 17½; 18; 20; 22; 28½; 34; 62 of the Act No. 1459) or by the by-laws.

<sup>279</sup> For a recent decision reaffirming that a court will not substitute its judgment for that of the board of directors of a company acting in good faith on management affairs, see: *Matic, Jr.*, Survey of 1961-1962 Supreme Court Decisions in Commercial Law, 10 Far Eastern L. Rev. 1 at 6-7 (1962): "It is said to be a well-known rule that questions of policy or of management are left solely to the honest decision of officers of a corporation, and the court is without authority to substitute its judgment for that of the board of directors, the board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts. *Fletcher on Corporations*, Vol. 2, p. 390. The rule was applied in the case of *Montelibano, et al. v. Bacolod Murcia Milling Co., Inc.* L-15092, May 18, 1962. The facts of this case show that in 1919, milling contracts to last for 30 years were executed between plaintiff sugar planters and defendant milling company, the contracts providing that the resulting product would be divided in the ratio of 45% for the company and 55% for the planters. Sometime in 1936, the contracting parties agreed to increase the planter's share to 60% but the operation of the contract would be extended to 45 years. On August 20, 1936, the board of Directors of defendant milling company adopted a resolution granting further concession to the planters to the effect that if during the operation

Directors of a company may be removed from office by a vote of two-thirds of the members entitled to vote, or, if the company be a stock company, by a vote of the shareholders holding or representing two-thirds of the subscribed capital stock entitled to vote. However, such removal may only take place either at a regular meeting of the company or at a special meeting called for the purpose, and in either case, after previous notice to shareholders or members of the intention to propose such removal at the meeting.<sup>282</sup> A special meeting of the shareholders or members of a company for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote, or, if it be a stock company, on the written demand of the shareholders representing or holding at least one-half of the shares entitled to be voted. Should the secretary or clerk fail or refuse to call the special meeting demanded or fail or refuse to give the notice, or, if there is no secretary or clerk, the call for the meeting may be addressed directly to the members or shareholders by any member or shareholder of the company signing the demand. Notice of the time and place of any such meeting, as well as of the intention to

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of the amended milling contract for the sugar production all the other sugar central mills in Negros Occidental should grant to their planters better concessions than those stipulated therein, then it is understood that similar concessions are considered granted to plaintiff sugar planters. Since it appeared undisputed that sugar centrals which produce over  $\frac{1}{3}$  of the entire annual sugar production in the province have granted progressively increasing participation to their adherent planters, the high court ruled that the defendant milling company is duty-bound, under the terms of its resolution of August 20, 1936, to grant similar increases to plaintiff sugar planters. The rule, according to the court, is that where the act is in direct and immediate furtherance of the corporation's business, fairly incident to the express powers and reasonably necessary to their exercise, the corporation has the power to do it; otherwise not, citing *Fletcher, Cyc. Corp.* Vol. 6, Rev. Ed., 1950, pp. 266-368; and that where the resolution was passed in good faith by the Board of Directors, it is valid and binding whether or not it will cause losses or decrease the profits of the central, the court has no authority to review the same."

<sup>280</sup> Act No. 1459, Sec. 33.

<sup>281</sup> See: *Sotto v. Commission on Elections*, 76 Phil. 516, No. L-329, April 16, 1946: "By the great weight of authority, a special meeting of directors cannot validly be held without giving notice in advance to every director except where there is some express provision in the charter or by-laws to the contrary, or where it is impossible or impracticable to give notice." 2 Phil. Dig. Secs. 32-33, 169 and also: "Although the articles or by-laws of a corporation provide that a majority of the Board of Directors shall constitute a quorum for the transaction of business, such a provision does not validate action taken at a special meeting of the board without notice in advance to all members thereof, except as the corporation may be estopped to deny validity of the action taken as against third persons." 2 Phil. Dig. Secs. 32-33, 169.

