NON-PROFIT CORPORATIONS—A PROPOSAL *

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During the last 15 years, there has been a considerable increase in the number of non-profit corporations organized in the Philippines.[1] Whatever may be the reason for this increase—the tax advantages involved, the increase in leisure time or as an answer to social needs—their influence on Philippine society has been felt. Ranging from such national organizations as the Philippine Chamber of Commerce, the Rotary Club, the YMCA to the local cultural and social organizations, they have contributed considerably to the healthy growth and development of business, education, athletics, music and art appreciation, recreation facilities and other similar aspects of social life. It is sad to note therefore that despite the increasing influence of this type of organization, our lawmakers have so far failed to give them recognition separate and distinct from the purely business corporations. Although our present Corporation Law [2] does govern non-profit corporations, yet this statute is obviously geared mainly to govern business corporations, and the meager provisions applicable to them do not help much in reducing the guess work which incorporators of such corporations would have to indulge in, nor in solving the problems arising from their operation, management, and dissolution. The lack of clear and comprehensive provisions has given rise to certain abuses on the part of those entrusted with their management and the members, lacking sufficient protection from the law, either remain ignorant of these abuses or cannot do much to remedy them. At least to serve as a guide to the incorporators and to lay down legal standards of management and operation in order to minimize abuses, the enactment of a special law governing non-profit corporations would certainly be most welcome, to say the least.

It should be mentioned here that the proposed Corporation Code prepared by the Code Commission which was submitted to Congress more than ten years ago without any resulting action, contained a special chapter on non-profit corporations.[3] It is felt, however, that even these provisions were not sufficiently comprehensive.

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* A study undertaken for the U.P. Law Center.

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1 A survey of the records of the Securities and Exchange Commission shows that at the time of this writing, there are a total of 4,109 non-profit corporations registered as non-stock corporations, of which there were only 43 in 1953.

2 Act 1459 as amended.

3 Title II of the proposed Corporation Code.

This proposal is a draft of a bill to govern non-profit corporations exclusively. In its preparation, a study was made of some state statutes prevailing in the United States. Many of these are patterned after the Model Non-Profit Corporation Act, prepared by the American Bar Association. This Model Act as revised in 1957 was also studied and some of its provisions found suitable for local purposes were included in the proposal, oftentimes with some modifications. Some provisions of the Corporation Code as proposed by the Code Commission were also included, with some changes whenever found necessary. In addition, there are entirely new provisions which either incorporate judicially declared principles or, though having no definite source, are believed to be necessary or proper.

Although "non-stock corporations" and "non-profit corporations" are terms which have been used interchangeably as having similar connotations, the former is really broader in scope since it may cover even corporations organized for profit. The proposed bill therefore uses the narrower term "non-profit corporations." A definition of the term is given in Section 1 to serve as the basis for determining whether a corporation comes within the purview of the proposed bill. The proposed definition rules out profits in favor of members. Under it, incidental profits may not be distributed during the existence of the corporation and any pecuniary benefit which a member may expect cannot be obtained until dissolution. Although a corporation may be a non-profit one, it is oftentimes necessary and beneficial for the furtherance of its purposes, that it be engaged in some income-producing activities. These activities may give rise to income more than sufficient to support present operations. Under the proposed provision, as long as these profits do not in any way inure to the personal benefit of the members during the existence of the corporation, the corporation does not cease to be a non-profit one. On the other hand, these profits should not be allowed to remain idle. The proposed provision therefore prescribes that they be used to promote the purposes of the corporation. Oftentimes, this situation will give rise to an increase in assets. Whether this increase in assets representing the incidental profits of the corporations will eventually go to the members upon dissolution, will depend on the nature of the corporation, in accordance with the proposed provision on distribution of assets upon dissolution. If it is charitable or religious, no member can get any part of the corporate assets, which must be distributed to organizations having purposes similar to those of the dissolving corporation.[4] The non-profit corporation under the proposal, however, cannot accumulate income for a period longer than 5 years without the approval of the Securities and Exchange Commission. It must either use the same for expansion of its operations or dispose of it for purposes consistent with the nature of its functions.[5]

[4] Section 49 d.
[5] Section 3 j.

A requirement that certain statements appear in the Articles of Incorporation is proposed in Section 3. The Corporation Law in enumerating these statements in Section 6, does not require a statement of the general scheme of financing which a non-business corporation proposes to adopt. The present law limits itself to requiring a statement of capital stock and the amount of subscription thereto, which clearly can be applicable only to business corporations. The proposed section requires not only a statement of assets which the corporation may possess at the time of incorporation but also a general declaration as to how the corporation is to be financied. This will at least help the proper authorities and other persons interested to determine the limitations which those entrusted with the operations of the corporation are subject in raising or in soliciting funds.

The proposed bill refers to the members of the governing board as trustees to distinguish them from directors of business corporations. Trustees as well as officers are prohibited from receiving compensation for the performance of the duties pertaining to their office, except in the form of *per diems* for meetings actually attended.[6] This provision is aimed to prevent distribution of income in the form of high salaries to officers and trustees. Such trustees are also expressly made personally liable for misappropriation or misuse of corporate money or property whether caused by willful act or by negligence in the administration of the affairs of the corporation.[7]

Membership in a non-profit corporation is as proposed, personal and non-transeferable, unless the articles or by-laws provide otherwise (Sec. 17). Its termination will have the effect of forfeiting all rights which the member may have in the corporation or in its property (Sec. 18). This means that any expectation which he may have to share in the corporate assets upon liquidation terminates with his membership.

Government supervision is considerably broadened by the proposed bill.[8] Failure to file an annual report may be a ground for dissolving the corporation.[9] The Securities and Exchange Commission is directed to certify to the Solicitor General the names of the corporations which have given ground for dissolution.[10] For lack of any other proper existing government agency, immediate supervision remains, under the proposal, with the Securities and Exchange Commission.

A significant innovation which is expected to meet opposition from some quarters is the requirement that all educational institutions must

[6] Section 25.
[7] Section 29.
[8] Sections 35 to 40.
[9] Section 57 (a).
[10] Section 59.

incorporate under the proposed bill.[11] This is to de-emphasize the profit making-aspect of these institutions in order that they may concentrate their efforts on their most important objective of providing education for the youth. It is believed that their organization as non-stock corporations under the proposed bill, accompanied by the prohibition against distribution of profits in any form during the lifetime of the corporation, will help improve educational standards.

The proposal grants broad powers to the non-profit corporation.[12] As observed by a well-known authority on modern corporation law, "The presumption or implication of powers (in the case of non-profit corporations) is checked by few or no conflicting interests of shareholders or investors. As a result, non-profit corporations have the implied power to do anything reasonably necessary to accomplish their purposes, except what the specific statutes or public policy forbids." [13] In line with this broad grant of power, a provision restricting considerably the *"ultra vires* doctrine" is inserted.[14] Adapted from the Model Non-Profit Corporation Act, the provision disallows the use of lack of powers, except in very limited cases, as a basis for or as a defense to an action against a corporation.

Detailed provisions regarding voluntary [15] and involuntary [16] dissolution of the non-profit corporation as well as distribution of its assets upon liquidation,[17] are incorporated in the proposed bill. The provisions of the Model Non-Profit Corporation Act on merger and consolidation are substantially incorporated and provide in detail for the steps to be taken and the effects thereof.[18]

A draft of the proposal in bill form follows. The justification or explanation of many of the provisions is also given.

AN ACT TO GOVERN NON-PROFIT CORPORATIONS

SEC. 1. FOR THE PURPOSES OF THIS ACT, A NON-PROFIT CORPORATION IS ANY CORPORATION NO PART OF THE INCOME OF WHICH IS DISTRIBUTABLE TO ITS MEMBERS, TRUSTEES OR OFFICERS, SUBJECT TO THE PROVISIONS OF THIS ACT ON DISSOLUTION: *PROVIDED*, THAT ANY PROFIT WHICH A NON-PROFIT CORPORATION MAY OBTAIN AS AN INCIDENT TO ITS OPERATION SHALL, WHENEVER NECESSARY OR PROPER, BE USED FOR THE FURTHERANCE OF THE PURPOSE FOR WHICH THE CORPORATION WAS ORGANIZED.

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11 Section 66.
12 Section 30.
13 *Oleck, Non-Profit Corporations and Associations*, pp. 95-96, sec. 48 (1956).
14 Section 33.
15 Sections 44 to 48 and 52 to 55.
16 Sections 56 to 58.
17 Sections 49 and 50.
18 Sections 60 to 64.

ALL NON-PROFIT CORPORATIONS SHALL BE ORGANIZED AS NON-STOCK CORPORATIONS.

THE TERMS "CORPORATION" AND "NON-STOCK CORPORATION" IN THE PRECEDING PARAGRAPH OF THIS SECTION SHALL HAVE THE SAME MEANING AS THE TERMS ARE DEFINED IN SECTIONS 2 AND 3 OF ACT 1459, OTHERWISE KNOWN AS THE CORPORATION LAW. WHENEVER USED IN THIS ACT, THE TERM "CORPORATION" SHALL MEAN A "NON-PROFIT CORPORATION."

The present corporation law does not define a non-profit corporation. The Corporation Code as proposed by the Code Commission does not specifically define a non-profit corporation but provides that "a non-profit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits or dividends to the members thereof and for which individuals may associate themselves, such as civil, religious, charitable, social, educational, scientific, cultural or recreational purposes, subject to the provisions of this Code applicable to particular classes of non-profit corporations. A non-profit corporation may engage in business for profit as an incident to the main purposes of the corporation. It may distribute its net assets among its members only upon its dissolution or winding up."

The proposed provision in Section 1 has similar effects as the quoted article of the proposed Corporation Code, but is more specific in its definition of a non-profit corporation and in the provision for the use of incidental profits.

The requirement that all non-profit corporations should be organized as non-stock corporations is most logical since a stock corporation, contemplating as it does the distribution of dividends among its stockholders, is incompatible with the idea of non-profit corporations.

FORMATION AND ORGANIZATION

SEC. 2. THREE OR MORE PERSONS MAY ORGANIZE A NON-PROFIT CORPORATION FOR ANY LAWFUL PURPOSE OR PURPOSES, INCLUDING WITHOUT BEING LIMITED TO, ANY ONE OR MORE OF THE FOLLOWING PURPOSES: CHARITABLE, RELIGIOUS, EDUCATIONAL, CULTURAL, ATHLETIC, FRATERNAL, LITERARY, SCIENTIFIC, SOCIAL, CIVIC OR RECREATIONAL PURPOSES, SUBJECT TO THE SPECIAL PROVISIONS OF THIS ACT GOVERNING PARTICULAR CLASSES OF NON-PROFIT CORPORATIONS: *PROVIDED*, THAT LABOR UNIONS, COOPERATIVE ORGANIZATIONS AND ORGANIZATIONS SUBJECT TO THE INSURANCE ACT MAY NOT BE ORGANIZED UNDER THIS ACT, WHICH SHALL BE ONLY SUPPLETORY TO THE LAWS GOVERNING SUCH UNIONS AND ORGANIZATIONS.

This section is similar to Section 4 of the American Bar Association's Model Non-Profit Corporation Act. It would be futile and unwise to attempt a complete enumeration of the purposes for which a non-profit corporation may be formed. As long as the purpose is lawful, a non-profit corporation should be allowed to organize. Labor unions are governed by the Industrial Peace Act.[19] Cooperatives are covered by the Philippine Non-Agricultural Cooperative Act[20] and the Act creating the Agricultural Productivity Commission.[21] These are special types of non-profit corporations which are adequately covered by existing legal provisions. The proposed Act will apply only if such special laws are silent on any matter in question.

Article 274 of the proposed Corporation Code quoted earlier and which enumerates some of the purposes for which a non-profit corporation may be organized does not make mention of labor unions or cooperatives and leaves to implication the question as to whether they will be covered by the Code.

SEC. 3. THE ARTICLES OF INCORPORATION OF NON-PROFIT CORPORATIONS MUST STATE:

a. THE NAME OF THE CORPORATION, WHICH SHALL NOT BE THE SAME AS, NOR DECEPTIVELY SIMILAR TO THAT OF ANOTHER EXISTING CORPORATION, NOR BE MISLEADING AS TO ITS CORPORATE PURPOSES;

b. THE PURPOSE OR PURPOSES FOR WHICH IT IS ORGANIZED, AND A STATEMENT AS TO HOW IT INTENDS TO CARRY OUT SUCH PURPOSE OR PURPOSES;

c. THE PLACE OF THE PRINCIPAL OFFICE OF THE CORPORATION;

d. THE TERM OF CORPORATE EXISTENCE, WHICH SHALL NOT EXCEED 50 YEARS: *PROVIDED*, THAT SUCH TERM MAY BE EXTENDED FOR A PERIOD OF NOT MORE THAN 50 YEARS IN ANY ONE INSTANCE, BY AMENDMENT TO THE ARTICLES OF INCORPORATION AS HEREINAFTER PROVIDED;

e. THE NAMES AND ADDRESSES OF THE ORIGINAL MEMBERS OF THE CORPORATION;

f. THE AMOUNT OF ASSETS, CLASSIFIED AS TO REAL AND PERSONAL PROPERTY, WHICH THE CORPORATION MAY OWN OR POSSESS AT THE TIME OF MAKING THE ARTICLES OF INCORPORATION, AND THE TERMS OF ANY GENERAL SCHEME OF FINANCING SUCH CORPORATION. WHENEVER APPLICABLE, THE ARTICLES SHALL STATE THE LIABILITY OF MEMBERS FOR DUES AND ASSESSMENTS, WHICH MAY BE IMPOSED UPON ALL CLASSES

[19] R.A. 875, secs. 23 and 24.
[20] R.A. 2023.
[21] R.A. 3844 amending R.A. 829 and R.A. 1285.

