

JOINT STOCK COMPANIES UNDER PHILIPPINE LAW

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(Continuation)

8. Foreign companies

No foreign company or company formed, organised, or existing under any laws other than those of the Philippines can transact business in the Philippines²⁹⁵ until after it has obtained a license for

²⁹⁵ See: *General Corporation of the Philippines v. Union Insurance Society*, 48 Official Gazette 73, No. L-2684, September 14, 1950; For a foreign corporation to be regarded as doing business in the Philippines, there must be continuity of conduct and intention to establish a continuing business. 2 Phil. Dig. Sec. 51, 181 and also: "Where a foreign insurance corporation engages in regular marine insurance business here by issuing policies abroad to cover shipments to the Philippines, the policies being made payable here and the company keeping an agent here to receive and settle claims flowing from the policies, it must be regarded as doing business here and subject to jurisdiction of the local courts." 2 Phil. Dig. Sec. 51, 181. See also: *Pacific Micronesian Line, Inc. v. del Rosario*, 50 Official Gazette 5271, No. L-7154, October 23, 1954: "An isolated act, contract, or transaction does not constitute 'doing business in the Philippines' by a foreign corporation." 2 Phil. Dig. Sec. 51, 181 and also: "A foreign corporation was not 'doing business in the Philippines' for purposes of obtaining jurisdiction over it by service of process pursuant to Rule 7, Sec. 14 of the Rules of Court, where it owned no property in the Philippines, was not licensed to do business there, its ships were never sent to the Philippines nor any business solicited there, and its only act relating to the Philippines was the hiring of a Filipino crew member through a Filipino agency." 2 Phil. Dig. Sec. 51, 101. See also: *Pacific Vegetable Oil Corporation v. Singson*, No. L-7917, April 29, 1955: "An American corporation, as a foreign corporation, was not required to obtain a license to do business in the Philippines in order to enter into transaction for purchase of copra from Philippine vendors, through the latter's brokers in the United States, for delivery 'c.i.f.' there, with price to be paid at San Francisco through a letter of credit to be opened by the Bank of California, as transactions of this kind do not constitute doing business in the Philippines." 2 Phil. Dig. Sec. 51, 181. The Supreme Court has recently redefined the term "transacting business" (See: Platon: *Annual Survey of 1962 Supreme Court Decisions*, Commercial Law, 38 Phil. L.J. 126 (1963): "For the past, the Court has 'invariably taken this term to signify a continuity of business activities and has accordingly laid down the general rule that a foreign corporation transacts business in a state if it carries on a substantial part of its ordinary business there (This rule rests on a long line of American decisions, notably in *Wood v. Ball*, 190 N.Y. 217, 83 N.E. 21; *General R. Signal Co. v. Virginia*, 246 U.S. 500; 38 S.Ct. 360; and *Bullfrog Goldfield v. Jordan*, 174 Cal. 342, 163, p. 40). Thus, even if a foreign corporation sues within a state a particular business activity which is part of the general business engaged in by such corporation, the particular business activity cannot be considered as a 'transaction of business' if it is in fact a single or isolated act performed in the state by the foreign corporation. Because here, there is no continuity and substantiality of business operations (*Cooper Mfg. Co. v. Ferguson*, 113 U.S. 727, 5 S.Ct. 739, 28 L. Ed. 1137; *Pacific Micronesian Line v. del Rosario*, G.R. No. L-7154, Oct. 23, 1954). There is, however, an exception to this rule that is, notwithstanding the fact that a business transaction by a foreign corporation in a state is single and isolated, such transaction may still come within the term 'transaction of business' if it shows an intent on the part of the corporation to engage in business in the state (*Woiser*

that purpose from the Securities and Exchange Commissioner, upon order of the Central Bank in case of banks, savings and loan banks, trust companies, and banking institutions of all kinds, and upon order of the Secretary of Commerce and Industry in case of all other

Land Co. v. Bohrer, 78 Or. 202, 152 P. 869). This, it has been observed, is the true test in determining whether or not a foreign corporation is "transacting business" within a state (Guevara, *The Corporation Law* (1957), p. 164). This year, this test was applied by the Supreme Court in a case (*Far East International Import and Export Corp. v. Nankai Kogo Ltd., et al.*, G.R. No. L-8164, December 29, 1962), involving a domestic corporation, the Far East International Import and Export Corporation, and a Japanese corporation, the Nankai Kogo, Inc., Ltd. The contract between the parties stipulated that the Far East would sell to the Nankai some 5,000 metric tons of steel scrap and that the Nankai would open a letter of credit with the China Banking Corporation, a domestic bank, to secure the payment. The parties agreed that the China Bank would pay the Far East the purchase price for the scrap only upon the presentation by the Far East of the bill of lading evidencing the fact of shipment to the Nankai. All these negotiation, including the final signing of the contract, took place in Manila, the Nankai being represented by two of its officers. Thereafter, the Far East began to ship the steel scrap on board the Everret Steamship Co., and the Nankai opened in the China Bank the letter of credit. The Far East, however, failed to deliver the whole of the 5,000 metric tons of scrap owing to the death of Magsaysay and the succession to the presidency of Garcia who terminated the license of the Far East to export steel scrap. The Far East was therefore able to ship only 1,058.6 metric tons of scrap so that payment thereof may be effected against the China Bank, the Everret refused, so the Far East filed an action for specific performance, damages, a writ of preliminary mandatory injunction directed against the Nankai, to maintain the letter of credit, and the shipping company, to issue the bill of lading. By special appearance, the Nankai filed a motion to dismiss on grounds of lack of jurisdiction over the person of the defendant and over the subject matter, failure to state a cause of action and failure on the part of the Court to serve it with summons.

The plaintiff alleged, on the other hand, that the court had jurisdiction over the defendant corporation since the latter was doing business in the Philippines with office address at the Luneta Hotel where the two officers of the defendant resided and were served with summons.

The Supreme Court, in sustaining the plaintiff, held, among others [footnote omitted], that the defendant was within the jurisdiction of the court inasmuch as it was doing business in the Philippines. "It is difficult," the Court said, "to lay down any rule of universal application to determine when a foreign corporation is doing business in the Philippines. Each case must turn upon its own peculiar facts and upon the language of the statute applicable. But from the proven facts obtaining in this case, the appellant's defense of lack of jurisdiction appears unavailing . . . The testimony of Atty. Ocampo, that appellant was doing business in the Philippines was corroborated by no less than one of the appellant's officers that he was sent to the Philippines by his company to look into the operation of mines, thereby revealing the appellant's desire to continue engaging in business here, after receiving the shipment of the scrap iron, making the Philippines a base thereof."

"The rule that the doing of a single act does not constitute business within the meaning of statutes prescribing the conditions to be complied with by foreign corporations must be qualified to the extent that a single act may bring the corporation within the purview of the Statute where it is an act of the ordinary business of the corporation. In such case, the single act or transaction is not merely incidental or casual, but is of such a character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a basis of operations for the conduct of a part of the corporation's ordinary business. (Emphasis supplied)."

foreign companies.^{296, 297} No order for a license can be issued by either of said authorities except upon a statement under oath of the managing agent of the company, showing to the satisfaction of the proper authority that the company is solvent and in sound financial condition, and setting forth the resources and liabilities of the company within a reasonable number of days to be fixed by the Central Bank, or the Secretary of Commerce and Industry, as the case may be, prior to the date of presenting the statement.

Information must be supplied as regards:

- 1) the name of the company;
- 2) the purpose for which it was organised;
- 3) the location of its head office;
- 4) the capital stock of the company and the amount thereof actually subscribed and paid into the treasury with indication of the date of said payment;
- 5) the net assets of the company over and above all debts, liabilities, obligations, and claims outstanding against it, indicating the date of the balance;
- 6) the name of an agent residing in the Philippines authorised by the company to accept service of summons and process²⁹⁸ in all legal proceedings against the company and of all notices affecting

²⁹⁶ For an American case dealing with the effect of execution of foreign corporation's contract which, while executory, was unenforceable because of noncompliance with conditions of doing business in a state, see: *K. F. Gill, et al., a Limited Partnership Doing Business as The John Gill & Sons Co. v. S. H. B. Corporation*, 322 Mich. 700, 34 N.W. 2d 526, 7 A.L.R. 2d 252; see also: A.L.R. Digest, Corporations, Secs. 388, 390, 393.

²⁹⁷ For an American case dealing with the problem of what constitutes doing business within a state by a foreign magazine, newspaper, or other publishing company, for purposes other than taxation, see: *Alonzo N. Labonte v. American Mercury Magazine Inc. et al.*, 98 N.H. 163, 96 A. 2d 200, 38 A.L.R. 2d 742; see also: A.L.R. Digests, Corporations Secs. 375-377. For an American case dealing with ownership or control by foreign corporation of stock of other corporation as constituting doing business within a state, see: *Mary Kathryn Castle Steinway v. Majestic Amusement Company, et al.*, 178 F. 2d 681, 18 A.L.R. 2d 179; see also: A.L.R. Digests, Corporations Sec. 375. For an American case dealing with leasing of real estate by a foreign company, as lessor or lessee, as doing business within a state within statutes prescribing conditions of rights to do business, see: *Worcester Felt Pad Corporation v. Tucson Airport Authority*, 233 F. 2d 44, 59 A.L.R. 2d 1121.

²⁹⁸ See: *General Corporation of the Philippines v. Union Insurance Society*, 48 Official Gazette 73, No. L-2684, September 14, 1950: "A foreign corporation actually doing business in this jurisdiction, with or without license or authority to do so, is amenable to process and the jurisdiction of local courts," 2 Phil. Dig. 53, 182. See also: *Johnlo Trading Co. v. Zulueta*, No. L-4459, May 18, 1951: "When a foreign corporation is allowed to engage in business in the Philippines under a special permit from the Bureau of Commerce without appointment of any agent for service of process, anyone who represents the company in the Philippines may be regarded as its agent for service of process." 2 Phil. Dig. 53, 182. See: *Pacific Micronesian Line, Inc. v. del Rosario*, 50 Official Gazette 5271, No. L-7154, October 23, 1954: "The provisions of Rule 7

the company.²⁹⁹ The Central Bank or the Secretary of Commerce and Industry, as the case may be, before ordering that a license be issued in the case of any particular company, may require further evidence of the solvency and fair dealing of the company if in its or his judgment such further information is essential.