<sup>282</sup> See case cited at footnote (276) *supra*: "A person appointed 'manager' of a corporation by the Board of Directors is not an 'officer' unless made so by the by-laws, and is accordingly subject to suspension or removal by the board of directors upon such terms as it may see fit without necessity of concurrence of a specified percentage of the stockholders, as required by the by-laws for removal of 'officers'."

propose such removal, must be given by publication or by written notice as prescribed by the law.<sup>283</sup> In case of removal on the vote of the shareholders or the members, as the case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general or at any special meeting called for the purpose, after giving notice as prescribed by the law.<sup>284, 285</sup>

#### 7. *Forced sale of franchises.*

Any franchise granted to a company to collect tolls or to occupy, enjoy, or use public property or any portion of the public domain or any right of way over public property or the public domain, and any rights and privileges acquired under such franchise may be levied upon and sold under execution, together with the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of such franchise or right of way, in the same manner and with like effect as any other property to satisfy any judgment against the company. However, the sale of the franchise or right of way and the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of said franchise or right of way is especially decreed and ordered in the judgment. Such sale cannot become effective until confirmed by the court after due notice.<sup>286</sup>

The officer selling any franchise under execution must, after confirmation by the court, issue a certificate of purchase to the purchaser of the franchise and must place such purchaser in peaceful possession of all property described in the judgment as necessary for the enjoyment of the franchise or right of way, the exercise of its powers, or the receipt of its proceeds.<sup>287</sup>

From and after issuance of the certificate of purchase of the franchise or right of way, the purchaser may exercise all the powers and privileges and enjoy all the rights and be subjected to all the liabilities of the franchise or grant of right of way to the same extent as would have been the company had the sale not taken place.<sup>288</sup>

The purchaser of the franchise or his assignee is entitled to recover any penalties or damages recoverable by the company and imposed or allowed by law for an injury to the franchise, or any property necessary for the enjoyment of the franchise or right of way, or of the privileges of either, occurring during the time he holds the

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<sup>283</sup> See: Act No. 1459, Sec. 29.

<sup>284</sup> See: Act No. 1459, Sec. 29.

<sup>285</sup> Act No. 1459, Sec. 34.

<sup>286</sup> Act No. 1459, Sec. 56.

<sup>287</sup> Act No. 1459, Sec. 57.

<sup>288</sup> Act No. 1459, Sec. 58.



franchise or right of way. Said purchaser or his assignee may use the name of the company in any action necessary to recover the aforesaid penalties and damages, and the recovery of such penalties or damages constitutes a bar to any subsequent action to recover the same by or on behalf of the company.<sup>289</sup>

The company whose franchise or right of way is sold as provided by the Law <sup>290</sup>, except as to the rights and powers asquired by the purchaser and the duties, obligations, penalties, and forfeitures imposed on the purchaser of the franchise or right of way, retains the same powers, is bound to discharge the same duties, and is liable to the same obligations, penalties, and forfeitures as before such sale. The rights acquired by the purchaser of the franchise is subject to the prior rights of mortgagees and lien holders.<sup>291</sup>

The sale of any franchise and right of way under execution is made in the place in which the company has its head office <sup>292</sup>. As far as public services are concerned, subject to established limitations and exceptions and except for provisions to the contrary, it is unlawful for any public service or for the owner, lessee or operator thereof, without the previous approval and authorisation of the Commission, even in case of forced sale <sup>293</sup>, to sell, alienate, mortgage, encumber or lease its property, franchise, certificate privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof with those of any other public service. The approval is given, after notice to the public and after hearing the persons interested at a public hearing, if it be shown that there are just and reasonable grounds for making the mortgage or encumbrance, for liabilities of more than one year maturity, or the sale, alienation, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of sale, the date on which the same is to be consummated must be fixed in the order of approval. However, nothing in the law can be construed to prevent the transaction from being negotiated or completed before its approval or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of business <sup>294</sup>

*(To be continued in the next issue)*

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<sup>289</sup> Act No. 1459, Sec. 59.

<sup>290</sup> See: Act No. 1459, Sec. 56.

<sup>291</sup> Act No. 1459, Sec. 60.

<sup>292</sup> Act No. 1459, Sec. 61.

<sup>293</sup> See: *Raymundo v. Luneta Motor Co.*, 58 Phil., 899.

<sup>294</sup> Sec. 20, par. (g) of Commonwealth Act No. 146, known as The Public Service Act, as amended.