OF MEMBERS ALIKE OR IN DIFFERENT AMOUNTS OR PROPORTION, OR UPON A DIFFERENT BASIS UPON DIFFERENT CLASSES OF MEMBERS. MEMBERS OF ONE OR MORE CLASSES MAY BE MADE EXEMPT FROM EITHER DUES OR ASSESSMENTS, OR BOTH: *PROVIDED HOWEVER*, THAT THE ARTICLES MAY AUTHORIZE THE BOARD OF TRUSTEES TO FIX THE AMOUNT OF SUCH DUES OR ASSESSMENTS FROM TIME TO TIME, AND FIX THE TIME OF THEIR PAYMENT, UPON SUCH NOTICE AND BY SUCH METHODS AS THE BY-LAWS MAY PRESCRIBE;

g. THE NUMBER OF TRUSTEES, WHICH SHALL NOT BE LESS THAN THREE NOR MORE THAN FIFTEEN;

h. THE NAMES AND ADDRESSES OF THE FIRST TRUSTEES WHO SHALL ACT FOR THE CORPORATION UNTIL THE ELECTION OF THEIR SUCCESSORS, WHICH ELECTION SHALL TAKE PLACE NOT LATER THAN ONE YEAR FROM THE ISSUANCE OF THE CERTIFICATE OF INCORPORATION.

i. THE NAMES OF THE FIRST OFFICERS OF THE CORPORATION WHO SHALL HOLD OFFICE UNTIL THE ELECTION OF THEIR SUCCESSORS;

j. A STATEMENT OF HOW THE UNUSED INCOME OF THE CORPORATION, IF ANY, ACCUMULATED AT THE END OF EVERY FIVE-YEAR PERIOD, UNLESS THE APPROVAL OF THE SECURITIES AND EXCHANGE COMMISSION IS OBTAINED IN ACCORDANCE WITH SECTION 38 OF THIS ACT, SHALL BE USED OR DISPOSED OF: *PROVIDED*, THAT IF THE CORPORATION DOES NOT NEED NOR FIND USE FOR SAID ACCUMULATED INCOME, IT SHALL BE DEALT WITH OR DISPOSED OF ONLY FOR SUCH PURPOSES AS MAY BE CONSISTENT WITH THE PURPOSES FOR WHICH THE CORPORATION WAS ORGANIZED: *PROVIDED FURTHER*, THAT SAID ARTICLES MAY DELEGATE TO THE BOARD OF TRUSTEES THE POWER TO DECIDE AT THE END OF EVERY FIVE-YEAR PERIOD, THE USE OR DISPOSAL OF SAID INCOME, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

THE ARTICLES OF INCORPORATION MAY CONTAIN SUCH OTHER PROVISIONS AS THE INCORPORATORS MAY WANT TO SET FORTH, INCLUDING ANY PROVISION FOR DISTRIBUTION OF ASSETS ON DISSOLUTION, PROVIDED THEY ARE NOT CONTRARY TO LAW, PUBLIC POLICY, GOOD MORALS AND CUSTOMS.

The proposed provision enumerates the statements which must of necessity appear in the articles of incorporation of every non-profit corporation. In the absence of any of these statements, the SEC may refuse registration of the articles until such time as the law is complied with.

Name—The restrictions on names of non-profit corporations are justified. The fact that an organization is a non-profit one does not necessarily mean that its name will not develop goodwill or value as a trade name. A name may become very valuable for instance, in that the corporation may have been accustomed to obtain and receive from the public large sums of money for charitable or civic purposes.[22]

Purposes—The statement of purpose or purposes in effect will determine in most cases the extent of the powers of the corporation. It is the most important factor governing its general authority to act. It thus does away with the necessity to specify in the articles the powers of the corporation.

Assets, dues and assessments.—This statement is the equivalent of the statement of capital stock and subscription to the same in the case of business corporations.[23] "Whenever applicable" precedes the requirement as to dues and assessments because the nature of a non-profit corporation may not necessarily call for any dues or assessments from members. Unequal contributions are expressly allowed in order to give the corporation an opportunity to collect more from those who can afford a bigger amount. Exemption may also be necessary in some cases where it would be desirable to attract members whose names or services may be of particular value to the corporation.

The proposed Corporation Code does not require a statement of the present assets of the new corporation. It however contains a similar provision on dues and assessments except that this statement may appear either in the articles or by-laws and the method by which the directors may follow in fixing and collecting the dues and assessments may be prescribed by them, and not necessarily by the by-laws as the above provisions of this proposed Act provides.

It is felt that the statement of assets, dues and assessments being as they are the equivalent of the statement of capital stock in a business corporation, should appear in the articles, which is the charter of the corporation.

Number of trustees—"Trustees" is used in place of "directors" in order to distinguish the non-profit corporation from the purely business corporation. This is also in accordance with the present policy of the SEC with respect to non-stock corporations.

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[22] See *Benevolent and Protective Order of Elks v. Improved Benevolent and Protective Order of Elks*, 122 Tenn. 141, 118 SW 389 (1909). Also *Boy Explorers of America*, 67 NYS. 2d 108 (1946), where the Court held that the name was deceptively similar to Boy Scouts of America. As to a misleading name, see Ala. Code, Title 10, Sec. 209 (1959) under which the name cannot indicate that the corporation is organized for any purpose not stated in its articles.

[23] See secs. 6, pars. 7 and 8, Act 1459 as amended.

The minimum of three trustees is set because it is believed that a lesser number might lead to a one-man rule, which may prove risky in many types of non-profit corporations. A maximum of 15 is prescribed since a larger board may be unwieldy and hard to convene.

Term of corporate existence.—The initial term is fixed at a maximum of 50 years, subject to extension by amendment of the articles. This is similar to the present rule governing busines corporations.[24] This allows a great flexibility in fixing the lifetime of the corporation. It may even exist perpetually by periodic amendment to its articles. There seems to be no reason why a limit should be set to the lifetime of a corporation, as long as it complies with the provisions of the law and the members wish to continue its existence. On the other hand, if it becomes undesirable, whether legally or otherwise, to continue its corporate existence, there are prescribed means to dissolve a corporation, even before the term fixed in the articles.[25]

Unused income—Under a subsequent section of this Act,[26] no corporation may accumulate income for a period longer than five years, except upon approval of the Securities and Exchange Commission. Under this prohibition, such accumulated income will have to be used or disposed of by the corporation in some manner. Under Section 1 of this proposed Act, no income can go to the members or trustees, but should instead be channeled for the furtherance of the purposes of the corporation. It may be, however, that the corporation does not, at least for the present, find need for such extra funds. The above provision gives it some amount of discretion in determining how to dispose of said income, provided its action is consistent with the provisions of this proposed Act and with the purposes of the corporation. It may therefore go to charity or to some organization similar in nature to the corporation.

> SEC. 4. THE ARTICLES OF INCORPORATION SHALL BE DULY EXECUTED AND ACKNOWLEDGED BY THE MAJORITY OF THE INCORPORATORS BEFORE A NOTARY PUBLIC AND SHALL BE FILED AND REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION. AFTER THE PAYMENT OF THE FEE OF TWENTY PESOS, AND THE SECURITIES AND EXCHANGE COMMISSION IS SATISFIED THAT THE PURPOSE OR PURPOSES STATED IN THE ARTICLES OF INCORPORATION ARE LAWFUL AND THAT THE SAID ARTICLES ARE IN ACCORDANCE WITH LAW, A CERTIFICATE OF INCORPORATION SHALL BE ISSUED AND UPON SUCH ISSUANCE, CORPORATE EXISTENCE SHALL BEGIN AND THE CORPORATION SHALL ACQUIRE A JURIDICAL PERSONALITY SEPARATE AND DISTINCT FROM ITS MEMBERS, WITH SUCH POWERS AND ATTRIBUTES AS ARE HEREINAFTER PROVIDED.

[24] See sec. 7(4) and sec. 18, Act 1459 as amended.
[25] See sec. 45, et. seq., *infra.*
[26] Sec. 38, *infra.*

THE CERTIFICATE OF INCORPORATION SHALL BE CONCLUSIVE EVIDENCE THAT ALL CONDITIONS PRECEDENT REQUIRED TO BE PERFORMED BY THE INCORPORATORS HAVE BEEN COMPLIED WITH AND THAT THE CORPORATION HAS BEEN INCORPORATED UNDER THIS ACT, EXCEPT AS AGAINST THE STATE IN A PROCEEDING TO CANCEL OR REVOKE THE CERTIFICATE OF INCORPORATION.

The last sentence is taken from the Model Corporation Act. After the issuance of the certificate of incorporation, no one can question the due incorporation of the corporation except the State in a direct proceeding to cancel or revoke such certificate.

SEC. 5. WITHIN THIRTY DAYS FROM THE ISSUANCE OF THE CERTIFICATE OF INCORPORATION, THE CORPORATION SHALL ADOPT ITS BY-LAWS BY THE AFFIRMATIVE VOTE OF THE MAJORITY OF THE MEMBERS ENTITLED TO VOTE: *PROVIDED*, THAT WRITTEN NOTICE OF THE MEETING FOR SUCH ADOPTION SHALL HAVE BEEN GIVEN TO ALL MEMBERS IN PERSON OR BY MAIL, AT LEAST TEN DAYS PRIOR TO THE DATE OF SAID MEETING, STATING THE PURPOSE OF THE MEETING.

Although the by-laws may be passed by a majority vote of members entitled to vote only, opportunity to discuss and air their views is given to all members, voting as well as non-voting. Notice of the meeting is therefore required by the proposed provision to be given to all members of the corporation. It is believed that the opinions of the non-voting members will help the voting members in determining what rules to adopt. On the other hand, if non-voting members be counted in the proportion necessary to carry and adopt the by-laws, it may be possible that such by-laws, in view of the great number of members in some corporations, may not be enacted within a reasonable time, to the prejudice of the corporation as a whole.

SEC. 6. THE BY-LAWS OF A NON-PROFIT CORPORATION SHALL, WHENEVER APPLICABLE, PROVIDE FOR:

a. THE AUTHORIZED NUMBER OF MEMBERS, AS WELL AS THE RULES FOR THEIR ADMISSION, *PROVIDED* THAT ALL SUCH RULES SHALL BE REASONABLE, GERMANE TO THE PURPOSES OF THE CORPORATION AND EQUALLY ENFORCED AS TO ALL MEMBERS.

b. THE METHOD OR MEANS OF COLLECTING DUES OR ASSESSMENTS FROM THE MEMBERS, INCLUDING PROVISIONS FOR THE CANCELLATION OF MEMBERSHIP, UPON REASONABLE NOTICE, FOR NON-PAYMENT OF SUCH DUES OR ASSESSMENTS, AND FOR REINSTATEMENT IN SUCH CORPORATION.

c. SUBJECT TO THE PROVISIONS OF THE ARTICLES OF INCORPORATION, THE CLASSIFICATION OF MEMBERS, IF ANY, AND THE VOTING, PROPERTY AND OTHER RIGHTS AND IN-

TERESTS OF SUCH MEMBERS, INCLUDING THEIR DISTRIBUTIVE RIGHTS UPON DISSOLUTION: *PROVIDED*, HOWEVER, THAT WHERE THE PURPOSE OF THE CORPORATION IS RELIGIOUS OR CHARITABLE, NO PART OF THE PROPERTY OF THE CORPORATION CAN BE DISTRIBUTED IN FAVOR OF ANY MEMBER PERSONALLY UPON THE CORPORATION'S DISSOLUTION.

d. THE CAUSES FOR THE TERMINATION OF MEMBERSHIP AND THE EFFECTS OF SUCH TERMINATION ON THE INTERESTS OF THE MEMBER IN THE CORPORATION.

e. THE TIME, PLACE AND MANNER OF CALLING, GIVING NOTICE OF AND CONDUCTING REGULAR AND SPECIAL MEETINGS OF MEMBERS AND TRUSTEES.

f. THE NUMBER OR PERCENTAGE OF MEMBERS NECESSARY TO CONSTITUTE A QUORUM AT ANY MEETING OF MEMBERS AND THE VOTE NECESSARY TO ADOPT ANY MATTER VOTED UPON.

g. THE NUMBER OF TRUSTEES NECESSARY TO CONSTITUTE A QUORUM IN ANY MEETING OF TRUSTEES.

h. THE QUALIFICATIONS AND TENURE OF OFFICERS AND TRUSTEES, AS WELL AS THEIR POWERS AND DUTIES. SUCH TENURE SHALL NOT EXCEED TWO YEARS, SUBJECT TO THE RIGHT OF MEMBERS TO REELECT ANY OR ALL TRUSTEES IN ACCORDANCE WITH SECTION 19.

i. THE METHOD OF TRANSFER OF MEMBERSHIP, IF SUCH BE ALLOWED, AND THE CONDITIONS UNDER WHICH IT MAY BE DONE.

THE BY-LAWS MAY CONTAIN ANY OTHER PROVISION PROVIDED IT IS NOT CONTRARY TO LAW, PUBLIC POLICY OR CUSTOM, OR TO THE ARTICLES OF INCORPORATION. WHENEVER ANY PROVISION OF THE BY-LAWS IS INCONSISTENT WITH A PROVISION OF THE ARTICLES OF INCORPORATION, THE LATTER SHALL CONTROL.

A COPY OF THE BY-LAWS, DULY VERIFIED BY THE PRESIDENT AND THE SECRETARY OF THE CORPORATION AS CORRECT, SHALL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, UPON PAYMENT OF THE AMOUNT OF TEN PESOS, NOT LATER THAN THIRTY DAYS FROM THE ADOPTION THEREOF.