The Central Bank may, in its discretion, order the issuance to any foreign banking company of a license to transact business in the Philippines. It is the duty of the Central Bank to verify the information contained in the statement of the managing agent or representative of such foreign company, as well as to make any

Sec. 14 for service of process on foreign corporations by serving their designated agent, or, if none, the government official designated by law, or serving any officer or agent of the corporation within the Philippines, are all limited, by the Rule itself, to corporations "doing business in the Philippines." A Philippine tribunal cannot obtain jurisdiction by any of these methods of service unless the corporation was "doing business in the Philippines." 2 Phil. Dig. Sec. 53, 183. For an American case dealing with a foreign corporation's purchase within a state of goods to be shipped into another state or country as doing business within the state for purposes of jurisdiction or service of process, see: *Sterling Novelty Corporation v. Frank & Hirsch Distributing Company (Pty.) Ltd.*, 299 N.Y. 208, 86 N.E. 2d 564, 12 A.L.R. 2d 1435. For an American case dealing with the power of a state to subject a foreign corporation to the jurisdiction of its courts on sole ground that the corporation committed a tort within the state, see: *Lucy W. Smyth v. Twin State Improvement Corporation*, 116 Vt. 569, 80 A. 2d 664, 25 A.L.R. 2d 1193.

²⁹⁹ Sec. 72. "Summons and legal process served the agent designated to accept service thereof in the statement required to be filed by Section sixty-eight of this Act shall give jurisdiction to the courts over the corporation filing said statement, and service of notices on such agent shall be binding upon the corporation which he represents as if made upon the corporation itself. Should the authority of such agent to accept service of summons and legal process on the corporation or notice to it be revoked, or should such agent become mentally incompetent or otherwise unable to accept service while exercising such authority, it shall be the duty of the corporation to promptly name and designate another agent upon whom service of summons and process in legal proceedings against the corporation and of notices affecting the corporation may be made and to file with the Securities and Exchange Commissioner a duly authenticated nomination of such agent. Should there be no person authorized by the corporation upon whom service of summons, process, and all legal notices may be made, upon the Superintendent of Banks, in the case of banks, savings and loan banks, trust corporations, and other banking institutions, and upon the Secretary of Commerce and Industry in the case of all other foreign corporations, and such service shall be as effective as if made upon the corporation or upon its duly authorized agent. In case of service for the corporation upon the said Superintendent of Banks or the Secretary of Commerce and Industry, as the case may be, the proper official shall register and transmit by mail to the president or to the secretary or clerk of the corporation at its home office or principal office a copy, duly certified by him, of the summons, process, or notice. The sending of such copy of the summons, process, or notice shall be a necessary part of the service and shall complete the service. The registry receipt of mailing shall be conclusive evidence of the sending. All costs necessarily incurred by the said Superintendent or Secretary for the mailing and sending of a copy of the summons, process, or notice to the president or the president or the secretary or clerk of the corporation at its home office or principal office shall be paid in advance by the party at whose instance the service is made," of Act No. 1459, as modified by Commonwealth Act No. 287 and by Sec. 17 of Republic Act No. 337, known as The General Banking Act, as amended.

other or further investigation as to the persons, conditions, and circumstances surrounding or in any manner affecting such banking company, and if said Central Bank is satisfied that the issuance to such company of a license to transact business in the Philippines will promote the public interest and convenience, then he recommends that such license be issued. From the date of the coming into effect of the Law, every foreign banking company wishing to open a branch or business in the Philippines must first obtain the written approval of the Superintendent of Banks, which is given by him unless he has evidence to show that the establishment of such branch or branches will be prejudicial to the interest of the public, in which case he states in writing his reasons for refusing to give the approval. In case of the refusal of the Superintendent of Banks to give such approval, the parties applying therefor may appeal to the Monetary Board³⁰⁰ as provided by the Law.³⁰¹

Upon filing in the Securities and Exchange Commission the said statement, a certified copy of its charter and the order of the Central Bank or the Secretary of Commerce and Industry, as the case may be, for the issuance of a license, the Securities and Exchange Commission issues to the foreign company as directed in the order a license to do business in the Philippines, and for the issuance of said license the Securities and Exchange Commission may collect a fee in proportion to the corporate capital of such company, to be fixed in accordance with the schedule established in Sec. 8 of the Law.³⁰²

³⁰⁰ Sec. 71 "Any opinion, decision, ruling, or regulation made or issued by the Superintendent of Banks may be appealed to the Monetary Board, which shall have the power and authority to confirm, modify or repeal such opinion, decision, ruling or regulation made or issued as aforesaid; but the action of the Monetary Board with respect thereto shall be subject to judicial review" of Republic Act No. 337, known as The General Banking Act, as amended.

³⁰¹ Sec. 68 of Act No. 1459, as amended by Act No. 3610 and by Sec. 88 "All authority now vested in the Bank Commissioner and the Bureau of Banking with respect to the establishment, operation and liquidation of banking and credit institutions, and branches or agencies thereof, are hereby transferred to the Central Bank", and Sec. 89 "All authority now vested in the Secretary of Finance with respect to the establishment, operation or liquidation of banking and credit institutions, or branches or agencies thereof, shall be transferred to, and exercised by the Monetary Board of the Central Bank" of the Republic Act No. 337, known as The General Banking Act, as amended.

³⁰² Last part of Sec. 68 of Act No. 1459, as amended by Commonwealth Act No. 287 and Sec. 14 "No foreign bank or banking corporation formed, organized or existing under any laws other than those of the Republic of the Philippines shall be permitted to transact business in the Philippines, or maintain by itself or assignee any suit for the recovery of any debt, claims, or demand whatsoever, until after it shall have obtained, upon order of the Monetary Board, a license for that purpose from the Securities and Exchange Commissioner. Any officer, director or agent of any such corporation who transacts business in the Philippines without the said license shall be punished by imprisonment for not less than one year nor more than ten years and by a fine of not less than one thousand pesos nor more than ten thousand pesos. For the issuance

No foreign company or company formed, organised, or existing under any laws other than those of the Philippines can be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it has the license prescribed by the Law.^{303, 304} Any officer, director, or agent of the company or any person transacting business for any foreign company not having the license prescribed is punishable by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court.³⁰⁵

Every foreign company and every company not formed, organised, or existing under the laws of the Philippines but transacting business in the Philippines at the time of the coming into effect of the Law had been allowed seventeen months from its passage in which to secure the license, present the statement, and make the deposits required.³⁰⁶

The Monetary Board, by the affirmative vote of at least five of its members and with the approval of the President of the Philippines, may revoke the license to transact business in the Philippines of any foreign bank or banking company not formed, organised, or existing under the laws of the Philippines, if the Board finds after

of such license to any foreign bank, the Securities and Exchange Commissioner shall collect a fee in proportion to the corporate capital of such bank in accordance with the schedule established in section eight of Act numbered Fourteen hundred and fifty-nine (the Corporation Law), as amended. No order for a license shall be issued by the Monetary Board, unless and until it is convinced that the public interest and economic conditions, both general and local, justify the issuance of such order; that the foreign bank or banking corporation is solvent and in sound financial condition; and that a duly appointed agent in the Philippines has been authorized to accept summons and legal processes", and Sec. 89 (for the text of this Section see footnote 301, *supra*) of the Republic Act No. 337, known as The General Banking Act, as amended.

³⁰³ Act No. 1459, Sec. 68, as amended by Commonwealth Act No. 287 and Secs. 14 and 89 of Republic Act No. 337, known as The General Banking Act, as amended.

³⁰⁴ See: *Pacific Vegetable Oil Corporation v. Singson*, No. L-7917, April 29, 1955: "It was never the purpose of the legislature to exclude a foreign corporation entering into isolated business transactions in the Philippines, but having no license to do business there, from recourse to Philippine courts in order to enforce the obligation of such contracts." 2 Phil. Dig. Sec. 52, 182. See also: *Eastboard Navigation, Ltd. v. Juan Ysmael & Co.*, No. L-9090, September 10, 1957: "A foreign corporation, though not licensed to do business in the Philippines under Secs. 68 and 69 of the Corporation Law, Philippine Annotated Laws Title 25 Secs. 69 and 70, may nevertheless bring an action in Philippine courts based on a judgment obtained outside the Philippines against a Philippine corporation where it has engaged only in the two isolated transactions in the Philippines and cannot be said to have been engaged in business there." 2 Phil. Dig. Sec. 52, 182.

³⁰⁵ Act No. 1459, Sec. 69.

³⁰⁶ Act No. 1459, Sec. 70, as amended by Sec. 2 of Act No. 1565 and by Sec. 1 of Act No. 1610.

due investigation at which such bank or banking company is given a chance to be heard by itself or counsel, that the foreign bank or banking company is in imminent danger of insolvency or that its continuance in business will involve probable loss to those transacting business with it. After the revocation of its license, no such foreign bank or banking company can transact business in the Philippines unless its license is renewed or reissued. After the revocation of such license the Solicitor General may take such proceedings as may be proper to protect creditors of such foreign bank or banking institution and the public.³⁰⁷

Any foreign company or company not formed, organised, or existing under the laws of the Philippines, and lawfully doing business in the Philippines is bound by all laws, rules and regulations applicable to domestic companies of the same class, save and except such only as provide for the creation, formation, organisation or dissolution of companies or such as fix the relations, liabilities, responsibilities, or duties of members, shareholders, or officers of companies to each other or to the company.^{308, 309, 310} But nothing in the Law can 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 in Paris on 10th December, 1898.³¹¹

In all matters not specifically covered by provisions applicable only to foreign banks, or their branches and agencies in the Philippines, any foreign banking company or foreign bank not formed, organised, or existing under the laws of the Philippines but lawfully doing business in the Philippines is bound by all laws, rules, and regulations applicable to domestic banking companies of the same class, except such laws, rules and regulations as provide for the creation, formation, organisation, or dissolution of companies or

³⁰⁷ Sec. 16 of Republic Act No. 337, known as The General Banking Act, as amended and modifying Sec. 71 of Act No. 1459.