The above statements should appear in the by-laws whenever they are applicable to the particular type of non-profit corporation concerned. These will serve as information to future members as well as to the SEC and enable the latter to exercise meaningful supervision over the corporate affairs.

Paragraph a. This provision gives wide latitude to the corporation to formulate its own rules of membership. The rule is partly taken from Section 12 of the Michigan General Corporation Act.

Paragraph b. This provision is auxiliary to the authorization in letter (a) to promulgate rules for admission of members. Dues and assessments

may be the only or main source of income of the corporation to support its operation, so it is only reasonable to allow it to disqualify from further membership any one who fails to contribute to the support of the organization.

Paragraph c. Under the proposed provisions of Sec. 3(f), the articles of incorporation must state, whenever applicable, the liability of members for dues or assessments and allows a classification of members on the basis of this liability. Classifications on other bases are possible, and these should appear in the by-laws of the corporation, otherwise the members shall be treated equally.

Paragraph d. In the absence of any provision in the by-laws regarding the effects of termination of membership, section 18 will apply, extinguishing all rights of the member in the corporation or in its property.

Paragraph h. The maximum term of two years is fixed for a trustee because it is felt that a longer period would be unwise. A director who turns out to be undesirable or incompetent as a member of the board, may not be easily removed from office in accordance with section 26. The limitation of two years serves as an additional safeguard against such a situation. On the other hand, a period of one year may be too short for a continuation of policies of a particular board, so that the proposed provision allows the corporation the liberty to decide the tenure of the directors up to a maximum of two years. An efficient board will usually be reelected.

Paragraph i. If the articles are silent as to transfer of membership, Section 17 will apply and all rights of membership shall be personal and non-transferable.

SEC. 7. A COPY OF THE ARTICLES OF INCORPORATION AND OF THE BY-LAWS, AND ALL AMENDMENTS THERETO, SHALL BE KEPT ON FILE IN THE PRINCIPAL OFFICE OF THE CORPORATION AND SHALL BE OPEN FOR INSPECTION TO ALL MEMBERS OF THE CORPORATION AT REASONABLE HOURS ON BUSINESS DAYS.

AMENDMENTS

SEC. 8. UPON RESOLUTION OF THE BOARD OF TRUSTEES SETTING FORTH THE PROPOSED CHANGE, THE ARTICLES OF INCORPORATION MAY BE AMENDED BY A VOTE OF TWO-THIRDS OF ALL MEMBERS ENTITLED TO VOTE, IN A GENERAL OR SPECIAL MEETING, PROVIDED WRITTEN NOTICE OF SUCH MEETING AND OF THE INTENTION TO AMEND BE SENT TO ALL MEMBERS AT LEAST TEN DAYS PRIOR TO THE DATE OF SAID MEETING. A COPY OF THE AMENDMENT DULY EXECUTED AND ACKNOWLEDGED BEFORE A NOTARY PUBLIC SHALL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WHICH, UPON FINDING THAT THE AMENDMENT

IS NOT CONTRARY TO LAW, AND UPON PAYMENT OF THE AMOUNT OF TEN PESOS BY THE CORPORATION, SHALL ATTACH THE SAME TO THE ORIGINAL ARTICLES OF INCORPORATION. FROM THE DATE OF SUCH FILING, THE CORPORATION SHALL HAVE THE SAME POWERS AND LIABILITIES AS IF THE AMENDMENT HAD BEEN EMBRACED IN THE ORIGINAL ARTICLES OF INCORPORATION.

SEC. 9. THE BY-LAWS MAY BE AMENDED BY A MAJORITY OF THE MEMBERS ENTITLED TO VOTE AT A SPECIAL OR GENERAL MEETING; *PROVIDED* THAT WRITTEN NOTICE OF THE MEETING AND OF THE INTENTION TO AMEND, HAS BEEN GIVEN TO ALL MEMBERS AT LEAST TEN DAYS BEFORE THE MEETING: *PROVIDED FURTHER*, THAT A MAJORITY OF THE MEMBERS ENTITLED TO VOTE MAY AT ANY MEETING DELEGATE TO THE BOARD OF TRUSTEES THE POWER TO AMEND THE BY-LAWS.

A COPY OF THE AMENDMENT SHALL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WITHIN ONE MONTH FROM THE PASSAGE THEREOF. A FEE OF FIVE PESOS SHALL BE COLLECTED FOR SUCH FILING.

SEC. 10. NO AMENDMENT TO THE ARTICLES OR BY-LAWS OF A CORPORATION SHALL AFFECT ANY EXISTING CAUSE OF ACTION IN FAVOR OF OR AGAINST SUCH CORPORATION, OR ANY PENDING ACTION TO WHICH SUCH CORPORATION SHALL BE A PARTY, OR EXISTING RIGHTS OF PERSONS OTHER THAN MEMBERS.

MEMBERS

SEC. 11. THE RIGHT OF THE MEMBERS, OR ANY CLASS OR CLASSES OF MEMBERS, TO VOTE MAY BE LIMITED, ENLARGED OR DENIED TO THE EXTENT SPECIFIED IN THE ARTICLES OF INCORPORATION OR BY-LAWS. UNLESS SO LIMITED, ENLARGED OR DENIED, EACH MEMBER, REGARDLESS OF CLASS, SHALL BE ENTITLED TO ONE VOTE ON EACH MATTER SUBMITTED TO A VOTE TO MEMBERS.

In the social type of organization, normally each member should be entitled to one vote. However, some types of organizations may have good reason for providing for voting and non-voting members. In a charitable organization for example, contributions are solicited from a great number of donors and membership in the corporation would serve as an inducement to donations. It may be impractical however to give voting rights to all one-peso donors, but it would certainly be beneficial to the corporation to give such right to large donors in order to attract more funds.

SEC. 12. THERE SHALL BE A MEETING OF ALL MEMBERS OF THE CORPORATION AT LEAST ONCE A YEAR UPON SUCH NOTICE AND AT SUCH TIME AND PLACE AS THE BY-LAWS MAY PROVIDE AT SUCH MEETING, THE TRUSTEES SHALL

PRESENT A COMPLETE REPORT OF THE OPERATIONS OF THE CORPORATION FOR THE PRECEDING YEAR.

SPECIAL MEETINGS MAY BE HELD ON SUCH CALL AND NOTICE AND AT SUCH PLACE AS THE ARTICLES OR BY-LAWS MAY PROVIDE, SUBJECT TO THE PROVISIONS OF THIS ACT. IN THE ABSENCE OF ANY PROVISION IN THE ARTICLES OF INCORPORATION OR BY-LAWS, AND UNLESS OTHERWISE PROVIDED IN THIS ACT, ALL MEETINGS OF MEMBERS MAY BE CALLED BY THE PRESIDENT OR BY THE BOARD OF TRUSTEES, BY GIVING WRITTEN NOTICE OF THE PLACE, DATE AND HOUR THEREOF AND IN CASE OF A SPECIAL MEETING, THE PURPOSE FOR WHICH THE MEETING IS CALLED, AT LEAST TEN DAYS BUT NOT MORE THAN THIRTY DAYS BEFORE THE DATE OF THE MEETING, EITHER PERSONALLY OR BY MAIL.

The first paragraph of the proposed provision is aimed to minimize the danger of abuses which may be committed by a self-perpetuating board of trustees, without apprising the members as to what is being done. Under the Corporation law, not even business corporations are legally required to give an annual report to its stockholders, although most corporations do so.

SEC. 13. A MEMBER MAY VOTE IN PERSON, OR, UNLESS THE ARTICLES OF INCORPORATION OR THE BY-LAWS OTHERWISE PROVIDE, MAY VOTE BY PROXY EXECUTED IN WRITING BY THE MEMBER OR BY HIS DULY AUTHORIZED ATTORNEY-IN-FACT. A PROXY SHALL BE VALID FOR NINETY DAYS FROM THE DATE OF ITS EXECUTION, UNLESS A LONGER OR SHORTER PERIOD IS PROVIDED IN THE PROXY.

IN THE ABSENCE OF PROVISIONS IN THE ARTICLES OF INCORPORATION OR THE BY-LAWS FIXING A HIGHER PROPORTION OR NUMBER, ONE FIFTH OF THE VOTES ENTITLED TO BE CAST OR THREE VOTING MEMBERS, WHICHEVER IS THE HIGHER NUMBER, REPRESENTED IN PERSON OR BY PROXY, SHALL CONSTITUTE A QUORUM AT ANY MEETING OF MEMBERS. WHERE THERE IS A QUORUM, UNLESS THE LAW, ARTICLES OF INCORPORATION OR BY-LAWS FIX A GREATER PROPORTION, A VOTE OF THE MAJORITY OF THE MEMBERS ENTITLED TO VOTE PRESENT OR REPRESENTED SHALL BE NECESSARY TO ADOPT ANY MATTER VOTED UPON.

Although one fifth of the members entitled to vote seems a rather small proportion for a quorum, yet it is felt that this is necessary for practical purposes. If in a widely-held business corporation where financial benefits are expected by stockholders, it is oftentimes difficult to get a majority to attend meetings, there would be greater reason to expect the same situation in non-profit corporations. In order not to hamper the efficient operation of the corporation, therefore, the proposed provision is included. Where the members of the corporation are less than fifteen,

the requirement of three members to constitute a quorum will prevail. The articles or by-laws may of course provide for a higher though not a lower number for a quorum as well as the necessary vote.

> SEC. 14. THE CORPORATION SHALL KEEP A MEMBERSHIP BOOK WHICH SHALL CONTAIN THE NAMES, ADDRESSES AND SIGNATURES OF ALL MEMBERS. TERMINATION OF ANY MEMBERSHIP SHALL BE RECORDED IN SAID BOOK, TOGETHER WITH THE DATE ON WHICH THE MEMBERSHIP CEASED AND THE CAUSE FOR SAID TERMINATION.
>
> AN APPLICANT FOR MEMBERSHIP MUST FILE AN APPLICATION WITH THE BOARD OF TRUSTEES, WHICH SHALL HAVE THE POWER TO APPROVE THE SAME IN ACCORDANCE WITH THE ARTICLES OF INCORPORATION OR BY-LAWS OF THE CORPORATION. WHENEVER APPROVED, SUCH APPLICATION MUST BE KEPT ON FILE IN THE PRINCIPAL OFFICE OF THE CORPORATION.

The first paragraph is from Article 297 of the proposed Corporation Code. The second paragraph is taken from the SEC Requirements for Non-Stock Corporations, issued on May 24, 1963. Since the articles or by-laws of the corporation may provide for qualifications of members, whether or not said qualifications are met must be assessed. The most logical body to do this is the board of trustees.

> SEC. 15. MEMBERS SHALL NOT BE PERSONALLY LIABLE FOR THE DEBTS, LIABILITIES OR OBLIGATIONS OF THE CORPORATION BEYOND THEIR LIABILITY TO PAY DUES AND/OR ASSESSMENTS PROPERLY LEVIED IN ACCORDANCE WITH THE ARTICLES OR BY-LAWS OF THE CORPORATION.

This proposed provision is merely a re-statement of the fundamental principle in corporation law that the members or stockholders thereof shall not be personally liable for the obligations of the corporation and that their liability is limited to the amount that they have contributed or have agreed to contribute to the corporation. No similar provision is found in the present Corporation Law, although the principle of limited liability is undoubtedly followed in this jurisdiction.[27]

> SEC. 16. WHERE THE NON-PROFIT CORPORATION HAS NO MEMBERS OTHER THAN THE TRUSTEES, THE LATTER SHALL EXERCISE ALL THE RIGHTS AND POWERS OF THE MEMBERS THEREOF. WHERE THE ARTICLES OF INCORPORATION OR THE BY-LAWS STATE THE MINIMUM NUMBER OF MEMBERS WHICH THE CORPORATION SHALL HAVE AND THE MEMBERS ARE REDUCED BELOW SUCH NUMBER BY DEATH, WITH-

[27] See *Arnold v. Willits & Patterson, Ltd.* 44 Phil. 634 (1923) and *La Campana Coffee Factory, Inc. v. Kaisahan Ng Mga Mangagawa sa La Campana,* 83 Phil. 160 (1953).

DRAWAL, EXPULSION OR OTHERWISE, THE SURVIVING OR REMAINING MEMBER OR MEMBERS SHALL, UNLESS THE ARTICLES OR BY-LAWS OTHERWISE PROVIDE, CONTINUE THE CORPORATE EXISTENCE AND MAY FILL THE VACANCIES BY ADMITTING NEW MEMBERS.

This provision is taken substantially from Article 296 of the proposed Corporation Code. It is indeed possible that a corporation can efficiently accomplish its purposes with only a few members. The corporation need not take in more members aside from the incorporators. On the other hand, the efficient operation of some types of non-profit corporations may need more members, in which case, a minimum or a maximum number may be fixed in the articles or by-laws.[28] The reduction of members below the minimum fixed should not be a cause for affecting the existence of the corporation.

SEC. 17. UNLESS THE ARTICLES OF INCORPORATION OR BY-LAWS OTHERWISE PROVIDE, MEMBERSHIP IN A NON-PROFIT CORPORATION, AND ALL RIGHTS ARISING THEREFROM, ARE PERSONAL AND NON-TRANSFERABLE.

In many types of non-profit corporations, the personal qualifications of members would be of utmost importance, unlike in business corporations, specially in widely held ones, where the financial contribution is the main and in many cases, the only consideration for membership. The rule of non-transferability contrary to the rule of transferability in business corporations,[29] is therefore perfectly justified in non-profit corporations. Under the proposed provision, the rule however is not inflexible and the members may, in the articles or by-laws, expressly allow transferability, as well as the method and conditions of a transfer.

SEC. 18. MEMBERSHIP SHALL BE TERMINATED IN THE MANNER AND FOR THE CAUSES PROVIDED IN THE ARTICLES OF INCORPORATION OR BY-LAWS OF THE CORPORATION. TERMINATION OF MEMBERSHIP SHALL HAVE THE EFFECT OF EXTINGUISHING ALL RIGHTS OF THE MEMBER IN THE CORPORATION OR IN ITS PROPERTY, UNLESS OTHERWISE PROVIDED IN SAID ARTICLES OR BY-LAWS.

Under this proposed provision, when membership ceases, all rights of the member are forfeited. This would include any rights which a member would have on the property of the corporation. Since the corporation was organized without any intention of giving financial or pecuniary benefits to its members, it is reasonable to imply that a member, in paying or giving his contribution, whether in the form of dues, assessments

[28] See sec. 6(a), *supra.*

[29] See sec. 35, Act 1459 as amended. Also *Padgett v. Babcock & Templeton, Inc.*, 59 Phil. 232 (1933).

or property, does so without any expectation of getting it back. This contribution, and any increments thereto, should therefore remain with the corporation for the furtherance of its purposes. If the termination is caused by death, his heirs would not have any rights in the corporation. However, in some types of non-profit corporations, it is possible and indeed probable that the member expects at least a return of his contribution upon the dissolution of the corporation. This would specially be true if his initial contributions consisted of valuable property. The nature of the purpose and operation of the corporation may indeed increase the value of this contribution, as well as the other assets of the corporation, and the member may have had reason to expect to share in such increase in value at the dissolution of the corporation, without necessarily doing violence to the spirit of non-profit corporations. It is for this reason that the proposed provision allows the articles or by-laws to make express provisions as to rights of members in the corporation and its property, upon the termination of their membership for any cause whatsoever.

TRUSTEES AND OFFICERS

SEC. 19. UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR THE BY-LAWS, THERE SHALL BE HELD AN ANNUAL ELECTION OF TRUSTEES. NOTICE OF THE MEETING TO ELECT TRUSTEES SHALL BE GIVEN ALL MEMBERS ENTITLED TO VOTE AT LEAST TEN DAYS BEFORE SAID MEETING. THE SAID NOTICE MUST STATE THE TIME AND PLACE OF THE MEETING, AND THAT THE ELECTION OF TRUSTEES WILL BE HELD.

NO PERSON MAY BE ELECTED AS A TRUSTEE UNLESS HE IS A MEMBER OF THE CORPORATION.

Under Section 6(h) of this proposed bill, the by-laws may fix the tenure of the trustees for a maximum period of two years. In such a case, the election of trustees should be held at the expiration of the term of such trustees, or shortly before that, instead of annually.

SEC. 20. THE ARTICLES OF INCORPORATION OR THE BY-LAWS MAY PROVIDE THAT IN ALL ELECTIONS FOR TRUSTEES, EVERY MEMBER ENTITLED TO VOTE SHALL HAVE THE RIGHT TO CUMULATE HIS VOTE AND TO GIVE ONE CANDIDATE A NUMBER OF VOTES EQUAL TO HIS VOTE MULTIPLIED BY THE NUMBER OF TRUSTEES TO BE ELECTED, OR THAT HE MAY DISTRIBUTE HIS VOTES SO CUMULATED AMONG ANY NUMBER OF SUCH CANDIDATES.

This provision authorizes cumulative voting in the election of trustees. However, the articles or by-laws must expressly allow it, otherwise, each member will be entitled to only one vote, the general rule laid down by section 10. The members of the corporation are in the best

position to know whether or not in the type of corporation they have organized cumulative voting would be proper. This modifies the present rule under the Corporation Law which, although providing for cumulative voting in stock corporations, allows only one vote for each director to members of non-stock corporations,[30] without permitting the articles or by-laws to provide otherwise.

> SEC. 21. THE BOARD OF TRUSTEES OF THE CORPORATION SHALL BE THE GOVERNING BODY OF THE CORPORATION AND SHALL HOLD ALL PROPERTY OF THE CORPORATION, EXERCISE ALL THE POWERS, AND PERFORM THE OBLIGATIONS THAT PERTAIN TO THE CORPORATION.

This proposed provision is similar to the rule found in Section 28 of the Corporation Law. It merely means that it is the board of trustees as a body, and not the members of the corporation, which represents the corporation and exercises all the duties and powers devolving on the corporation. So that any act by the members, as a body, cannot usually bind the corporation. This rule is justified by several factors. The members of a corporation may be many and will therefore be unwieldy and difficult to convene. It is the board who is more familiar with the operations of the corporation, and the smallness of the group makes it easier to convene. If every matter which comes before the corporation for decision would have to be referred to the members, it is not difficult to imagine the inconvenience and difficulty of arriving at a decision and the inefficiency which will necessarily result from such a situation.

> SEC. 22. UNLESS THE ARTICLES OF INCORPORATION OR THE BY-LAWS PROVIDE A GREATER NUMBER, A MAJORITY OF THE TRUSTEES SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS, AND PROVIDED A QUORUM EXISTS, THE VOTE OF THE MAJORITY OF THOSE PRESENT AT THE MEETING SHALL BE SUFFICIENT TO PASS ALL RESOLUTIONS OF THE BOARD: *PROVIDED*, THAT IF ALL THE TRUSTEES SHALL CONSENT IN WRITING TO ANY ACTION TO BE TAKEN BY THE CORPORATION, SUCH ACTION SHALL BE AS VALID A CORPORATE ACTION AS THOUGH IT HAD BEEN AUTHORIZED AT A MEETING OF THE BOARD.
>
> TRUSTEES MUST BE PERSONALLY PRESENT AT BOARD MEETINGS AND CANNOT VOTE BY PROXY.
>
> NOTICE OF EVERY BOARD MEETING SHALL BE GIVEN TO EVERY MEMBER OF THE BOARD AT LEAST THREE DAYS BEFORE EACH MEETING, UNLESS A DIFFERENT PERIOD IS FIXED BY THE ARTICLES OF INCORPORATION OR BY-LAWS. BUT THE PRESENCE OF A TRUSTEE AT ANY MEETING SHALL BE A WAIVER OF NOTICE TO HIM EXCEPT WHERE HE ATTENDS

[30] See sec. 31, Act 1459 as amended.

A MEETING FOR THE PURPOSE OF OBJECTING TO THE TRANSACTION OF ANY BUSINESS BECAUSE THE MEETING IS NOT LAWFULLY CALLED OR CONVENED.

Under the first paragraph, the articles or by-laws may fix a number greater than the majority of directors as a quorum. A number less than the majority is not advisable. In the absence of such express provision, the usual rule applies—the presence of a majority of the trustees shall be sufficient to conduct a meeting.

The objection to allowing a director or trustee to vote by proxy is that in so doing he delegates his control and management discretion, thus in effect abdicating from the position of trust to which he was elected by the members or stockholders.[31] Discretion must be exercised personally and judgment should be formed after hearing the discussion for and against the matter being considered during the meeting.

Lack of notice to even just one trustee can invalidate a meeting at such trustee's protest. But his presence should be considered a waiver of his right to notice because the reason for such notice has been achieved. This is the rule with respect to business corporations,[32] although there is no specific provision in the Corporation Law on the matter.

SEC. 23. UPON THE ELECTION OF THE TRUSTEES, THEY SHALL IMMEDIATELY HOLD A MEETING TO ELECT FROM AMONG THEM A PRESIDENT, A TREASURER AND SUCH OTHER OFFICERS AS THE ARTICLES OR BY-LAWS MAY PROVIDE. A SECRETARY MAY BE APPOINTED OR ELECTED BY THE BOARD FROM ANY OF THE MEMBERS OF THE CORPORATION. HE SHALL NOT HAVE THE RIGHT TO VOTE AT ANY MEETING OF THE BOARD, UNLESS HE HIMSELF IS A TRUSTEEE.

SEC. 24. WITHIN FIFTEEN DAYS AFTER EVERY MEETING ELECTING THE TRUSTEES AND OFFICERS OF THE CORPORATION, THE SECRETARY OR ANY OTHER OFFICER OF THE CORPORATION SHALL SUBMIT TO THE SECURITIES AND EXCHANGE COMMISSION, THE NAMES AND ADDRESSES OF THE NEW OFFICERS AND TRUSTEES. SHOULD AN OFFICER OR TRUSTEE DIE, RESIGN OR IN ANY MANNER CEASE TO HOLD OFFICE, THE SECRETARY OR ANY OTHER OFFICER OF THE CORPORATION SHALL IMMEDIATELY REPORT SUCH FACT TO THE SECURITIES AND EXCHANGE COMMISSION, AND UNTIL SAID COMMISSION SHALL HAVE RECEIVED SUCH REPORT, THE OFFICER OR TRUSTEE WHO HAS RESIGNED OR CEASED TO HOLD OFFICE, SHALL BE DEEMED TO CONTINUE IN OFFICE.

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[31] See *Perry v. Tuskaloosa Cotton Seed Oil Mill Co.*, 93 Ala. 364, 9 So. 217 (1891); *Lippman v. Kehoe Stenograph Co.*, 11 Del. Ch. 80, 95 Atl. 895 (1915).

[32] *Thompson v. M. K. & T. Oil Co.*, 42 P. (2d) 374 (1935); *Zachary v. Millin*, 294 Mich. 622, 293 NW 770 (1940).

This provision is taken from the SEC Regulations as to Non-stock Corporations issued on May 24, 1963. The above requirement will keep the SEC records up to date regarding the persons responsible for the corporation. In case any question regarding the operation of the corporation should arise, the SEC would be in a better position to conduct any inquiry which may be necessary under the circumstances. This would be of particular importance in the case of non-profit corporations which solicit contributions from the public for charitable or other civic purposes.

> SEC. 25. TRUSTEES AND OFFICERS, AS SUCH, SHALL NOT RECEIVE COMPENSATION, BUT THE ARTICLES OF INCORPORATION OR THE BY-LAWS MAY FIX A REASONABLE AMOUNT WHICH EACH TRUSTEE SHALL BE ENTITLED TO RECEIVE FOR EVERY PERSONAL ATTENDANCE AT BOARD MEETINGS. NOTHING HEREIN, HOWEVER, SHALL PREVENT PAYMENT OF REASONABLE COMPENSATION TO ANY TRUSTEE OR OFFICER WHO MAY BE ASSIGNED DUTIES IN ADDITION TO THOSE PERTAINING TO HIS OFFICE. UNLESS OTHERWISE PROVIDED OR FIXED IN THE ARTICLES OR BY-LAWS, SUCH COMPENSATION MAY BE FIXED BY THE BOARD OF TRUSTEES, WITHOUT COUNTING THE PRESENCE OR VOTE OF THE TRUSTEE OR OFFICER SOUGHT TO BE COMPENSATED.
>
> THE COMPENSATION PROVIDED FOR IN THE PRECEDING PARAGRAPH SHALL NOT BE DEEMED A DIVIDEND OR DISTRIBUTION OF INCOME OF THE CORPORATION, PROVIDED THE SAME BE REASONABLE AND ONLY FOR ACTUAL SERVICES RENDERED. ANY VIOLATION OF THIS PROVISION MAY BE A GROUND FOR *QUO WARRANTO* PROCEEDINGS BY THE STATE AGAINST THE CORPORATION.

Even in business corporations, it has long been a presumption that directors and director-officers serve without pay.[33] This should apply with equal or even more force in non-profit corporations. The above provision not only creates a presumption against but in effect prohibits compensation in favor of trustees and officers as such. However, it may oftentimes be practical to encourage trustees' attendance at meetings of the board. The above provision therefore allows the articles or by-laws to provide for *per diems* for personal (not proxy) attendance. Although a trustee therefore cannot under the provision be paid a regular salary, his personal interest in the management of the affairs of the corporation, as shown by his attendance in board meetings, is rewarded financially. Where such trustee or officer is appointed to perform duties not usually attached to his office, the provision allows compensation, as long as the same is reasonable. In this case, the compensation may be fixed either

[33] See *Corrine Mill, Canal & Stock Co v. Toponce*, 152 US 405 (1894); *Vaught v. Charleston Nat. Bk.* 62 Fed. 2d 817 (1933); *Fox v. Arctic Placer Mining & Milling Co.* 229 NY 124, 128 NE 154 (1920); *Camera Exchange Inc. v. Curameng* 50 O.G. 2650 (CA) (1953).

in the articles, in the by-laws or by the board of trustees. In the latter case, the trustee or officer sought to be compensated is disqualified from voting for obvious reasons.

The penalty imposed for a violation of the provision is aimed to prevent any circumvention of the prohibition against distribution of the corporate income to members or trustees. Without the penalty, it would be easy to distribute profits in the form of high salaries to officers and directors.

> SEC. 26. A TRUSTEE MAY BE REMOVED FROM OFFICE, WITH OR WITHOUT CAUSE, BY THE VOTE OF TWO THIRDS OF THE MEMBERS ENTITLED TO VOTE: *PROVIDED*, THAT SUCH REMOVAL SHALL TAKE PLACE AT A REGULAR OR SPECIAL MEETING AFTER NOTICE TO ALL MEMBERS OF THE INTENTION TO PROPOSE SUCH REMOVAL AT THE MEETING. THE VACANCY RESULTING FROM SUCH REMOVAL MAY BE FILLED AT THE SAME MEETING OR AT ANY SUBSEQUENT MEETING, PROVIDED NOTICE OF THE INTENTION TO FILL THE VACANCY HAS BEEN GIVEN TO THE MEMBERS IN ACCORDANCE WITH THE BY-LAWS OF THE CORPORATION.