³⁰⁸ For an American case dealing with the statutory requirements respecting issuance of corporate stock as applicable to a foreign corporation, see: *State of Iowa Ex Rel. J. B. Weeds v. Martha R. Bechtel, et al.*, 31 N.W. 2d 853, 8 A.L.R. 2d 1162; see also: A.L.R. Digests, Corporations Secs. 34, 174, 183, 193, 368.

³⁰⁹ See: *Juanico v. American Land Commercial Co.*, 51 Official Gazette 3439, No. L-7459, June 23, 1955: "A foreign corporation, organized under the laws of the State of Delaware, does not forfeit its corporate existence by failure to reconstitute its organization papers in accordance with Republic Act No. 62, as amended by Act No. 350, Philippine Annotated Laws Title 47 Secs. 119 *et seq.*, since the law is not applicable to such a corporation." 2 Phil. Dig. Sec. 50, 180.

³¹⁰ See: *de Guinoo v. Court of Appeals*, No. L-5541, June 25, 1955: "A sale of land to a foreign corporation which took place on April 1, 1935, before approval of the Constitution on November 15, 1935, was not void." 2 Phil. Dig. Sec. 54, 183.

³¹¹ Act No. 1459, Sec. 73.

such as fix the relation, liabilities, responsibilities, or duties of members, shareholders, or officers of companies, to each other or to the company.³¹²

Since the coming into effect of the Insurance Act,³¹³ no foreign company or domestic insurance company can transact any new business in the Philippines until after it has obtained a certificate or authority for that purpose from the Insurance Commissioner³¹⁴ upon payment by the company concerned of the fees prescribed by the law.

The Insurance Commissioner may refuse to issue a certificate of authority to any insurance company if, in his judgment, such refusal will best promote the interest of the people of the country. No such certificate or authority is granted to any such company until the Insurance Commissioner has satisfied himself by such examination as he may make and such evidence as he may require that such company is qualified by the laws of the Philippines to transact business therein. Said certificate of authority expires on the last day of June of each year and is renewed annually if the company is continuing to comply with all the provisions of the law or the circulars, instructions or rulings of the Insurance Commissioner. Before issuing such certificate of authority, the Insurance Commissioner must be satisfied that the name of the company is not that of any other known company transacting a similar business, or a name so similar as to be calculated to mislead the public. Every company receiving any such certificates of authority is subject to the insurance laws of the Philippines and to the jurisdiction and supervision of the Insurance Commissioner.³¹⁵

The Insurance Commissioner must request every company, before engaging in the business of insurance, to file in his office:

³¹² Sec. 18 of Republic Act No. 337, known as The General Banking Act, as amended.

³¹³ Act No. 2427, known as The Insurance Act, enacted on 11th December, 1914 and entered into effect on 1st July, 1915, as amended.

³¹⁴ See: Sec. 169 of Act No. 2427, known as The Insurance Act, as amended by Sec. 1 of Act No. 3152 and superseded by Republic Act No. 275, as amended by Republic Act No. 898, which provides for An Act Changing the Name of the Bureau of Banking to that of the "Office of the Insurance Commissioner", Providing for the Assessment upon Insurance Companies to Cover the Excess of the Expenses to the Office of the Insurance Commissioner Relating to Insurance Companies, Agents and Insurance Matters over its Income from Certain Sources, and for Other Purposes, Republic Act No. 275, approved on 15th June, 1948. See also: Circular No. 64 from the Office of the Insurance Commissioner, dated 15th November, 1960, directed to all Insurance Companies doing business in the Philippines, published in 57 Official Gazette (No. 6) 1019, February 6, 1961.

³¹⁵ Sec. 172 of the Act No. 2427, known as The Insurance Act, as amended by Sec. 2 of Act No. 3152.

a) a certified copy of the last annual statement or a verified financial statement exhibiting the condition and affairs of such company;

b) if incorporated under the laws of the Philippines, a copy of the articles of incorporation and by-laws and any amendments to either, certified by the Securities and Exchange Commissioner to be a copy of that which is filed in his office;

c) if incorporated under any laws other than those of the Philippines, a certificate from the Securities and Exchange Commissioner showing that it is duly registered in the mercantile registry of that office in accordance with the provisions of Sec. 68 of the Corporation Law;³¹⁶

d) if not incorporated, a certificate setting forth the nature and character of the business, the location of the head office, the names of the persons and of those composing the company, firm, or association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed.

The certificate must be verified by the affidavit of the chief officer, secretary, agent or manager of the company; and if there are any written articles of agreement or company, a copy thereof must accompany such certificate.³¹⁷

The Insurance Commissioner must require as a condition precedent to the transaction of insurance business in the Philippines by any foreign insurance company, that such company file in his office a written power of attorney designating some person who must be a resident of the Philippines as its general agent, on whom any notice provided by law or by any insurance policy, proof of loss, summons and other process may be served in all actions or other legal proceedings against such company, and consenting that service upon such general agent must be admitted and held as valid as if served upon the foreign company at its head office. Any such foreign company must, as a further condition precedent to the transaction of insurance business in the Philippines, make and file with the Insurance Commissioner an agreement or stipulation, executed by the proper authorities of said company in form and substance as follows:

"The (name of company) does hereby stipulate and agree in consideration of the permission granted by the Insurance Commis-

³¹⁶ Sec. 176 of Act No. 2427, known as The Insurance Act, as amended by Sec. 1 of Act No. 3573 and by Commonwealth Act No. 287.

³¹⁷ Sec. 176 of Act No. 2427, known as The Insurance Act, as amended.

sioner to it to transact business in the Philippines, that if at any time said company shall leave the Philippines, or cease to transact business therein, or shall be without an agent in the Philippines on whom any notice, proof of loss, summons, or other legal process may be served, then in any action or proceeding arising out of any business or transaction which occurred in the Philippines, service of any notice provided by law, or insurance policy, proof of loss, summons, or other legal process may be made upon the Insurance Commissioner, and that such service upon the Insurance Commissioner shall have the same force and effect as if made upon the Company."

Whenever such service of notice, proof of loss, summons, or other legal process may be made upon the Insurance Commissioner, he must, within ten days thereafter, transmit by mail, postage paid, a copy of such notice, proofs of loss, summons, or other legal process to the company at its head office. The sending of such copy by the Commissioner is a necessary part of the service of the notice, proof of loss, or other legal process.³¹⁸

No foreign insurance company can engage in business in the Philippines unless possessed of paid up unimpaired capital or assets and reserve not less than that required of domestic insurance companies; and no insurance company organised or existing under the government or laws other than those of the Philippines can engage in business in the Philippines until it has deposited with the Insurance Commissioner for the benefit and security of its policy holders and creditors in the Philippines, securities satisfactory to the Insurance Commissioner consisting of bonds of the Government of the Philippines or of any of the branches or political subdivisions of the Philippines authorised by law to issue bonds, or the Government in which such company is organised, or other good securities to the actual market value of two hundred and fifty thousand pesos. At least fifty *per centum* of the securities or bonds must consist of securities of the Philippines. Foreign insurance companies doing business in the Philippines on the date of entry into effect of the law had time until the 30th of June, 1951 to comply with the requirement increasing their respective deposits as provided in the law. It was a sufficient compliance with the law to make the deposit required with the Philippine National Bank, New York agency in the United States of America, embassies, legations or consular offices of the Philippines already established other than those in the United States or which may hereafter be established, or with a safe deposit company designated by the said Philippine National Bank, New York

³¹⁸ Sec. 177 of Act No. 2427, known as The Insurance Act, as amended by Sec. 6 of Act No. 3152.

agency, embassies, legations or consular offices of the Philippines, provided that said company agreed to hold the securities so deposited subject to the control of the Philippine National Bank, New York agency, embassies, legations or consular offices of the Philippines, as the representatives of the Insurance Commissioner of the Philippines.³¹⁹

Every foreign insurance company doing business in the Philippines must set aside at least thirty *per centum* of the legal reserves of the policies written in the Philippines and invest and keep the same therein in accordance with the provisions of the law. Of the legal reserves as of December 31, 1949, at least ten *per centum* must have been invested and kept in the Philippines by December 31, 1950; of the legal reserves as of December 31, 1950, at least twenty *per centum* must have been invested and kept therein by December 31, 1951; of the legal reserves as of December 31st of each year after 1950, at least thirty *per centum* must have been invested and kept in the Philippines by the end of the following year. In determining the amount to be invested and kept in the Philippines under the law, a company must be given credit for the amount of securities of the Philippines deposited by such company under the law.³²⁰ The securities purchased and kept in the Philippines under the law cannot be sent out of the territorial jurisdiction of the Philippines without the written consent of the Commissioner.³²¹

A foreign insurance company doing business in the Philippines, upon payment of a fee of one hundred pesos and surrender to the Insurance Commissioner of its certificate of authority, may apply to withdraw from the Philippines.³²² Such application must be duly

³¹⁹ Sec. 178 of Act No. 2427, known as The Insurance Act, as amended by Act No. 2867 and by Republic Act No. 488.

³²⁰ *Ibid.*

³²¹ Sec. 178-A, of Act No. 2427, known as The Insurance Act, as inserted by Republic Act No. 488, effective 11th June, 1950.