No cause is necessary for a trustee's removal. Lack of confidence, without necessity of presenting any proof of cause of such lack, should be sufficient.[34] This is the rule in business corporations, where the director has to have a financial interest therein to qualify as such. For more reason should it apply to a non-profit corporation, where a trustee may even be exempted from payment of dues and assessments.

> SEC. 27. ANY OFFICER ELECTED OR APPOINTED BY THE BOARD OF TRUSTEES MAY BE REMOVED BY SUCH BOARD WHENEVER IN ITS JUDGMENT THE BEST INTERESTS OF THE CORPORATION WILL BE SERVED THEREBY. THE REMOVAL OF AN OFFICER SHALL BE WITHOUT PREJUDICE TO THE CONTRACT RIGHTS, IF ANY, OF THE OFFICER SO REMOVED. ELECTION OR APPOINTMENT OF AN OFFICER OR AGENT SHALL NOT OF ITSELF CREATE CONTRACT RIGHTS.

This was taken substantially from Section 24 of the Model Act.

> SEC. 28. ANY VACANCY OCCURRING IN THE BOARD OF TRUSTEES AND ANY TRUSTEESHIP TO BE FILLED BY REASON OF AN INCREASE IN THE NUMBER OF TRUSTEES MAY BE FILLED BY THE BOARD OF TRUSTEES UNLESS THE ARTICLES OF INCORPORATION OR THE BY-LAWS PROVIDE THAT A VACANCY OR TRUSTEESHIP SO CREATED SHALL BE FILLED IN SOME OTHER MANNER, IN WHICH CASE SUCH PROVISION SHALL CONTROL. THE TRUSTEE SO ELECTED OR APPOINTED, AS THE CASE MAY BE, TO FILL A VACANCY SHALL BE ELECTED OR APPOINTED FOR THE UNEXPIRED TERM OF HIS PREDECESSOR IN OFFICE.

[34] See *Government v. Agoncillo*, 50 Phil. 348 (1927).

This was taken substantially from Section 19 of the Model Act.

SEC. 29. THE FUNDS AND PROPERTY OF THE CORPORATION SHALL BE ACQUIRED, HELD AND DISPOSED OF ONLY FOR THEIR LAWFUL PURPOSES, AND THE TRUSTEES SHALL BE INDIVIDUALLY LIABLE FOR THE MISAPPLICATION OR MISUSE OF ANY SUCH MONEY OR PROPERTY CAUSED THROUGH THE NEGLECT OF SUCH TRUSTEE TO EXERCISE REASONABLE CARE AND PRUDENCE IN THE ADMINISTRATION OF THE AFFAIRS OF SUCH CORPORATION OR THROUGH WILFUL VIOLATION OF THE LAWS GOVERNING THE SAME.

This was taken substantially from Section 235 of the Michigan General Corporation Act. Our Corporation Law contains no provision as to the degree of care which directors should exercise nor for liability for their negligence in the performance of their duties. This provision merely makes express the general principle followed by both Philippine and American cases.[85]

CORPORATE POWERS AND RESPONSIBILITIES

SEC. 30. EVERY NON-PROFIT CORPORATION MAY:

(a) HAVE THE RIGHT OF SUCCESSION IN ITS CORPORATE NAME;

(b) SUE AND BE SUED IN ITS CORPORATE NAME;

(c) HAVE AND USE A CORPORATE SEAL WHICH MAY BE ALTERED AT PLEASURE;

(d) ACQUIRE REAL AND PERSONAL PROPERTY INCLUDING SHARES OF STOCK, BONDS AND SECURITIES OF OTHER CORPORATIONS BY GRATUITOUS OR ONEROUS TITLE;

(e) SELL, CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, TRANSFER OR OTHERWISE DISPOSE OF ALL OR ANY PART OF ITS PROPERTY AND ASSETS;

(f) MAKE CONTRACTS AND INCUR LIABILITIES, BORROW MONEY, ISSUE ITS NOTES, BONDS, AND OTHER OBLIGATIONS, AND SECURE ANY OF ITS OBLIGATIONS BY MORTGAGE OR PLEDGE OF ALL OR ANY OF ITS PROPERTY;

(g) ACT AS TRUSTEE UNDER ANY TRUST INCIDENTAL TO THE PRINCIPAL OBJECTS OF HE CORPORATION, AND RECEIVE, HOLD, ADMINISTER, AND EXPEND FUNDS AND PROPERTY SUBJECT TO SUCH TRUST;

(h) INDEMNIFY ANY TRUSTEE OR OFFICER OR FORMER TRUSTEE OR OFFICER OF THE CORPORATION, AGAINST EXPENSES ACTUALLY AND NECESSARILY INCURRED BY HIM IN CONNECTION WITH THE DEFENSE OF ANY ACTION, SUIT OR PROCEEDING IN WHICH HE IS MADE A PARTY BY REASON OF BEING OR HAVING BEEN SUCH TRUSTEE OR OFFICER, EXCEPT IN RELATION TO MATTERS AS TO WHICH HE SHALL

[85] See *Angeles v. Santos*, 64 Phil. 697 (1937); *Litwin v. Allen* 25 NYS 2d 667 (1940); *Walker v. Man* 253 NYS 458 (1931).

BE ADJUDGED IN SUCH ACTION, SUIT OR PROCEEDING TO BE LIABLE FOR NEGLIGENCE OR MISCONDUCT IN THE PERFORMANCE OF DUTY; AND

(i) HAVE AND EXERCISE ALL POWERS NECESSARY OR CONVENIENT TO EFFECT ANY OR ALL OF THE PURPOSES OF THE CORPORATION.

This proposed provision enumerates the powers of a non-profit corporation. This enumeration is not exclusive since the last paragraph is a general grant of power to do all acts not only necessary, but convenient to the furtherance of the corporate purposes. The purpose clause in the articles of incorporation therefore, circumscribes the implied powers of every corporation.

Letter (h) is included to dispel all doubts as to a corporation's power to indemnify a director or trustee who has been sued as such without any fault or negligence on his part. Without this power some persons may be discouraged or hesitant to accept the responsibilities of a trustee in a non-profit corporation, specially where no pecuniary benefit can be expected to inure to them. This paragraph is taken from Section 5 of the Model Act.

SEC. 31. NON-PROFIT CORPORATIONS SHALL BE RESPONSIBLE FOR THE TORTS OF THEIR AGENTS AND EMPLOYEES COMMITTED WITHIN THE SCOPE OF EMPLOYMENT TO THE SAME EXTENT AS NATURAL PERSONS AND BUSINESS CORPORATIONS.

This provision is inserted to erase all doubts as to the liability of a corporation which is not a business one. It would be unfair to exempt such a corporation just because it is a non-profit one. Although many state statutes give immunity from tort liability in various degrees, the recent trend, both legislative and judicial, has been changing.[36] The corporation can protect itself from heavy damage expenses by insurance. Besides, due care in the choice and supervision of its agents and employees can prevent most damages.

The above provision is contained in a proposed Non-profit Corporation Act for Michigan.[37]

SEC. 32. A SALE, LEASE, EXCHANGE, MORTGAGE, PLEDGE OR OTHER DISPOSITION OF ALL, OR SUBSTANTIALLY ALL, THE PROPERTY AND ASSETS OF A CORPORATION MAY BE MADE UPON SUCH TERMS AND CONDITIONS, AND FOR SUCH CONSIDERATION, WHICH MAY CONSIST IN WHOLE OR IN PART OF MONEY OR PROPERTY, REAL OR PERSONAL, INCLUDING SHARES OF ANY CORPORATION FOR PROFIT, AS MAY BE

[36] See Oleck, *op. cit.*, 110-111.

[37] See Boyer, Non-Profit Corporation Statutes, A Critique and Proposal, 129, sec. 201 (1957).

AUTHORIZED IN THE FOLLOWING MANNER: THE BOARD OF TRUSTEES SHALL ADOPT A RESOLUTION RECOMMENDING SUCH SALE, LEASE, EXCHANGE, MORTGAGE, PLEDGE OR OTHER DISPOSITION AND DIRECTING THAT IT BE SUBMITTED TO A VOTE AT A MEETING OF MEMBERS ENTITLED TO VOTE, WHICH MAY BE EITHER AN ANNUAL OR A SPECIAL MEETING. NOTICE OF SUCH MEETING AND THE PURPOSE THEREOF SHALL BE GIVEN IN THE MANNER AND WITHIN THE TIME PROVIDED BY THIS ACT FOR THE GIVING OF NOTICE TO MEMBERS. AT SUCH MEETING THE MEMBERS MAY AUTHORIZE SUCH SALE, LEASE, EXCHANGE, MORTGAGE, PLEDGE OR OTHER DISPOSITION AND MAY FIX, OR MAY AUTHORIZE THE BOARD OF DIRECTORS TO FIX, ANY OR ALL OF THE TERMS AND CONDITIONS THEREOF AND THE CONSIDERATION TO BE RECEIVED BY THE CORPORATION THEREFOR. SUCH AUTHORIZATION SHALL REQUIRE AT LEAST TWO-THIRDS OF THE VOTES WHICH VOTING MEMBERS PRESENT AT SUCH MEETING OR REPRESENTED BY PROXY ARE ENTITLED TO CAST. AFTER SUCH AUTHORIZATION BY A VOTE OF MEMBERS, THE BOARD OF TRUSTEES, NEVERTHELESS, IN ITS DISCRETION, MAY ABANDON SUCH SALE, LEASE, EXCHANGE, MORTGAGE, PLEDGE OR OTHER DISPOSITION OF ASSETS, SUBJECT TO THE RIGHTS OF THIRD PARTIES UNDER ANY CONTRACT RELATING THERETO, WITHOUT FURTHER ACTION OR APPROVAL BY MEMBERS.

WHERE THERE ARE NO MEMBERS OTHER THAN THE TRUSTEES, OR NO MEMBERS WITH VOTING RIGHTS, THE VOTE OF A MAJORITY OF THE TRUSTEES IN OFFICE WILL BE SUFFICIENT AUTHORIZATION FOR THE CORPORATION TO ENTER INTO ANY SUCH TRANSACTION.

The above provision involves transactions which are unusual or out of the ordinary course of business of the corporation. An act by the board of trustees alone therefore should not be sufficient to bind the corporation. The members should be given a chance to decide whether they are willing to take such a serious step as disposing or encumbering all or substantially all of the corporation's property. The provision is taken substantially from Section 44 of the Model Act and is similar to the provision of section 28½ of our Corporation Law.

SEC. 33. NO ACT OF A CORPORATION AND NO CONVEYANCE OR TRANSFER OF REAL OR PERSONAL PROPERTY TO OR BY A CORPORATION SHALL BE INVALID BY REASON OF THE FACT THAT THE CORPORATION WAS WITHOUT CAPACITY OR POWER TO DO SUCH ACT OR TO MAKE OR RECEIVE SUCH CONVEYANCE OF TRANSFER, BUT SUCH LACK OF CAPACITY OR POWER MAY BE ASSERTED:

(a) IN A PROCEEDING BY A MEMBER OR A TRUSTEE AGAINST THE CORPORATION TO ENJOIN THE DOING OR CONTINUATION OF UNAUTHORIZED ACTS, OR THE TRANSFER OF REAL OR PERSONAL PROPERTY BY OR TO THE CORPORA-

TION. IF THE UNAUTHORIZED ACTS OR TRANSFER SOUGHT TO BE ENJOINED ARE BEING, OR ARE TO BE, PERFORMED PURSUANT TO ANY CONTRACT TO WHICH THE CORPORATION IS A PARTY, THE COURT MAY, IF ALL OF THE PARTIES TO THE CONTRACT ARE PARTIES TO THE PROCEEDING AND IF IT DEEMS THE SAME TO BE EQUITABLE, SET ASIDE AND ENJOIN THE PERFORMANCE OF SUCH CONTRACT, AND IN SO DOING MAY ALLOW TO THE CORPORATION OR THE OTHER PARTIES TO THE CONTRACT, AS THE CASE MAY BE, COMPENSATION FOR THE LOSS OR DAMAGE SUSTAINED BY EITHER OF THEM WHICH MAY RESULT FROM THE ACTION OF THE COURT IN SETTING ASIDE AND ENJOINING THE PERFORMANCE OF SUCH CONTRACT, BUT ANTICIPATED PROFITS TO BE DERIVED FROM THE PERFORMANCE OF THE CONTRACT SHALL NOT BE AWARDED BY THE COURT AS A LOSS OR DAMAGE SUSTAINED;

(b) IN A PROCEEDING BY THE CORPORATION, WHETHER ACTING DIRECTLY OR THROUGH A RECEIVER, TRUSTEE, OR OTHER LEGAL REPRESENTATIVE, OR THROUGH MEMBERS IN A DERIVATIVE SUIT, AGAINST THE OFFICERS OR TRUSTEES OF THE CORPORATION FOR EXCEEDING THEIR AUTHORITY;

(c) IN A PROCEEDING BY THE SOLICITOR GENERAL, AS PROVIDED IN THIS ACT, TO DISSOLVE THE CORPORATION, OR IN A PROCEEDING BY HIM TO ENJOIN THE CORPORATION FROM PERFORMING UNAUTHORIZED ACTS, OR IN ANY OTHER PROCEEDING BY THE SOLICITOR GENERAL.

This provision adopts section 6 of the Model Act. It restricts to a great degree the defense of *ultra vires*. Thus, the corporation cannot assert it against the other party to the contract, but only in a proceeding against the officers or trustees. Neither can the other party disclaim liability on the ground that the contract is *ultra vires* the corporation. Although a member is allowed to file suit to enjoin the corporation from proceeding with the unauthorized act, he cannot sue the other party to the contract. And even in this case, the court may set aside and enjoin the contract only if it deems it equitable to do so. Thus, although the contract may be actually *ultra vires,* the court will not set it aside on that ground alone. The theory embodied in this provision has been generally indorsed by many decisions and is substantially supported by Section 30 of this proposed Act, granting to the corporation all powers not only necessary, but convenient, to effectuate the corporate purposes.