³²² See: *Scottish Union & National Ins. Co. v. Macadaeg*, 48 Official Gazette 4774, No. L-5717, August 30, 1952: "Section 202-D of the Insurance Law, added by Republic Act No. 447, does not permit a foreign insurance company, without the consent of an insured, to transfer accrued liabilities under a policy to another insurer and thereby become eligible to pick up its reserve securities and "go home", 4 Phil. Dig. Sec. 4, 240, and: "If the Insurance Commissioner is fully aware of pending cases against a foreign company by residents of the Philippines, he is not justified in declaring that the company has no outstanding liabilities and permitting it to withdraw its securities, in view of Sec. 202-D of the Insurance Law, added by Republic Act No. 447," 4 Phil. Dig. Sec. 4, 241, and also: "When the Insurance Commissioner approves withdrawal of a foreign insurance company from business in the Philippines, under Republic Act No. 447, his exercise of discretion is subject to review by the courts, and substitution of their judgment, where the insurer has accrued "liabilities" which the law requires it to discharge before withdrawal", 4 Phil. Dig. Sec. 4, 241, and finally: "Although Sec. 88 of the Insurance Law, Philippine Annotated Law Title 9 Sec. 89, defines "reinsurance" as "one by which an insurer procures a third person to insure him against loss or liability by reason of such original

executed in writing, accompanied by evidence of due authority for such execution, and properly acknowledged.³²³

The Insurance Commissioner must publish the application for withdrawal daily for a period of one week in two newspapers of general circulation in the City of Manila, one in English and the other in Spanish, the expenses of such publication to be paid by the insurance company.³²⁴

Every foreign insurance company which withdraws from the Philippines, must, prior to such withdrawal, discharge its liabilities to policyholders and creditors in the country. In case of its policies insuring residents of the Philippines, it must see to it that the primary liabilities under such policies be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities.³²⁵

The Insurance Commissioner must make an examination of the books and records of the withdrawing company, and if, upon such examination, he finds that the insurer has no outstanding liabilities to residents of the Philippines, he may cancel the withdrawing company's certificate of authority, if unexpired, and permit the insurer to withdraw. The cost and expenses of all such examination must be paid as prescribed by Sec. 174 of the Insurance Act, as amended.³²⁶

9. *Miscellaneous and special provisions*

The Corporation Law contains miscellaneous provisions regarding the criterion to be applied in case of misnomer of a company,³²⁷ the application of the Law to companies already in existence at the date of the coming into effect,³²⁸ the possibility of amending or repealing the Law,³²⁹ the subsistence of corporate form for the purpose of prosecuting and defending suits, of enabling the company to settle

insurance," the term is also sometimes applied to a contract between two insurers by which one assumes the risk of the other and, with the assent of the insured, becomes a substituted insurer, and it is in this latter sense that the word must be deemed intended in Sec. 202-C of the Act, Title 39 Sec. 231, relating to withdrawal of foreign insurers from the Philippines", 4 Phil. Dig. Sec. 4, 241.

³²³ Sec. 202-A of Act No. 2427, known as The Insurance Act as inserted by Republic Act No. 447, approved on 8th June, 1950.

³²⁴ Sec. 202-B of Act No. 2427, known as The Insurance Act, as inserted by Republic Act No. 447, approved on 8th June, 1950.

³²⁵ Sec. 202-C of Act No. 2427, known as The Insurance Act, as inserted by Republic Act No. 447, approved on 8th June, 1950.

³²⁶ Sec. 202-D of Act No. 2427, known as The Insurance Act, as inserted by Republic Act No. 447, approved on 8th June, 1950.

³²⁷ Act No. 1459, Sec. 74.

³²⁸ Act No. 1459, Sec. 75.

its own business³³⁰ and the relative powers therefor,³³¹ the guarantee that no private property can be taken by any company under any franchise for any purpose without proper condemnation proceedings and without just compensation, nor any franchise, privilege, or concession given except under condition that it shall be kept under control of the Congress of the Philippines.³³² Sec. 80, finally, extends the application of the provisions of the Law to every company formed or organised under it, unless such company be exempted from its operation or unless some special provision be contained in the Law and be inconsistent with the provisions of the Law, in which case the special provision shall apply.³³³

Special provisions of the Corporation Law govern railroad companies,³³⁴ unless they are governed by special charter as in the case of the Manila Railroad Company. The Manila Railroad Company is controlled by the government to the extent of 99% of the subscribed and paid-in capital and is subject to the authority of the Public Service Commission only for the determination of its rates.³³⁵ The special provisions on Savings and Mortgage Banks³³⁶ have been repealed by the General Banking Act³³⁷ and superseded by Secs. 29 to 38 of it.

The provisions on Commercial Banking Corporations³³⁸ have been repealed and superseded by Secs. 20 to 28 of the same Act,³³⁹ while the provisions affecting banking institutions in general³⁴⁰ have been repealed by Secs. 34 and 35 of the same Act.³⁴¹

Provisions concerning Trust Corporations³⁴² have been repealed and superseded by Secs. 56 to 66 of the General Banking Act.³⁴³

³²⁹ Act No. 1459, Sec. 76.

³³⁰ Act No. 1459, Sec. 77.

³³¹ Act No. 1459, Sec. 78.

³³² Act No. 1459, Sec. 79.

³³³ Act No. 1459, Sec. 80.

³³⁴ Sec. 81 of Act No. 1459; Sec. 82 of Act No. 1459 as amended by Sec. 1 of Act No. 2100 and by the Constitution; Sec. 83 of Act No. 1459, as amended by Sec. 2 of Act No. 2100; Sec. 84 of Act No. 1459; Sec. 85 of Act No. 1459 as amended by Acts No. 2100 and 4007; Sec. 86 of Act No. 1459, as amended by Commonwealth Act No. 93; Sec. 87 of Act No. 1459; Sec. 88 of Act No. 1459, as amended by Acts No. 2100 and 4007; Secs. 89, 90, 91 and 92 of Act No. 1459; Sec. 93 of Act No. 1459, as amended by Sec. 5 of Act No. 2100; Secs. 94, 95, 96, 97 and 98 of Act No. 1459; Sec. 99 of Act No. 1459 has been repealed by Sec. 32 of Act No. 2362; Secs. 100, 101, and 102 of Act No. 1459.

³³⁵ See: *Batangas Transportation Company v. Manila Railroad Company*, 64 Phil. 312.

³³⁶ Act No. 1459, Secs. 103 to 115.

³³⁷ Republic Act No. 337, approved on 24th July, 1948.

³³⁸ Act No. 1459, Secs. 116 to 129.

³³⁹ See footnote 338, *supra*.

³⁴⁰ Act No. 1459, Secs. 171 to 190.

³⁴¹ See footnote 338, *supra*.

³⁴² Act No. 1459, Secs. 131 to 146.

³⁴³ See footnote 338, *supra*.

Building and Loan Associations are governed by Secs. 39 to 55 of the General Banking Act.³⁴⁴ Provisions on Domestic Insurance Corporations³⁴⁵ have been repealed by Sec. 204 of Act No. 2427.³⁴⁶ Philippine law provides that for the administration of the temporalities of any religious denomination, society, or church, and the management of the estates and properties thereof, it is lawful for the bishop, chief priest, or presiding elder of any such religious denomination, society, or church to become a corporation sole, unless inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by competent authority thereof.³⁴⁷

In order to become a corporation sole the bishop, chief priest, or presiding elder of any religious denomination, society, or church must file with the Securities and Exchange Commissioner articles of incorporation setting forth the following facts:

1) that he is the bishop, chief priest, or presiding elder of his religious denomination, society, or church and that he desires to become a corporation sole;

2) that the rules, regulations, and discipline of his religious denomination, society, or church are not inconsistent with his becoming a corporation sole and do not forbid it;

3) that as such bishop, chief priest, or presiding elder, he is charged with the administration of the temporalities and the management of the estates and properties of his religious denomination, society, or church within his territorial jurisdiction, describing it;

4) the manner in which any vacancy occurring in the office of bishop, chief priest, or presiding elder is required to be filled, according to the rules, regulations, or discipline of the religious denomination, society, or church to which he belongs;

5) the place where the principal office of the corporation sole is to be established and located, which place must be within the Philippines.³⁴⁸

The articles of incorporation must be verified before filing by affidavit or affirmation of the bishop, chief priest, or presiding elder, as the case may be, and accompanied by a copy of the commission, certificate of election or letters of appointment of such bishop, chief

³⁴⁴ See footnote 338, *supra*.

³⁴⁵ Act No. 1459, Secs. 147 to 153.

³⁴⁶ Known as The Insurance Act, as amended.

³⁴⁷ Act No. 1459, Sec. 154.

³⁴⁸ Act No. 1459, Sec. 155, as modified by Commonwealth Act No. 287.

priest, or presiding elder, duly certified to be correct by any notary public or clerk of a court of record.³⁴⁹

The successors in office of any bishop, chief priest, or presiding elder incorporated as a corporation sole shall become the corporation sole on accession to office, and shall be permitted to transact business as such on filing with the Securities and Exchange Commissioner a copy of their commissions, certificates of election, or letters of appointment duly certified to be correct by any notary public or clerk of a court of record.

During a vacancy in the office of bishop, chief priest, or presiding elder of any church incorporated as a corporation sole, the person or persons authorised and empowered by the rules, regulations, or discipline of the religious denomination, society, or church represented by the corporation sole to administer the temporalities and manage the estates and properties of the corporation sole during the vacancy may exercise all the power and authority of the corporation sole during such vacancy.³⁵⁰

³⁴⁹ Act No. 1459, Sec. 156.

See also: Sec. 157. "From and after the filing with the Securities and Exchange Commissioner of the said articles of incorporation, verified by affidavit or affirmation as aforesaid and accompanied by the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder duly certified as prescribed in the section immediately preceding, such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole and all temporalities, estates, and properties of the religious denomination, society, or church theretofore administered or managed by him as such bishop, chief priest, or presiding elder shall be held in trust by him as a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society or church, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof. For the filing of such articles of incorporation, the Securities and Exchange Commissioner, shall collect twenty-five pesos," of Act No. 1459, as modified by Commonwealth Act No. 287.

³⁵⁰ Act No. 1459, Sec. 158, as modified by Commonwealth Act No. 287. See also Sec. 159. "Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests, or gifts, for such purposes. Such corporation may mortgage or sell real property held by it upon obtaining an order for that purpose from the Court of First Instance of the province in which the property is situated; but before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication or otherwise in such manner and for such time as said court or the judge thereof may have directed, and that it is to the interest of the corporation that leave to mortgage or sell should be granted. The application for leave to mortgage or sell must be made by petition, duly verified by the bishop, chief priest, or presiding elder, acting as corporation sole, and may be opposed by any member of the religious denomination, society or church represented by the corporation sole: *Provided, however,* That in cases where the rules, regulations, and discipline of the religious denomination, society, or church concerned represented by such corporation sole regulate the methods of acquiring, holding, selling and mortgaging real estate and personal property, such rules, regulations, and discipline shall control and intervention of the courts shall not be necessary."