SEC. 34. EACH CORPORATION SHALL KEEP CORRECT AND COMPLETE BOOKS AND RECORDS OF ACCOUNT AND SHALL KEEP MINUTES OF THE MEETINGS OF ITS MEMBERS, BOARD OF TRUSTEES, AND COMMITTEES HAVING ANY OF THE AUTHORITY OF THE BOARD OF TRUSTEES. ALL SUCH BOOKS AND RECORDS MAY BE INSPECTED BY ANY MEMBER OR HIS AGENT OR ATTORNEY, FOR ANY PROPER PURPOSE AT ANY REASONABLE TIME.

This rule is similar to Sec. 51 of the Corporation Law, except that the above provision incorporates the judicial rule, not expressed in the present Corporation Law, that the right of inspection may be exercised not only in person, but also through a duly authorized agent.[38] and only for a proper purpose.[39]

GOVERNMENT SUPERVISION

SEC. 35. EVERY CORPORATION SHALL FILE WITH THE SECURITIES AND EXCHANGE COMMISSION, AN ANNUAL REPORT SETTING FORTH A BRIEF SUMMARY OF ITS COMPLETE OPERATIONS DURING THE PRECEDING YEAR, INCLUDING THE FUNDS RECEIVED DURING SAID PERIOD, THE SOURCE THEREOF, THE PURPOSES FOR WHICH THEY WERE SPENT AND THE CASH POSITION OF THE COMPANY AS OF THE DATE OF THE REPORT. SUCH REPORT SHALL BE FILED NOT LATER THAN JULY FIRST OF EACH YEAR.

This is taken from the SEC requirement for Non-Stock Corporations.[40]

SEC. 36. THE SECURITIES AND EXCHANGE COMMISSION SHALL HAVE THE RIGHT TO EXAMINE ALL THE BOOKS AND RECORDS OF ANY CORPORATION ORGANIZED UNDER THIS ACT FOR THE PURPOSE OF DETERMINING WHETHER SUCH CORPORATION IS COMPLYING WITH THE PROVISIONS OF THIS ACT. IN THIS CONNECTION, IT SHALL HAVE THE RIGHT TO ISSUE SUBPOENA AND SUBPOENA DUCES TECUM.

SEC. 37. THE SECURITIES AND EXCHANGE COMMISSIONER MAY PROPOUND TO ANY CORPORATION SUBJECT TO THE PROVISIONS OF THIS ACT, AND TO ANY OFFICER OR TRUSTEE THEREOF, SUCH INTERROGATORIES AS MAY BE REASONABLY NECESSARY AND PROPER TO ENABLE HIM TO ASCERTAIN WHETHER SUCH CORPORATION HAS COMPLIED WITH ALL THE PROVISIONS OF THIS ACT APPLICABLE TO SUCH CORPORATION. SUCH INTERROGATORIES SHALL BE ANSWERED WITHIN THIRTY DAYS AFTER RECEIPT THEREOF, OR WITHIN SUCH ADDITIONAL TIME AS MAY BE ALLOWED BY THE SECURITIES AND EXCHANGE COMMISSIONER, AND THE ANSWERS SHALL BE MADE IN WRITING AND UNDER OATH. IF THE INTERROGATORIES ARE DIRECTED TO THE CORPORATION, THEY SHALL BE ANSWERED BY THE PRESIDENT, VICE-PRESIDENT OR SECRETARY THEREOF. THE SECURITIES AND EXCHANGE COMMISSIONER SHALL CERTIFY TO THE SOLICITOR GENERAL, FOR SUCH ACTION AS THE LATTER MAY DEEM APPROPRIATE, ALL INTERROGATORIES AND ANSWERS THERETO WHICH DISCLOSE A VIOLATION OF THE PROVISIONS OF THIS ACT.

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[38] See *Philpotts v. Phil. Manufacturing Co.*, 40 Phil. 471 (1919).
[39] *Ibid.* See also *Grey v. Insular Lumber Co.*, 67 Phil. 139 (1939).
[40] SEC Regulations issued on May 24, 1963 (unpublished).

This provision is taken from section 87 of the Model Act. It gives the SEC the means of acquiring information which cannot be obtained from the corporate books, without the need of going through the cumbersome process of a formal investigation.

> SEC. 38. EVERY NON-PROFIT CORPORATION SHALL BE SUBJECT AT ANY TIME TO EXAMINATION BY THE PRESIDENT OF THE PHILIPPINES, THROUGH THE SOLICITOR GENERAL OR THE AUDITOR GENERAL, TO ASCERTAIN THE CONDITION OF ITS AFFAIRS AND TO DETERMINE WHETHER IT HAS FAILED TO COMPLY WITH OR HAS DEPARTED FROM ITS GENERAL PURPOSE. IN CASE OF ANY SUCH FAILURE OR DEPARTURE, THE SOLICITOR GENERAL, UPON THE DIRECTION OF THE PRESIDENT OF THE PHILIPPINES, SHALL INSTITUTE THE NECESSARY PROCEEDING FOR ITS CORRECTION. EXCEPT WHEN APPROVED BY THE PRESIDENT OF THE PHILIPPINES, UPON RECOMMENDATION OF THE SECURITIES AND EXCHANGE COMMISSION, NO CORPORATION SHALL ACCUMULATE INCOME FOR A PERIOD LONGER THAN FIVE YEARS.

This provision on the visitorial power of the President is similar to section 54 of the Corporation Law. The last sentence is taken from Article 290 of the Corporation Code as was proposed by the Code Commission.

> SEC. 39. ALL INTERROGATORIES PROPOUNDED BY THE SECURITIES AND EXCHANGE COMMISSIONER AND THE ANSWERS THERETO, AS WELL AS THE RESULTS OF ANY EXAMINATION MADE BY THE SOLICITOR GENERAL OR THE AUDITOR GENERAL UNDER THE PRECEDING TWO SECTIONS, SHALL BE KEPT STRICTLY CONFIDENTIAL EXCEPT IN SO FAR AS THE OFFICIAL DUTY OF THE SECURITIES AND EXCHANGE COMMISSIONER, THE SOLICITOR GENERAL OR THE AUDITOR GENERAL, AS THE CASE MAY BE, MAY REQUIRE THE SAME TO BE MADE PUBLIC OR IN THE EVENT SUCH INTERROGATORIES, ANSWERS, OR RESULTS ARE REQUIRED FOR EVIDENCE IN ANY CRIMINAL PROCEEDING OR IN ANY OTHER ACTION BY THE STATE.

This is similar to the rule found in section 55 of the Corporation Law. Any premature or unwarranted publicity may damage the corporation's reputation beyond repair. Any publicity should come only if the State sees fit to take any action against the corporation or its officers.

> SEC. 40. THE SECURITIES AND EXCHANGE COMMISSIONER SHALL HAVE THE POWER AND AUTHORITY REASONABLY NECESSARY TO ENABLE HIM TO ADMINISTER THIS ACT EFFICIENTLY AND TO PERFORM THE DUTIES HEREIN IMPOSED UPON HIM.

LOCAL CHAPTERS OR UNITS

SEC. 41. SUBJECT TO THE PROVISIONS OF THE NEXT SUCCEEDING SECTION, ANY NON-PROFIT CORPORATION MAY PROVIDE IN ITS ARTICLES OR BY-LAWS THAT IT IS TO BE A CENTRAL OR PARENT ORGANIZATION HAVING SUBORDINATE OR LOCAL CHAPTERS.

THREE OR MORE MEMBERS IN GOOD STANDING IN ANY NON-PROFIT CORPORATION MAY INCORPORATE AS A LOCAL CHAPTER OR UNIT THEREOF, UPON COMPLYING WITH THE PROVISIONS OF THIS ACT APPROPRIATE TO SUCH CORPORATIONS, PROVIDED IT HAS A PERMIT FROM SUCH PARENT CORPORATION. THE PURPOSE OF ALL SUCH LOCAL CHAPTERS OR UNITS SHALL BE TO FURTHER THE INTEREST OF THE PARENT CORPORATION IN THE COMMUNITY, TO HOLD THE PROPERTY OF SUCH LOCAL UNIT AND TO BECOME INTEGRAL MEMBERS OF THE PARENT CORPORATION.

The purpose of the non-profit corporation may be such that it could or should not confine itself to one community. Local chapters may therefore be incorporated and will in effect be "subsidiaries" of the mother chapter.

These proposed provisions on local chapters are similar to those found in the Michigan Act,[41] somewhat broadened in effect.

SEC. 42. EVERY PARENT CORPORATION SHALL HAVE THE RIGHT TO SUPERINTEND, VISIT, INSTRUCT AND GUIDE ITS LOCAL UNITS OR CHAPTERS AND MAY PRESCRIBE THE DUES AND ASSESSMENTS UPON WHICH MEMBERSHIP MAY BE CONDITIONED, AS WELL AS THE PROPORTION OF SUCH FUNDS THAT SHALL BELONG TO SUCH PARENT CORPORATION FOR THE WORK OF ORGANIZING, MAINTAINING AND CARRYING OUT THE PURPOSES OF THE SOCIETY AS A WHOLE.

SEC. 43. EVERY LOCAL CHAPTER OR UNIT INCORPORATED UNDER THESE PROVISIONS SHALL HAVE THE POWERS, DUTIES AND RESPONSIBILITIES PROVIDED BY THIS ACT, CONSISTENT WITH ITS STATUS AS SUCH LOCAL CHAPTER OR UNIT OF A PARENT ORGANIZATION.

VOLUNTARY DISSOLUTION

SEC. 44. A NON-PROFIT CORPORATION MAY BE DISSOLVED BY THE EXPIRATION OF ITS TERM AS PROVIDED IN THE ARTICLES OF INCORPORATION, OR BEFORE SUCH EXPIRATION, BY A RESOLUTION OF THE MEMBERS OF THE CORPORATION OR BY JUDGMENT OF THE COURT AS HEREINAFTER PROVIDED

[41] See sections 128, 129, 136 and 142 of the Michigan General Corporation Act. Also Boyer, *op. cit.*, pp. 170-176.

This provision gives the causes for voluntary dissolution, i.e., by expiration of term and by vote of the members, either with or without court intervention.

> SEC. 45. THE BOARD OF TRUSTEES MAY ADOPT A RESOLUTION RECOMMENDING THAT THE CORPORATION BE DISSOLVED, AND DIRECTING THAT THE QUESTION OF SUCH DISSOLUTION BE SUBMITTED TO A VOTE AT A MEETING OF MEMBERS, WHICH MAY BE EITHER AN ANNUAL OR A SPECIAL MEETING. WRITTEN NOTICE OF THE TIME AND PLACE OF SAID MEETING AS WELL AS THE PURPOSE THEREOF SHALL BE SENT BY REGISTERED MAIL TO ALL VOTING MEMBERS AND TO EACH KNOWN CREDITOR, IF ANY, OF THE CORPORATION AT LEAST THIRTY DAYS PRIOR TO THE DATE OF SAID MEETING. THE NOTICE SHALL ALSO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE MUNICIPALITY OR CITY WHERE THE PRINCIPAL OFFICE OF THE CORPORATION IS SITUATED AT LEAST ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS PRIOR TO THE MEETING. A RESOLUTION TO DISSOLVE THE CORPORATION SHALL BE ADOPTED UPON RECEIVING A MAJORITY OF THE VOTES OF THE MEMBERS HAVING VOTING RIGHTS, PRESENT OR REPRESENTED AT SUCH MEETING, PROVIDED WRITTEN CONSENT OF ALL CREDITORS PRESENT OR REPRESENTED AT SUCH MEETING IS OBTAINED. UNLESS A CREDITOR OF THE CORPORATION OBJECTS TO THE DISSOLUTION, UPON THE ADOPTION OF SUCH RESOLUTION FOR DISSOLUTION, THE CORPORATION SHALL CEASE TO CONDUCT ITS AFFAIRS EXCEPT IN SO FAR AS MAY BE NECESSARY FOR THE WINDING UP THEREOF. THE BOARD OF TRUSTEES, UNLESS THE RESOLUTION FOR DISSOLUTION NAMES SOMEBODY ELSE, SHALL PROCEED TO COLLECT ITS ASSETS AND APPLY AND DISTRIBUTE THEM AS PROVIDED IN THIS ACT.

This extra-judicial procedure for dissolution presupposes that the term of corporate existence is not yet expiring and it can be availed of only if there are no creditors or where all creditors consent. Otherwise, a judicial dissolution as prescribed by section 48 would be necessary.

> SEC. 46. A COPY OF THE RESOLUTION OF THE MEMBERS AUTHORIZING THE DISSOLUTION SHALL BE CERTIFIED BY A MAJORITY OF THE BOARD OF TRUSTEES, COUNTERSIGNED BY THE SECRETARY OF THE CORPORATION, AND FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, TOGETHER WITH A SWORN STATEMENT BY SUCH MAJORITY OF THE TRUSTEES THAT ALL KNOWN CREDITORS OF THE CORPORATION WERE NOTIFIED BY MAIL AND BY PUBLICATION AS REQUIRED BY THE PRECEDING SECTION, THAT NONE OF SAID CREDITORS PRESENTED ANY OBJECTION TO THE RESOLUTION, THAT ALL DEBTS, OBLIGATIONS, AND LIABILITITES OF THE CORPORATION HAVE BEEN PAID AND DISCHARGED OR THAT ADEQUATE PROVISION HAS BEEN MADE THEREFOR, THAT

ALL THE REMAINING ASSETS OF THE CORPORATION HAVE BEEN TRANSFERRED, CONVEYED OR DISTRIBUTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT, AND THAT THERE ARE NO SUITS PENDING AGAINST THE CORPORATION IN ANY COURT, OR THAT ADEQUATE PROVISION HAS BEEN MADE FOR THE SATISFACTION OF ANY JUDGMENT, ORDER OR DECREE WHICH MAY BE ENTERED AGAINST IT IN ANY PENDING SUIT. A COPY OF THE WRITTEN CONSENT OF THE CREDITORS TO THE DISSOLUTION SHALL BE ATTACHED TO SAID SWORN STATEMENT.