Sec. 160. "Any religious society or religious order, or any diocese, synod,

The Corporation Law provides that a college, school, or other institution of learning may be incorporated³⁵¹ if any number of persons not less than five files with the Securities and Exchange Commissioner articles of incorporation setting forth:

or district organization of any church, unless forbidden by the constitution, rules, regulations or discipline of the religious order, society, or church of which it is a part, or by competent authority may, upon the written consent of two-thirds of the membership had at regular meeting, incorporate for the administration of its temporalities or for the management of its properties or estates by filing with the Securities and Exchange Commissioner articles of incorporation verified by the affidavit or affirmation of the presiding officer, secretary, or clerk or other member of such religious society, religious order, or diocese, synod, or district organization of the church, setting forth the following facts:

(1) That the religious society or religious order or synod, diocese, or district organization is a religious society, or religious order, or diocese, synod, or district organization of some church;

(2) That two-thirds of its membership have given written consent or have voted to incorporate at a regular meeting of the body;

(3) That the incorporation of the religious society, religious order or diocese, synod, or district organization of the church desiring to incorporate is not forbidden by competent authority or by the constitution, rules, regulations, or discipline of the society, church, or order of which it forms a part;

(4) That the religious society or religious order or diocese, synod, or district organization of the church desires to incorporate for the administration of its temporalities or the management of its properties or estates;

(5) The place where the principal office of the corporation is to be established and located, which place must be within the Philippines.

(6) The names and residences of the directors, or trustees elected by the religious society or order, or the diocese, synod, or district organization of the church to serve for the first year or such other times as may be prescribed by the laws of the society or order, or of the diocese, synod, or district organization of the church, the board of directors or trustees to be not less than five nor more than fifteen. For the filing of such articles of incorporation, the Securities and Exchange Commissioner shall collect twenty-five pesos," as amended by Commonwealth Act No. 287.

Sec. 161. "By-laws for the government of the corporation not inconsistent with law or with the constitution, by-laws, rules, regulations, or discipline of the religious society, religious order, or church of which the corporation forms a part may be adopted or amended at any regular meeting called for the purpose by the incorporated religious society or order or by any convention, synod, or other legal representative body of the church in and for the district;

Sec. 162. "The by-laws of the corporation shall be signed and attested by the presiding officer and secretary or clerk of the religious society or order of the convention, synod, or other representative body of the church adopting the same;

Sec. 163. "The right to administer all temporalities and all property held or owned by a religious order or society, or by the diocese, synod, or district organization of any religious denomination or church shall, on its incorporation, pass to the corporation and shall be held in trust for the use, purpose, behoof, and benefit of the religious society, or order so incorporated or of the church of which the diocese, synod, or district organization is an organized and constituent part; and

Sec. 164. "Such corporation shall have the right to purchase, hold, mortgage, or sell real estate for its church, charitable, benevolent, or educational purposes by and with the consent of a majority of its membership," of Act No. 1459.

³⁵¹ For recent view on the subject, see: Guevara, Should Educational Institutions Be Non-Stock Corporation? 35 Phil. L.J. 1127 (1960).

- 1) the name of the company;
- 2) the purpose for which it is organised;
- 3) the place where the college, school, or institution of learning is to be conducted;
- 4) the qualifications of trustees and the number of trustees, which cannot be less than five nor more than fifteen, provided that such be some multiple of five;
- 5) the term of office of trustees and the names and residences of the trustees elected for the first term;
- 6) the amount of money and description of the property to be devoted to the maintenance and support of the college, school, or other institution of learning.³⁵²

Unless otherwise provided in the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning must, as soon as organised, so classify themselves that the term of office of one-fifth of their number expires every year. Trustees thereafter elected to fill vacancies occurring before the expiration of term hold office only for the unexpired term. Trustees elected thereafter to fill vacancies caused by expiration of term hold office for five years. A majority of the trustees constitutes quorum for the transaction of business. The office of the company is at the college, school, or other institution of learning. The powers and authority of trustees are defined in the by-laws.³⁵³

³⁵² Act No. 1459, Sec. 165, as modified by Commonwealth Act No. 287. See also:

Sec. 166. "Societies or organizations which have established colleges, schools, or other institutions of learning may, unless forbidden by their constitution or by competent authority exercised over them, incorporate with the written consent of two-thirds of the membership or by an affirmative vote of two-thirds of the membership had at a regular or at a special meeting called for the purpose, by filing with the Securities and Exchange Commissioner articles of incorporation setting forth the facts prescribed for articles of incorporation in Section one hundred and sixty-five," as amended by Commonwealth Act No. 287.

Sec. 167. "Societies or organization so incorporated shall have the power to adopt by-laws for the election of trustees and their terms of office," and

Sec. 168. "Whenever so empowered in writing by the Secretary of Education and under such terms and conditions as said Secretary may prescribe, universities and colleges duly incorporated in accordance with this Act may grant diplomas and confer degrees," of Act No. 1459.

Sec. 169. "Unless otherwise provided in the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth of their number shall expire every year. Trustees thereafter elected to fill vacancies occurring before the expiration of term shall hold office only for the unexpired term. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five years. A majority of the trustees shall constitute a quorum for the transaction of business. The office of the corporation shall be at the college, school, or other institution of learning. The powers and authority of trustees shall be defined in the by-laws.

³⁵³ Act No. 1459, Sec. 169. See also:

Sec. 170. "Any educational society or organization, by a two-thirds vote

10. *Voluntary dissolution and liquidation* ³⁵⁴

When a company is dissolved it ceases to exist as a separate juridical entity.^{355,356} This may occur for one of the following reasons:

1) by expiration of the term of existence of the company.

Pursuant to Sec. 6, par. 4 of the Corporation Law, normally, the life of a company cannot exceed fifty years, and this term cannot

of its membership had at a regular or at a special meeting called for the purpose, or by the written consent of two-thirds, of its members without a meeting, and any existing educational corporation or body claiming to be such may, by an unanimous vote of its trustees present at a regular or special meeting called for the purpose or by the written consent of such trustees without a meeting, convey all or any part of its property, rights, and franchise to a corporation organized for educational purposes in conformity with this Act. Any corporation organized for educational purposes in accordance with this Act shall have the right by and with the consent of a majority of its membership to purchase, hold, mortgage, or sell real estate for educational purposes." of Act No. 1459.

³⁵⁴ There are no provisions in the Philippine Corporation Law dealing specifically with merger and consolidation, although Secs. 6, 17½, 18, 28½ and 62 may be applied to these procedures. The Supreme Court has reconsidered the words "or otherwise disposed of" in Sec. 28½ of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 30 (authorising a company to sell, exchange, lease, "or otherwise dispose of" all its property upon such terms and conditions as the directors may deem expedient, when authorized by two-thirds vote of the shareholders), in the case *Reyes v. Blouse*, No. L-4420, May 19, 1952. The Court held that such words "are very broad, and in a sense cover a merger or consolidation," 2 Phil. Dig. Sec. 46, 177. In the same opinion the Court also said that: "A merger (which necessarily implies termination or cessation of the merged corporations and does not occur when the clear intention is to preserve the separate entities and merely consolidate properties and assets for management by a new corporation) or consolidation is governed as to the manner of effectuation, by Secs. 17½, 18, and 28½ of the Corporation Law, Philippine Annotated Laws Title 25 Secs. 18 and 19, which do not require express legislative authority or unanimous consent of all stockholders," 2 Phil. Dig. Sec. 46, 177. "Merger or consolidation of two land transportation companies is not prohibited by Act No. 2772, Philippine Annotated Laws Title 65 Secs. 22 et seq., as that Act applies only to railroad companies and other carriers by land or water, and must, in any event, be considered as obsolete with respect to land transportation companies in the light of the later provisions of the Public Service Law," 2 Phil. Dig. Sec. 46, 177. "Sec. 20(g) of Commonwealth Act No. 146, as amended, Philippine Annotated Laws Title 61 Sec. 20(g), in prohibiting merger or consolidation of public service operations except with the consent of the commission, by implication sanctions, mergers and consolidations subject to the commission approval, and to this extent, may be considered controlling with respect to land transportation corporations whether or not Sec. 28½ of Corporation Law, Philippine Annotated Laws Title 25 Sec. 30, is broad enough to cover merger and consolidation of other types of corporations," 2 Phil. Dig. Sec. 46, 177-178.

³⁵⁵ For an American case dealing with preferred stockholders' rights, upon liquidation or dissolution, to dividends, see: *Raymond M. Hay, et al., as Liquidating Trustees of Big Bend Land Co. v. Edward T. Hay, Individually and as Admr., etc., of Fayette H. Imhoff, Deceased*, 38 Wash. 2d 513, 230 P. 2d 791 25 A.L.R. 2d 776; see also: A.L.R. Digests, Corporations Sec. 329.5.

³⁵⁶ For an American case dealing with shareholders' rights to patent, copyright, or trademark owned by corporation on dissolution thereof, see: *Leonard Milgram v. Jiffy Equipment Company, et al.*, 362 Mo. 1194, 247 S.W. 2d 668, 30 A.L.R. 2d 925; see also: A.L.R. Digests, Corporations Sec. 329.5.

be extended by amendment of the articles of incorporation beyond the time limit fixed in the original articles.³⁵⁷

2) by enactment of legislation to that effect.

The law has expressly made such reserve by laying down the principle that the Corporation Law or any part thereof may be amended or repealed at any time by the legislative authority, and any or all companies created by virtue of the Law may be dissolved by legislative enactment. The Law provides furthermore that no right or remedy in favour of or accrued against any company, its shareholders or officers, can be removed or impaired either by the subsequent dissolution of said company or by any subsequent amendment or repeal of the Law or of any part or portion thereof.³⁵⁸

The same power has been entrusted with the Congress by the Constitution of the Philippines: "No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires."³⁵⁹

3) by a decision of the judiciary which deprives the company of corporate franchise.