SEC. 47. UPON THE FILING OF SAID RESOLUTION AND SWORN STATEMENT, THE SECURITIES AND EXCHANGE COMMISSIONER, IF HE SHOULD FIND THE SAME IN ACCORDANCE WITH LAW, SHALL ISSUE A CERTIFICATE OF DISSOLUTION UPON THE PAYMENT OF THE FEE OF TWENTY PESOS. UPON THE ISSUANCE OF SUCH CERTIFICATE OF DISSOLUTION, THE EXISTENCE OF THE CORPORATION SHALL CEASE, EXCEPT FOR THE PURPOSE OF CONTINUING THE OTHER PROCEEDINGS REFERRED TO IN THE PRECEDING PROVISION.

SEC. 48. IF ONE OR MORE CREDITORS OBJECT TO THE DISSOLUTION PROVIDED FOR IN SECTION 45, A PETITION TO THE COURT OF FIRST INSTANCE OF THE PROVINCE OR CITY WHERE THE PRINCIPAL OFFICE OF THE CORPORATION IS SITUATED MAY BE FILED, SIGNED BY A MAJORITY OF THE BOARD OF TRUSTEES, VERIFIED BY THE PRESIDENT OR SECCRETARY OR ONE OF ITS TRUSTEES, SETTING FORTH ALL THE CLAIMS AND DEMANDS AGAINST IT, AND STATING THAT AT A MEETING OF ITS MEMBERS CALLED FOR THAT PURPOSE, ITS DISSOLUTION WAS BY RESOLUTION AGREED UPON BY A MAJORITY VOTE OF THE MEMBERS ENTITLED TO VOTE PRESENT OR REPRESENTED AT THE MEETING AND PRAYING FOR A JUDGMENT ALLOWING DISSOLUTION OF THE CORPORATION.

THE PROCEDURE FOR NOTICE AND HEARING OF THE PETITION SHALL BE GOVERNED BY THE APPLICABLE PROVISIONS OF THE RULES OF COURT.

IF THE COURT, AFTER HEARING, SHOULD GRANT THE PETITION, IT SHALL ORDER THE CORPORATION TO CEASE TO CONDUCT ITS AFFAIRS, EXCEPT TO WIND THEM UP, AND SHALL FURTHERMORE ORDER THAT THE CREDITORS BE PAID IN ACCORDANCE WITH THE JUDGMENT OF THE COURT, AND THAT ANY REMAINING ASSETS OF THE CORPORATION BE DISTRIBUTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT.

THE COURT SHALL ORDER A COPY OF THE JUDGMENT ALLOWING DISSOLUTION TO BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, UPON PAYMENT OF THE FEE OF TWENTY PESOS BY THE PETITIONING CORPORATION. UPON SUCH FILING OF THE JUDGMENT OF DISSOLUTION AND OF PROOF THAT THE ORDERS OF THE COURT HAVE BEEN

COMPLIED WITH, THE SECURITIES AND EXCHANGE COMMISSION SHALL ISSUE A CERTIFICATE OF DISSOLUTION WITH THE SAME EFFECTS AS PROVIDED IN SECTION 47.

This procedure is aimed at protecting creditors' rights. It is similar to that followed in business corporations. The applicable provisions of the Rules of Court referred to are found in Rule 104.

SEC. 49. THE ASSETS OF A CORPORATION IN THE PROCESS OF DISSOLUTION SHALL BE APPLIED AND DISTRIBUTED AS FOLLOWS:

(a) ALL LIABILITIES AND OBLIGATIONS OF THE CORPORATION SHALL BE PAID, SATISFIED AND DISCHARGED, OR ADEQUATE PROVISION SHALL BE MADE THEREFOR;

(b) ASSETS HELD BY THE CORPORATION UPON CONDITION REQUIRING RETURN, TRANSFER OR CONVEYANCE, WHICH CONDITION OCCURS BY REASON OF THE DISSOLUTION, SHALL BE RETURNED, TRANSFERRED OR CONVEYED IN ACCORDANCE WITH SUCH REQUIREMENTS;

(c) ASSETS RECEIVED AND HELD BY THE CORPORATION SUBJECT TO LIMITATIONS PERMITTING THEIR USE ONLY FOR CHARITABLE, RELIGIOUS, ELEEMOSYNARY, BENEVOLENT, EDUCATIONAL OR SIMILAR PURPOSES, BUT NOT HELD UPON A CONDITION REQUIRING RETURN, TRANSFER OR CONVEYANCE BY REASON OF THE DISSOLUTION, SHALL BE TRANSFERRED OR CONVEYED TO ONE OR MORE CORPORATIONS, SOCIETIES OR ORGANIZATIONS ENGAGED IN ACTIVITIES SUBSTANTIALLY SIMILAR TO THOSE OF THE DISSOLVING CORPORATION, PURSUANT TO A PLAN OF DISTRIBUTION ADOPTED AS PROVIDED IN THIS ACT;

(d) OTHER ASSETS, IF ANY, SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE PROVISIONS OF THE ARTICLES OF INCORPORATION OR THE BY-LAWS TO THE EXTENT THAT THE ARTICLES OF INCORPORATION OR BY-LAWS DETERMINE THE DISTRIBUTIVE RIGHTS OF MEMBERS, OR ANY CLASS OR CLASSES OF MEMBERS, OR PROVIDE FOR DISTRIBUTION TO OTHERS; EXCEPT THAT IN THE CASE OF CORPORATIONS ORGANIZED FOR RELIGIOUS, CHARITABLE, ELEEMOSYNARY OR BENEVOLENT PURPOSE, NO PART OF THE DISSOLVING CORPORATION'S PROPERTY CAN INURE TO THE BENEFIT OF ANY INDIVIDUAL MEMBER, BUT THE SAID PROPERTY SHALL BE DISTRIBUTED IN FAVOR OF THE CHURCH TO WHICH IT MAY BE CONNECTED, IN THE CASE OF A RELIGIOUS SOCIETY, OR IN ALL CASES, IN FAVOR OF OTHER CORPORATIONS OR ORGANIZATIONS HAVING SIMILAR PURPOSES AS THE DISSOLVING CORPORATION, IN ACCORDANCE WITH A PLAN ADOPTED AS PROVIDED IN SECTION 50;

(e) ANY REMAINING ASSETS MAY BE DISTRIBUTED TO SUCH PERSONS, SOCIETIES, ORGANIZATIONS OR CORPORATIONS, WHETHER FOR PROFIT OR NOT FOR PROFIT, AS MAY

BE SPECIFIED IN A PLAN OF DISTRIBUTION AS PROVIDED IN THIS ACT.

This provision, as well as the succeeding one is taken from sections 46 and 47 of the Model Act. Due to the nature of a non-profit corporation, the rule as to distribution of its assets cannot be the same as that applicable to business corporations.

SEC. 50. A PLAN PROVIDING FOR THE DISTRIBUTION OF ASSETS, NOT INCONSISTENT WITH THE PROVISIONS OF THIS ACT, MAY BE ADOPTED BY A CORPORATION IN THE PROCESS OF DISSOLUTION IN THE FOLLOWING MANNER: THE BOARD OF TRUSTEES SHALL ADOPT A RESOLUTION RECOMMENDING A PLAN OF DISTRIBUTION AND DIRECTING THE SUBMISSION THEREOF TO A VOTE AT A MEETING OF MEMBERS HAVING VOTING RIGHTS, WHICH MAY BE EITHER AN ANNUAL OR SPECIAL MEETING. WRITTEN NOTICE SETTING FORTH THE PROPOSED PLAN OF DISTRIBUTION OR A SUMMARY THEREOF SHALL BE GIVEN TO EACH MEMBER ENTITLED TO VOTE, WITHIN THE TIME AND IN THE MANNER PROVIDED IN THIS ACT FOR THE GIVING OF NOTICE OF MEETINGS OF MEMBERS. SUCH PLAN OF DISTRIBUTION SHALL BE ADOPTED UPON RECEIVING AT LEAST TWO-THIRDS OF THE VOTES OF MEMBERS HAVING VOTING RIGHTS PRESENT OR REPRESENTED BY PROXY AT SUCH MEETING.

SEC. 51. WHERE THE CORPORATION HAS NO MEMBERS, OR NO MEMBERS HAVING VOTING RIGHTS, THE RESOLUTIONS AUTHORIZED BY SECTION 45 AND 48 SHALL BE ADOPTED AT A MEETING OF THE BOARD OF TRUSTEES UPON RECEIVING A VOTE OF A MAJORITY OF THE TRUSTEES IN OFFICE.

SEC. 52. IF THE CORPORATION IS ABOUT TO BE DISSOLVED BY THE EXPIRATION OF ITS TERM AS PROVIDED IN THE ARTICLES OF INCORPORATION, AND THERE IS NO INTENTION TO EXTEND ITS EXISTENCE, THE BOARD OF TRUSTEES, AT LEAST SIX MONTHS BEFORE THE ARRIVAL OF THE DATE OF EXPIRATION, SHALL SEND WRITTEN NOTICE TO ALL KNOWN CREDITORS OF THE CORPORATION BY REGISTERED MAIL AND CAUSE THE SAID NOTICE TO BE PUBLISHED AT LEAST ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY OR MUNICIPALITY WHERE THE PRINCIPAL OFFICE OF THE CORPORATION IS SITUATED. SAID NOTICE SHALL SET FORTH THE FACT OF THE IMPENDING DISSOLUTION, THE DATE OF THE EXPIRATION OF THE CORPORATE TERM, THE NAMES OF ALL KNOWN CREDITORS OF THE CORPORATION AND SHALL ASK ALL THOSE WHO HAVE CLAIMS AGAINST THE CORPORATION TO FILE THE SAME AT LEAST FOUR MONTHS BEFORE THE DATE OF EXPIRATION OF THE CORPORATE TERM. THE BOARD SHALL THEREAFTER PROCEED TO COLLECT THE ASSETS OF THE CORPORATION AND AFTER RECEIPT OF THE CREDITORS' CLAIMS, IF ANY, SHALL PASS UPON THE SAME GIVING EACH CREDITOR AN OPPORTUNITY TO BE HEARD.

AFTER SUCH HEARING, THE BOARD SHALL NOTIFY EACH CREDITOR OF THE APPROVAL OR REJECTION OF HIS CLAIM AND PROCEED TO APPLY AND DISTRIBUTE SAID ASSETS IN ACCORDANCE WITH SECTION 49 OF THIS ACT; *PROVIDED*, HOWEVER, THAT ANY CREDITOR WHO, HAVING FILED HIS CLAIM AGAINST THE DISSOLVING CORPORATION FEELS AGGRIEVED BY THE PROPOSED DISTRIBUTION OR ANY CREDITOR WHO, WITHOUT FAULT OR NEGLIGENCE ON HIS PART, FAILED TO FILE HIS CLAIM WITHIN THE PRESCRIBED TIME, MAY FILE A SUIT IN THE PROPER COURT TO ENJOIN THE CORPORATION FROM DISTRIBUTING ITS ASSETS, PRAYING THE COURT FOR THE APPROVAL OF HIS CLAIM. IN SUCH A CASE, THE COURT, PENDING THE HEARING OF THE CLAIM, MAY ENJOIN SUCH DISTRIBUTION UPON THE PETITIONER'S FILING A BOND TO ANSWER FOR ANY DAMAGES TO THE CORPORATION, ITS MEMBERS, ITS OTHER CREDITORS OR OTHER PERSONS WHO MAY HAVE AN INTEREST IN THE CORPORATE ASSETS, OR THE COURT MAY, IN ITS DISCRETION, ALLOW THE DISTRIBUTION OF THE ASSETS, MAKING ADEQUATE PROVISION FOR THE PETITIONER'S CLAIM, IN CASE IT SHOULD BE ALLOWED.

This provision differs from section 45 where dissolution takes place not due to expiration of term but due to the desire of the members to terminate corporate existence. If dissolution is due to expiration of term, the creditors must be given sufficient time prior thereto to file and prove their claims. Court intervention is not necessary since dissolution is automatic upon expiration of term.

SEC. 53. AFTER THE DISTRIBUTION OF THE CORPORATE ASSETS AS PROVIDED FOR IN THE PRECEDING SECTION, THE BOARD OF TRUSTEES SHALL FILE A SWORN STATEMENT SIGNED BY A MAJORITY OF THEM, WITH THE SECURITIES AND EXCHANGE COMMISSION SETTING FORTH THE FOLLOWING: THE FACT OF ITS DISSOLUTION DUE TO THE EXPIRATION OF ITS CORPORATE TERM, THE DATE OF SUCH EXPIRATION, THAT ALL KNOWN CREDITORS OF THE CORPORATION WERE PROPERLY NOTIFIED OF SUCH EXPIRATION AND DISSOLUTION, THAT ALL KNOWN CLAIMS AGAINST THE CORPORATION HAVE BEEN PAID OR DISCHARGED OR ADEQUATELY PROVIDED FOR, THAT THE REMAINING ASSETS OF THE CORPORATION HAVE BEEN APPLIED AND DISTRIBUTED IN ACCORDANCE WITH THIS ACT, AND THAT THERE ARE NO PENDING SUITS AGAINST THE CORPORATION OR THAT ADEQUATE PROVISION HAS BEEN MADE TO SATISFY ANY JUDGMENT OR ORDER WHICH MAY BE ENTERED AGAINST IT IN ANY PENDING SUIT. UPON THE FILING OF SUCH SWORN STATEMENT AND UPON THE PAYMENT OF THE FEE OF TWENTY PESOS, THE SECURITIES AND EXCHANGE COMMISSIONER SHALL ISSUE A CERTIFICATE OF DISSOLUTION, WITH THE SAME EFFECT AS THAT PROVIDED IN SECTION 47.