The violation of any of the provisions of the Law and its amendments not otherwise penalised therein, upon such violation being proved, subjects the company to dissolution by *quo warranto* proceedings.³⁶⁰

A similar action may be instituted in all cases provided for by Sec. 2 of Rule 68 of the Rules of Court, namely (1) when the company has offended against a provision of an Act for its creation or renewal, (2) when it has forfeited its privileges and franchises by non-user, (3) when it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges or franchises, and (4) when it has misused a right, privilege, or franchise conferred upon it by law, or when it has exercised a right, privilege, or franchise in contravention of law.

4) by voluntary dissolution or consequent to voluntary surrender of corporate franchise.

³⁵⁷ 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, as amended. [Ed's Note: R.A. No. 3531, approved June 20, 1963, provides, *inter alia*, that should the amendment of the articles of incorporation consist in extending the corporate life, the extension shall not exceed fifty years in any one instance].

³⁵⁸ Act No. 1459, Sec. 76.

³⁵⁹ Art. XIV, Sec. 8, last part, Constitution of the Philippines (1935), as amended.

³⁶⁰ Sec. 190-1/7 of the Act No. 1459, as amended by Act No. 3518, and Sec. 9 of Act No. 3610.

A company can be dissolved by resolution passed by the shareholders even before the expiration of the term of existence of the company.³⁶¹ Voluntary extra-judicial dissolution is possible when the company has no debts and would not, by dissolving, affect the position of those persons holding a claim against it.³⁶²

In case the dissolution of a company does not affect the rights of any creditor having a claim against such company, then such dissolution may be effected by a resolution duly adopted by the affirmative vote of two-thirds of the shareholders owning at least two-thirds of company's capital outstanding at a meeting to be held on the call of the directors after publishing notice of the time, place and object of the meeting for six consecutive weeks in some newspaper published in the place where the said company is located (and if no newspaper is published in the place, then in some newspaper of general circulation in the Philippines), and after sending such notice to each shareholder of record by registered mail at least thirty days prior to said meeting. A copy of the resolution authorising the dissolution must be certified by a majority of the Board of Directors and countersigned by the Securities and Exchange Commission. The Securities and Exchange Commissioner must thereupon record the fact of such dissolution and collect for such service the sum of twenty-five pesos, Philippine currency.³⁶³ If, on the contrary, a company is in a position of indebtedness, it may be dissolved only through judicial proceedings.

³⁶¹ See: *Daguhoy Enterprises, Inc. v. Ponce*, 50 Official Gazette 5267, No. L-6515, October 18, 1954: "A mere resolution by the stockholders or directors to dissolve a corporation does not effect dissolution. Some other step, administrative or judicial, is necessary." 2 Phil. Dig. Sec. 47, 179.

³⁶² For a recent decision dealing with the right of creditors to follow the assets of a dissolved corporation, see: *Platon*, Annual Survey of 1962 Supreme Court Decision, Commercial Law, 38 Phil. L.J. 126 at 128 (1963): "The Corporation Law does not provide for it, but it is law nonetheless, that a corporation may not evade its liability to its creditors by the simple expedient of effecting its dissolution and distributing its assets to the stockholders. In *Tan Tong Bio v. Commissioner of Internal Revenue*, G.R. No. L-15778, April 25, 1962, where the Commissioner, who sought to slap at the defendant corporation its tax liability, found that the corporation had been earlier dissolved and its assets distributed to the stockholders. The Commissioner brought action against the stockholders to recover said assets for the satisfaction of the corporation's tax liability, and the Court sustained him, holding that the creditor of a dissolved corporation may follow its assets once they have passed into the hands of the stockholders. The dissolution of a corporation, the Court said, does not extinguish the debts due or owing to it since a creditor may follow its assets as in the nature of a trust fund into the hands of the stockholders. "The hands of the government cannot, of course, collect taxes from a defunct corporation but it does not lose thereby any of its rights to assess taxes which had been due from the corporation and to collect them from persons who by reason of transactions with the corporation, hold property against which the tax can be enforced."

³⁶³ Sec. 62 of Act No. 1459, as superseded and modified by Sec. 1 of Rule 104 of the Rules of Court.

The Court of First Instance of the province where the head office of a company is situated may dissolve it upon the filing of a petition therefor by a majority of its board of directors or other officers having the management of its affairs, verified by its president or secretary or one of its directors, and setting forth all claims and demands against it, and that at a meeting of its shareholders called for that purpose its dissolution was resolved upon by a majority of the members, or, if it is a stock company, by the affirmative vote of the shareholders holding or representing two-thirds of all shares issued or subscribed.³⁶⁴

If the petition is sufficient in form and substance, the Court, by an order reciting the purpose of the petition, sets a date on or before which objections thereto may be filed by any person, which date cannot be less than thirty nor more than sixty days after the entry of the order. Before such date a copy of the order must be published at least once a week for four successive weeks in some newspaper of general circulation published in the municipality or city where the head office of the company is situated, or if there be no such newspaper, then in some newspaper of general circulation in the Philippines, and a similar copy must be posted for four weeks in three public places in such municipality or city.³⁶⁵

Upon five days notice given after the date on which the right to file objections as fixed in the order expired, the court must proceed to hear the petition and try any issues made by objection filed: and if no such objection is sufficient, and the material allegations of the petition are true, it must render judgment dissolving the company and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the company.³⁶⁶

The petition, orders, proof of publication and posting, objections filed, declaration of dissolution, and any evidence taken, constitute the record in the case.³⁶⁷

5) by failure of a company to formally organise and commence the transaction of its business or the construction of its works within two years from the date of its incorporation.³⁶⁸

³⁶⁴ Sec. 1 of Rule 104 of the Rules of Court, superseding and modifying Secs. 63 and 64 of Act No. 1459.

³⁶⁵ Sec. 2 of Rule 104 of the Rules of Court, superseding and modifying Secs. 65 and 66 of the Act No. 1459.

³⁶⁶ Sec. 3 of Rule 104 of the Rules of Court, superseding and modifying Secs. 65 and 66 of the Act No. 1459.

³⁶⁷ Sec. 4 of Rule 104 of the Rules of Court, superseding and modifying Sec. 67 of the Act No. 1459.

³⁶⁸ Sec. 19 of the Act No. 1459, as amended by Act No. 3849 and Commonwealth Act No. 287.

6) by an action for dissolution by minority shareholders.³⁶⁹

As a general rule, minority shareholders cannot institute an action to demand the dissolution of a company.³⁷⁰ But such action may be brought by the government through the Solicitor-General in a *quo warranto* proceeding at the instance of one or more shareholders.³⁷¹ In exceptional cases the intervention of the state may not be possible, or—even if possible—the state may prefer not to intervene. In these cases, then, a shareholder or a minority of shareholders are entitled to maintain an action in equity for the dissolution of the company.³⁷²

There are three methods of winding up a company:

- 1) by appointment of a receiver³⁷³ for the purpose of collecting the assets of the company and paying its debts.^{374,375}
- 2) by the directors of the company when the charter of the company expires by its own limitation or is annulled by forfeiture or otherwise, or when corporate existence is terminated in any other manner. The company may then continue 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

³⁶⁹ For an American case dealing with dissolution of a company on ground of intracorporate deadlock or dissension, see: *Petition of Collins-Doan Company, Louis G. Morten, et al. v. Samuel B. Collins et al.*, 3 N.J. 382, 70 A. 2d 159, 13 A.L.R. 2d 1250; see also: A.L.R. Digests, Corporations Secs. 330, 352.

³⁷⁰ See: *Financing Corporation of the Philippines v. Teodoro et al.*, 49 Official Gazette 4832, No. L-4900, August 31, 1953: "The general rule is that minority stockholders of a corporation cannot demand its dissolution by private suit instituted for that purpose." 2 Phil. Dig. Sec. 47, 178. See also: *Hall v. Piccio*, 47 Official Gazette No. 12 Supp. 220, No. L-2598, June 29, 1950: "When a certificate of incorporation has never been obtained, a so-called corporation may be dissolved by private suit between the stockholders without the intervention of the state." 2 Phil. Dig. Sec. 47, 178.

³⁷¹ See: *Financing Corporation of the Philippines v. Teodoro et al.*, 49 Official Gazette 4832, No. L-4900, August 31, 1953: "Where minority stockholders of a corporation desire its dissolution, the action should ordinarily be brought by the Government through its legal officer in a *quo warranto* case, at their instance and request; but if, for one reason or another, the State is not interested in the matters in controversy, the minority stockholders may proceed by private action, and whether to grant the prayer of the complaint depends upon the facts and circumstances presented." 2 Phil. Dig. Sec. 47, 178-179.

³⁷² See: *Financing Corporation of the Philippines v. Teodoro, et al.*, 49 Official Gazette 4832, No. L-4900, August 31, 1953.

³⁷³ For an American case dealing with judicial relief other than by dissolution or receivership in cases of intracorporate deadlock, see: *Sam Kay v. Key West Development Company, et al.* (Fla.) 72 So. 2d 786, 47 A.L.R. 2d 361; see also: A.L.R. Digests, Corporations Secs. 4, 224, 232, 233.5, 237.

³⁷⁴ This is done in the forms provided for by Sec. 66 of the Act No. 1459 as modified by Sec. 3 of Rule 104 of the Rules of Court.

³⁷⁵ A receiver is appointed only under special circumstances and only when such circumstances warrant such appointment (See: *China Banking Corporation v. Michelin & Cie.*, 58 Phil. 261).

convey its property and to divide its capital stock, provided however, that the company does not continue the business for which it was established.^{376,377}

- 3) by trustees to whom at any time during the three years as provided for in Sec. 77 of the Corporation Law the company is authorised and empowered to convey all of its property for the benefit of the members, shareholders, creditors, and others interested. From and after any such conveyance by the company of its property in trust for the benefit of its members, shareholders, creditors, and others in interest, all interest which the company had in the property terminates, the legal interest vests in the trustees and the beneficial interest in the members, shareholders, creditors, or other persons in interest.³⁷⁸

³⁷⁶ This is the case provided for by Sec. 77 of Act No. 1459. See: *Nation Airports Corporation v. Teodoro*, No. L-5122, April 30, 1952: "When the National Airports Corporation was abolished by Executive Order No. 365 and all its assets transferred to the Civil Aeronautics Administration, it ceased to exist and could not be considered as continuing in existence for purposes of liquidation and winding up under Sec. 77 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 77." 2 Phil. Dig. Sec. 48, 179. See also: *Daguhoy Enterprises, Inc. v. Ponce*, 50 Official Gazette 5267, No. L-6515, October 18, 1954: "Under Sec. 77 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 77, a corporation, even after dissolution, continues in existence as a judicial entity for three years for purposes of winding up its affairs and protecting its interests during liquidation." 2 Phil. Dig. Sec. 48, 179. See also: *Cebu Port Labor Union v. State Marine Corporation*, No. L-9350, May 20, 1957: "It is clearly evident from Sec. 77 of the Corporation Law, Philippine Annotated Laws Title 25 Sec. 77 that the three-year period allowed for winding up the affairs of a corporation whose charter has expired or been annulled or whose corporate existence is otherwise terminated by no means sanctions the continuance of regular business of the corporation for that period." 2 Phil. Dig. Sec. 48, 179, and also: In an action to require a shipping corporation to honor a stevedoring contract with respect to one of its vessels and to restrain the corporation and a rival union from going ahead with the unloading of the vessel, it appearing that defendant corporation was already dissolved at the time the petition was filed and that the vessel in question had changed hands, the dissolved corporation could not be compelled to respect the alleged agreement, specially considering the fact that it could not even be made a party to the suit. (Corporation Law Sec. 77, Philippine Annotated Laws, Title 25 Sec. 77; Rule 3 Sec. 1.)" 2 Phil. Dig. Sec. 49, 179. For an American case dealing with the maintainability of criminal proceedings against a dissolved corporation, see: *United States of America v. P. F. Collier & Son Corporation*, 208 F. 2d 936, 40 A.L.R. Digests, Corporations Sec. 345.5.

³⁷⁷ After the lapse of the three-year period all claims for and against the corporation become unenforceable (See: *Voluntary dissolution of Unicon Corporation, Ltd.*, In re, General Register (of the Supreme Court) No. 43709, VI L.J. 1137).

³⁷⁸ This is the method provided for by Sec. 78 of Act No. 1459. For a recent judicial interpretation of this section, see: *Matic, Jr.*, *Survey of 1961-1962 Supreme Court Decisions in Commercial Law*, 10 Far Eastern L. Rev. 1 at 3-5 (1962): "Under Rules 104 and 68 of the Rules of Court, upon the voluntary or involuntary judicial dissolution of a corporation, the court may appoint a receiver to take charge of its assets and dispose of them as the law may permit and justice may require."

It has been held in this connection that any litigation filed by or against

In the case of the voluntary liquidation of any bank or banking institution incorporated under the laws of the Philippines or of any branch in the Philippines of a foreign bank or banking company, written notice of such liquidation must be sent to the Monetary

the corporation instituted within the three-year period which however could not be terminated, must necessarily prolong that period until the final termination of said litigation, as otherwise corporations in liquidation would lose what should justly be on to them or would be exempt from the payment of just obligations through a mere technicality, something that courts should prevent (*Pasay Credit & Financing Corp. v. Lazaro, et al.*, (C.A.) 46 Official Gazette 5528). It has also been ruled that when the liquidation of the assets of the corporation is placed in the hands of a receiver or assignee, the period of three years prescribed by Sec. 77 is not applicable and the receiver may institute all actions leading to the liquidation of the assets of the corporation and claims against the corporation can be presented and allowed, even after the expiration of three years if not otherwise barred by the statute of limitations (*Sumera v. Valencia*, 39 Official Gazette 1477, May 24, 1941). If a receiver is appointed, the corporation ceases to exist as a corporate entity and is substituted for purposes of liquidation by the receiver; receivership, unless otherwise limited in its duration by the court, can exist indefinitely until the affairs of the corporation shall have been completely settled and liquidated (*Voluntary Dissolution of Union Guaranty Co., In re*, 37 Official Gazette 545, March 2, 1939).

In the case of *National Abaca and Other Fibers Corporation v. Apolonia Pore*, L-16779, August 16, 1961, plaintiff filed a complaint against a defendant on November 14, 1953. Defendant moved to dismiss upon the ground that plaintiff has no legal capacity to sue, it having been abolished by Executive Order dated November 24, 1950. It appeared, however, that the President of the Philippines had created a Board of Liquidators to continue the management of such matters of the corporation as may then be pending. The lower court dismissed the complaint for failure of the plaintiff to comply with its order to amend the complaint by including the Board of Liquidators as party plaintiff. On appeal, the Supreme Court ruled that the lower court had erred in dismissing the complaint.

Even if, however, action against a corporation has prescribed by reason of its legal death, "there is good authority to the effect that the creditor of a dissolved corporation may follow its assets once they passed into the hands of the stockholders." "A creditor of a dissolved corporation may follow its assets, as in the nature of a trust fund, into the hands of its stockholders." *MacWilliams v. Excelsior Coal Co.* (1924) 298 Fed. 384. And with particular reference to the effect of dissolution upon taxes due from a corporation "that the hands of the government cannot, of course, collect taxes from a defunct corporation, it loses thereby none of its rights to assess taxes which had been due from the corporation, and to collect them from persons, who by reason of transactions with the corporation, hold property against which the tax can be enforced and that the legal death of the corporation no more prevents such action than would the physical death of an individual prevent the government from assessing taxes against him and collecting them from his administrator, who holds the property which the decedent had formerly possessed", *Wender Bakeries Co. v. U.S. Ct. Cl. 6 F. Supp. 288* (1934). Although there is no statutory provision in our jurisdiction authorizing the government to proceed against the stockholders of a defunct corporation as transferees of the corporate assets upon liquidation, bearing in mind that our corporation law is of American origin, the foregoing authorities have persuasive effect in considering similar cases in this jurisdiction. So it was ruled by our Supreme Court in the case of *Tan Tiong Bio, et al., v. Commissioner of Internal Revenue*, L-15778, April 23, 1962, wherein the petitioners argued without success that they could not be held liable as officers or directors of a defunct corporation for tax liability of the latter since the Commissioner instituted action only on September 23, 1954 against officers and directors of the Central Syndicate, a corporation that was incorporated on August 15, 1946 with a life term of only two years."

Board before such liquidation is undertaken, and the Monetary Board has the right to intervene and take such steps as may be necessary to protect the interest of the creditors.³⁷⁹

Only upon dissolution and only from the surplus profits arising from the sale of the company's business after the payment of company's debts are the shareholders entitled to proportional distribution of the proceeds.^{380,381}

11. *Penalties and repealing provisions*

Philippine Corporation Law provides for special and general penalties. Sec. 15 of the Law provides 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, and any company violating this provision is liable to forfeit all charters, grants, franchises, and concessions for

³⁷⁹ Sec. 86 of Act No. 337, known as The General Banking Act, as amended.

³⁸⁰ Sec. 16, last part of Act No. 1459.

³⁸¹ For a recent case in which the Supreme Court of the Philippines held that the liquidation of the assets of a defunct corporation may be considered as a conveyance of property to shareholders, see: Platon, Annual Survey of 1962 Supreme Court Decisions, Commercial Law, 38 Phil. L.J. 126 at 130 (1963): A corporation is a juridical person distinct from the members composing it. Necessarily, properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. But shares of stock, while they constitute personal property, do not represent property of the corporation for corporation has property of its own consisting chiefly of real estate (Nelson v. Owen, 113 Ala. 372, 21 So. 75; Morrow v. Gould, 145 Iowa 1, 123 N.W. 743). A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity (Hall and Faley v. Alabama Terminal, 173 Ala. 398, 56 Co. 235); but its holder is not the owner of any part of the capital of the corporation (Bradley v. Bauder, 36 Ohio St. 28). Nor is the stockholder entitled to the possession of any definite portion of its assets. (Gottfried v. Miller, 104 U.S. 521; Jones v. Davis, 35 Ohio St. 474). The stockholder is not a co-owner or tenant in common of the corporate property. (Horton v. Hoston, 166 Ala. 317, 51 Co. 992).

On these bases, the Court, in the case of Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds, G.R. No. L-18216, October 30, 1962, held that the certificate of liquidation of the appellant corporation was not merely a distribution of the corporation assets but actually a conveyance or transfer of property from the corporation to the stockholders, and, therefore, the corresponding documentary stamps amounting to P940.45 and registration fees amounting to P430.00, should have been paid as prerequisite to the registration of the certificate of liquidation.

The certificate of liquidation in question was executed by five stockholders of the appellant corporation by virtue of a resolution of the stockholders dissolving the corporation. It proportionally distributed among the stockholders, as liquidating dividends, the assets of said corporation. The Register of Deeds of Manila, however, refused to register said certificate on the ground that since the certificate of liquidation represented a transfer of assets from the corporation to the stockholders, the registration fees should have been paid and the documentary stamps affixed on the certificate. The appellants contended that inasmuch as the certificate of liquidation was merely a distribution of the assets of the corporation which had ceased to exist, it did not have

doing business in the Philippines, and in addition to be deemed guilty of an offence and punishable by a fine of twenty thousand pesos.³⁸²

Issue of "watered stock" is expressly forbidden by the Law: "Any officer of any corporation consenting to the issuance 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 severally and jointly liable to the corporation and its creditors for the difference between the real present cash value of the property at the time of issuance of the stock and the issue or par value of the same, as the case may be."³⁸³

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 this provision is subject to a fine not less than one hundred pesos nor more than one thousand pesos.³⁸⁴ A company may, unless otherwise prescribed by the Law, provide penalties for the violation of its by-laws, not exceeding in any case the sum of two hundred pesos.³⁸⁵

Any officer, director, or agent of a company or any person transacting business for any foreign company not having the license prescribed by the Law³⁸⁶ can be punished by imprisonment for not less than six months nor more than two years or by a fine of not less

to contain an intricate statement of the properties involved, the documentary stamps to be affixed thereon should only be P0.30 and no registration fees should be required.

The Court held for the Register of Deeds, stating that "the act of liquidation made by the appellants of the corporation's assets is not and cannot be considered a partition of community property, but rather a transfer or conveyance of the title of its assets to the individual stockholders, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings,—and this is in effect the purpose which they seek to obtain from the Register of Deeds,—the transfer cannot be effected without the corresponding deed of conveyance from the corporation to the stockholders."

³⁸² Sec. 15 of Act No. 1459. As far as the prohibition of involuntary servitude, see also: Art. III, Sec. 1, No. 13 of the Constitution of the Philippines (1935) as amended: "No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted."

³⁸³ Sec. 16, par. 2 of Act No. 1459, as amended by Act No. 2792 and Act No. 3518.

³⁸⁴ Sec. 19 of Act No. 1459, as amended by Act No. 3849 and Commonwealth Act No. 287.

³⁸⁵ Sec. 21 of Act No. 1459.

³⁸⁶ Sec. 68 of Act No. 1459, as amended by Commonwealth Act No. 287 and Secs. 14 and 89 of Republic Act No. 337.

³⁸⁷ Sec. 69 of Act No. 1459.

than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court.³⁸⁷

In the case of a foreign bank or banking company, any officer, director or agent of any such company who transacts business in the Philippines without the said license is punishable by imprisonment for not less than one year nor more than ten years and by a fine of not less than one thousand pesos nor more than ten thousand pesos.³⁸⁸

Furthermore, the Law provides that the violation of any of its provisions and its amendment, not otherwise penalised therein, be punishable by a fine of not more than one thousand pesos and by imprisonment for not more than five years in the discretion of the court. If the violation is committed by a company, the same is, upon such violation being proved, dissolved by *quo warranto* proceedings, instituted by the Solicitor-General or by any provincial fiscal, by order of said Solicitor-General. This provision cannot be construed to repeal the other causes for the dissolution of companies prescribed by existing law, and the remedy provided for in this section is considered as additional to the remedies already existing.³⁸⁹

No bank or banking institution can enter, directly or indirectly, into any contract of guaranty or suretyship, or can guarantee the interest or principal of any obligation of any person, co-partnership, association, company or other entity. The provisions of this section, however, do not apply to the borrowing of money by any such bank or institution through the re-discounting of its receivables, or otherwise, as may be permitted by law, nor to granting or guaranteeing of acceptance credits in the ordinary course of its business. Nor do these provisions apply to the certification of cheques or to transactions involving the release of documents attached to items received for collection, nor to any other transaction which may properly be regarded as common usage and accepted banking practice.³⁹⁰

No bank, banking institution, or building and loan association organised under the laws of the Philippines can open a branch or branches without first having obtained the written approval of the Bank Commissioner (now Central Bank) for the opening of such branch or branches. The written approval is given unless there is evidence to show that the establishment of the proposed branch or branches is prejudicial to the interest of the public, in which case the reasons for refusing to give the approval must be stated in

³⁸⁸ Sec. 14 of Republic Act No. 337, known as The General Banking Act, as amended.

³⁸⁹ Act No. 1459, Sec. 190-1/7, as amended by Act No. 3518, and Sec. 9 of Act No. 3610.

³⁹⁰ Sec. 74 of Republic Act No. 337, known as The General Banking Act, as amended, superseding Sec. 190-2/7 of the Act No. 1459.

writing. In case of the refusal of the Bank Commissioner (now Central Bank) to give such approval, the parties applying therefor may appeal to the Secretary of Finance (Monetary Board of the Central Bank) as provided by the law.^{391, 392}

No person, association or company not conducting the business of a commercial banking company, trust company, savings and mortgage bank, or building loan association, as defined in the law,³⁹³ can advertise or hold itself out as being engaged in the business of such bank, company or association, or use in connection with its business title the word or words "bank," "banking," "banker," "building and loan association," "trust corporation," "trust company," or words of similar import, or solicit or receive deposits of money for deposit, disbursement, safe-keeping, or otherwise, or transact in any manner the business of any such bank, company or association, without having first complied with the provisions of the law³⁹⁴ in so far as it relates to commercial banking companies, trust companies, savings and mortgage banks, or building and loan associations, as the case may be. The officers and directors of a company are jointly and severally liable for any violation of the provisions of the law. Any violation of these provisions is punishable by a fine of five hundred pesos for each day during which such violation is continued or repeated, and in default of the payment thereof, subsidiary imprisonment as prescribed by law.³⁹⁵

The Commission may revoke the registration of any security and the license to sell a speculative security by entering an order to this effect, with its findings in respect thereto, if upon examination into the affairs of the issuer of such security, it appears that the issuer:

- a) is insolvent;
- b) has violated any of the provisions of the law³⁹⁶ or any order of the Commission of which the issuer has notice; or
- c) has been or is engaged or is about to engage in fraudulent transactions; or
- d) is in any other way dishonest or has made any fraudulent representation in any prospectus or in any circular or other

³⁹¹ See Sec. 190-6/7 of the Act No. 1459.

³⁹² Act No. 1459, Sec. 190-3/7, as inserted by Act No. 3610, and by Secs. 88, 89 of Republic Act No. 337, known as The General Banking Act, as amended.

³⁹³ See: Republic Act No. 337, known as The General Banking Act, as amended.

³⁹⁴ *Ibid.*

³⁹⁵ Sec. 6 of Republic Act No. 337, known as The General Banking Act, approved on July 24, 1948, superseding Sec. 190-4/7 of the Act No. 1459.

³⁹⁶ See: Commonwealth Act No. 83 known as The Securities Act, approved on October 26, 1936, as amended.

literature that has been distributed concerning the issuer of its securities; or

- e) is of bad business repute; or
- f) does not conduct its business in accordance with law; or
- g) has its affairs in an unsound condition; or
- h) has his enterprise or business based upon unsound business principles.

In making such examination, the Commission has access to and may compel the production of all the books and papers of such issuer, and may administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business and affairs, and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a certified public accountant.

Whenever the Commission may deem it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the Commission may point out or to be brought down to the latest practicable date.

Should any issuer refuse to permit an examination to be made by the Commission, this constitutes proper ground for revocation of registration and license.

Should the Commission deem it necessary, it may enter an order suspending the right to sell securities pending any investigation, provided that the order state the grounds for taking such action, but such order of suspension, although binding upon the persons notified thereof, must be deemed confidential, and can not be published. Upon the entry of such order of suspension, no further sale of such security can be made until further order of the Commission.

Notice of the entry of such order must be given by mail, or personally, or by telephone, confirmed in writing, or by telegraph, to the issuer and every dealer who has notified the Commission of an intention to sell such security.

Before such order is made final, the issuer or dealer is entitled to a hearing; and such order may be appealed to the Supreme Court in the manner provided in the law.³⁹⁷

In case of the voluntary liquidation of any bank or banking institution incorporated under the laws of the Philippines, or of any branch in the Philippines of a foreign bank or banking company, written notice of such liquidation must be sent to the Monetary Board

³⁹⁷ Sec. 12 of Commonwealth Act No. 83 known as The Securities Act, approved on October 26, 1936, as amended by Republic Act No. 635.

before such liquidation is undertaken. The Monetary Board has the right to intervene and take such steps as may be necessary to protect the interests of the creditors.³⁹⁸

Any opinion, decision, ruling, or regulation made or issued by the Superintendent of Banks may be appealed to the Monetary Board, which has the power and authority to confirm, modify or repeal such opinion, decision, ruling, or regulation made or issued as aforesaid; but the action of the Monetary Board with respect thereto is subject to judicial review.³⁹⁹

Unless otherwise provided by the General Banking Act, the violation of any of the provisions of that Act is punishable by a fine of not more than two thousand pesos or by imprisonment for not more than two years or both. If the violation is committed by a company, the same is, upon such violation being proved, dissolved by *quo warranto* proceedings instituted by the Solicitor General. This provision cannot be construed as repealing the other causes for the dissolution of companies prescribed by existing law, and the remedy provided for in this provision is considered as additional to the remedies already existing.⁴⁰⁰

Finally, the Law contains repealing provisions whereby the Code of Commerce, in so far as it relates to companies or *sociedades anónimas*, and all other Acts or parts of Acts in conflict or inconsistent with the Law, are repealed.⁴⁰¹

Nothing in the Law can be deemed to repeal the existing law relating to those classes of associations which are termed *sociedades colectivas*, and *sociedades de cuentas en participación*, as to which associations the existing law is deemed to be still in force.

The existing corporations or *sociedades anónimas*, lawfully organised as such, which elected to continue their business as such *sociedades anónimas* instead of reforming and reorganising under

³⁹⁸ Sec. 86 of Republic Act No. 337, known as The General Banking Act, approved on July 24, 1948, superseding Sec. 190-5/7 of the Act No. 1459.

³⁹⁹ Sec. 71 of Republic Act No. 337, known as The General Banking Act, approved on July 24, 1948, superseding Sec. 190-5/7 of the Act No. 1459.

⁴⁰⁰ Sec. 87 of Republic Act No. 337, known as The General Banking Act, approved on July 24, 1948.

⁴⁰¹ With the exception of Act No. 52, entitled "An Act providing for examinations of banking institutions in the Philippines, and for reports by their officers," as amended, and Act No. 667, entitled "An Act prescribing the method of applying to governments of municipalities, except the City of Manila, and of provinces for franchises to construct and operate streets railway, electric light and power, and telephone lines, the conditions upon which the same may be granted, certain powers of the grantees of said franchises, and of grantees of similar franchises under special Act of the Commission, and for other purposes", as amended.

and by virtue of the provisions of the Law, have continued to be governed by the laws that were in force prior to the passage of the Law in relation to their organisation and method of transacting business and to the rights of members thereof as between themselves, but their relations to the public officials have been governed by the provisions of the Corporation Law.⁴⁰²

⁴⁰² Sec. 191 of the Act No. 1459.