SEC. 54. ALL CREDITORS WHO FAILED TO FILE THEIR CLAIMS AND WERE THEREFORE NOT SATISFIED OR ADEQUATELY PROVIDED FOR PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF DISSOLUTION PROVIDED FOR IN SECTIONS 47, 48 AND 53, SHALL BE BARRED; *PROVIDED*, HOWEVER, THAT IF THE CLAIM OF A CREDITOR WHO, WITHOUT HIS FAULT OR NEGLIGENCE, HAS NOT BEEN SATISFIED OR ADEQUATELY PROVIDED FOR PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF DISSOLUTION DUE TO THE FAULT, FRAUD OR NEGLIGENCE OF THE BOARD OF TRUSTEES OR ANY MEMBER THEREOF, THE GUILTY TRUSTEE OR TRUSTEES SHALL BE PERSONALLY AND SOLIDARILY LIABLE TO SUCH CREDITOR FOR THE AMOUNT OF HIS UNSATISFIED CLAIM.

This is partly taken from section 62 of the Model Act. Under the proposed rules, liquidation should be done prior to the issuance of the certificate of dissolution, and all unsatisfied claims which have not been filed prior to such time will be barred. Nonpayment or non-filing of such claims would have to be due either to the negligence of the creditor or to the fraud or negligence of the corporation. The proviso makes the guilty trustees liable in the latter case and absolves the corporation in the former.

SEC. 55. NOTHING HEREIN PROVIDED SHALL PREVENT ANY CORPORATION FROM AMENDING ITS ARTICLES OF INCORPORATION TO EXTEND ITS CORPORATE EXISTENCE, PROVIDED THAT SUCH EXTENSION IS MADE PRIOR TO THE DISTRIBUTION OF ITS ASSETS AND THE ISSUANCE OF THE CERTIFICATE OF DISSOLUTION.

INVOLUNTARY DISSOLUTION

SEC. 56. A COMPLAINT FOR INVOLUNTARY DISSOLUTION OF A NON-PROFIT CORPORATION MAY BE FILED IN THE COURT OF FIRST INSTANCE OF THE PROVINCE OR CITY IN WHICH THE PRINCIPAL OFFICE OF THE CORPORATION IS LOCATED, BY A MEMBER OR TRUSTEE OF SAID CORPORATION ON ANY OF THE FOLLOWING GROUNDS:

(a) THAT THE TRUSTEES ARE DEADLOCKED IN THE MANAGEMENT OF THE CORPORATE AFFAIRS AND THAT IRREPARABLE INJURY TO THE CORPORATION IS BEING SUFFERED OR IS THREATENED BY REASON THEREOF, AND EITHER THAT THE MEMBERS ARE UNABLE TO BREAK THE DEADLOCK OR THERE ARE NO MEMBERS HAVING VOTING RIGHTS; OR

(b) THAT THE ACTS OF THE TRUSTEES OR THOSE IN CONTROL OF THE CORPORATION ARE ILLEGAL, OPPRESSIVE OR FRAUDULENT; OR

(c) THAT THE CORPORATE ASSETS ARE BEING MISAPPLIED OR WASTED; OR

(d) THAT THE CORPORATION IS UNABLE TO CARRY OUT ITS PURPOSES.

This provision is taken partly from section 54 of the Model Act. It supports the theory that a non-profit corporation should be run faithfully and efficiently, otherwise its continued existence is not justified. With respect to business corporations, our Supreme Court has recognized that, although as a general rule, minority stockholders cannot sue for dissolution but must lay their complaints before the Solicitor General who alone can bring *quo warranto* proceedings, there may be exceptional cases where state intervention is not necessary.[42] The above provision seeks to adopt this judicial rule in favor of non-profit corporations and allows even one member alone to ask for dissolution.

> SEC. 57. A CORPORATION MAY BE DISSOLVED INVOLUNTARILY BY A DECREE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OR CITY WHERE THE PRINCIPAL OFFICE OF THE CORPORATION IS LOCATED, IN AN ACTION FILED BY THE SOLICITOR GENERAL WHEN IT IS ESTABLISHED THAT:
>
> (a) THE CORPORATION HAS FAILED TO FILE ITS ANNUAL REPORT WITHIN THE TIME REQUIRED BY THIS ACT; OR
>
> (b) THE CORPORATION PROCURED ITS ARTICLES OF INCORPORATION THROUGH FRAUD; OR
>
> (c) THE CORPORATION HAS MISUSED OR ABUSED ANY RIGHT OR PRIVILEGE CONFERRED UPON IT BY LAW; OR
>
> (d) THE CORPORATION HAS NOT USED ITS CORPORATE RIGHTS AND PRIVILEGES DURING A TERM OF FIVE YEARS OR HAS COMMITTED OR OMITTED AN ACT WHICH AMOUNTS TO A SURRENDER OF ITS CORPORATE RIGHTS, PRIVILEGES OR FRANCHISE; OR
>
> (e) THE OBJECTS OF THE CORPORATION HAVE WHOLLY FAILED, OR ARE ENTIRELY ABANDONED OR THEIR ACCOMPLISHMENT IS IMPRACTICABLE; OR
>
> (f) THE CORPORATION HAS PERPETRATED FRAUD ON THE GOVERNMENT OR ANY OF ITS INSTRUMENTALITIES; OR
>
> (g) IT HAS COMMITTED ANY OTHER ILLEGAL ACT WHICH, IN THE OPINION OF THE COURT, RENDERS THE DISSOLUTION OF THE CORPORATION NECESSARY IN THE INTEREST OF THE PUBLIC.

There are two ways, under the proposal, by which a non-profit corporation may be dissolved involuntarily. The first is by an action by a member as prescribed in the preceding section. The second method is by following the above provision. This is taken partly from section 51 of

[42] See Financing Corporation of the Philippines v. Teodoro, 93 Phil. 678 (1953), where the Supreme Court mentioned the following grounds: imminent danger of insolvency, fraud and mismanagement, violation of by-laws, failure to achieve the fundamental purposes, and that the remaining assets are in danger of being further wasted, dissipated or lost.

the Model Act, partly from Rule 66 of the Rules of Court and partly from Article 232 of the Corporation Code as proposed by the Code Commission.

> SEC. 58. THE PROCEDURE FOR NOTICE AND HEARING OF THE COMPLAINT PROVIDED IN THE NEXT TWO PRECEDING SECTIONS SHALL BE GOVERNED BY THE PROVISIONS OF THE RULES OF COURT ON VOLUNTARY DISSOLUTION IN SO FAR AS THEY MAY BE APPPLICABLE.
>
> SHOULD THE COURT, AFTER HEARING, FIND THAT THE GROUND OR GROUNDS OF THE COMPLAINT FILED UNDER SEC. 56 OR 57 ARE TRUE, IT SHALL RENDER JUDGMENT DECREEING A DISSOLUTION OF THE CORPORATION, AND SHALL ISSUE THE SAME ORDERS AS PROVIDED FOR IN THE THIRD AND FOURTH PARAGRAPHS OF SECTION 48 OF THIS ACT. A CERTIFICATE OF DISSOLUTION SHALL LIKEWISE BE ISSUED BY THE SECURITIES AND EXCHANGE COMMISISON IN ACCORDANCE WITH THE PROVISIONS OF THE FOURTH PARAGRAPH OF SECTION 48, WITH THE SAME EFFECTS AS PROVIDED IN SECTION 47.

Rule 104 of the Rules of Court prescribes the procedure for voluntary dissolution.

> SEC. 59. THE SECURITIES AND EXCHANGE COMMISSIONER, ON OR BEFORE THE FIRST DAY OF AUGUST OF EACH YEAR, SHALL CERTIFY TO THE SOLICITOR GENERAL THE NAMES OF ALL NON-PROFIT CORPORATIONS WHICH HAVE FAILED TO FILE THEIR ANNUAL REPORTS IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT. HE SHALL ALSO CERTIFY, FROM TIME TO TIME, THE NAMES OF ALL CORPORATIONS WHICH HAVE GIVEN OTHER CAUSE FOR DISSOLUTION AS PROVIDED IN THIS ACT, TOGETHER WITH THE FACTS PERTINENT THERETO. WHENEVER THE SECURITIES AND EXCHANGE COMMISSIONER SHALL CERTIFY THE NAME OF A CORPORATION TO THE SOLICITOR GENERAL AS HAVING GIVEN ANY CAUSE FOR DISSOLUTION, SAID COMMISSIONER SHALL CONCURRENTLY MAIL TO THE CORPORATION A NOTICE THAT SUCH CERTIFICATION HAS BEEN MADE. UPON THE RECEIPT OF SUCH CERTIFICATION, THE SOLICITOR GENERAL SHALL FILE AN ACTION IN THE NAME OF THE STATE AGAINST SUCH CORPORATION FOR ITS DISSOLUTION. EVERY SUCH CERTIFICATE BY THE SECURITIES AND EXCHANGE COMMISSIONER TO THE SOLICITOR GENERAL PERTAINING TO THE FAILURE OF A CORPORATION TO FILE AN ANNUAL REPORT SHALL BE TAKEN AND RECEIVED IN ALL COURTS AS *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED. IF, BEFORE THE ACTION IS FILED, THE CORPORATION SHALL FILE ITS ANNUAL REPORT, SUCH FACT SHALL BE FORTHWITH CERTIFIED BY THE SECURITIES AND EXCHANGE COMMISSIONER TO THE SOLICITOR GENERAL AND HE SHALL NOT FILE AN ACTION AGAINST SUCH CORPORATION FOR SUCH CAUSE. IF, AFTER

ACTION IS FILED, THE CORPORATION SHALL FILE ITS ANNUAL REPORT AND SHALL PAY THE COSTS OF SUCH ACTION, THE ACTION FOR SUCH CAUSE SHALL ABATE.

This provision requires the SEC to be more vigilant in its supervision over non-profit corporations. There is no similar provision in the Corporation Law nor in the proposed Corporation Code. This is taken substantially from Section 52 of the Model Act.

SEC. 60. ANY TWO OR MORE NON-PROFIT CORPORATIONS MAY MERGE INTO ONE OF SUCH CORPORATIONS, PURSUANT TO A PLAN OF MERGER APPROVED IN THE MANNER HEREINAFTER PROVIDED: *PROVIDED, HOWEVER,* THAT THE SECURITIES AND EXCHANGE COMMISSIONER SHALL DISALLOW ANY MERGER OF CORPORATIONS THE PURPOSES OF WHICH ARE COMPLETELY UNRELATED TO EACH OTHER.

EACH CORPORATION INVOLVED IN THE PROPOSED MERGER SHALL ADOPT A PLAN OF MERGER SETTING FORTH:

(a) THE NAMES OF THE CORPORATION INTO WHICH THEY PROPOSE TO MERGE, WHICH IS HEREINAFTER DESIGNATED AS THE SURVIVING CORPORATION.

(b) THE TERMS AND CONDITIONS OF THE PROPOSED MERGER.

(c) A STATEMENT OF ANY CHANGES IN THE ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION TO BE EFFECTED BY SUCH MERGER.

(d) SUCH OTHER PROVISIONS WITH RESPECT TO THE PROPOSED MERGER AS ARE DEEMED NECESSARY OR DESIRABLE.

Under the general principles of corporation law, merger or consolidation of corporations cannot be resorted to unless there is express authority from a statute to do so. Since there seems to be no reason why non-profit corporations may not merge or consolidate, the proposed provision above and the next provision expressly allow such merger or consolidation. The only limitation set is that the purposes of the corporation merging or consolidating should not be unrelated to each other. Unlimited authority to merge or consolidate may result in confusion and at times, depending on the nature of the corporation, result in prejudice to the public dealing or benefiting from its operations. These provisions on merger and consolidation are taken substantially from sections 38 to 43 of the Model Non-Profit Corporation Act with some changes.

SEC. 61. ANY TWO OR MORE NON-PROFIT CORPORATIONS MAY CONSOLIDATE INTO A NEW CORPORATION PURSUANT TO A PLAN OF CONSOLIDATION APPROVED IN THE MANNER PROVIDED IN THIS ACT; *PROVIDED,* HOWEVER, THAT THE SECURITIES AND EXCHANGE COMMISSIONER SHALL DISAL-

LOW ANY CONSOLIDATION OF CORPORATIONS THE PURPOSES OF WHICH ARE COMPLETELY UNRELATED TO EACH OTHER.

EACH CORPORATION SHALL ADOPT A PLAN OF CONSOLIDATION SETTING FORTH:

(a) THE NAMES OF THE CORPORATIONS PROPOSING TO CONSOLIDATE, AND THE NAME OF THE NEW CORPORATION INTO WHICH THEY PROPOSE TO CONSOLIDATE, WHICH IS HEREINAFTER DESIGNATED AS THE NEW CORPORATION.

(b) THE TERMS AND CONDITIONS OF THE PROPOSED CORPORATION.

(c) WITH RESPECT TO THE NEW CORPORATION, ALL OF THE STATEMENTS REQUIRED TO BE SET FORTH IN ARTICLES OF INCORPORATION FOR CORPORATIONS ORGANIZED UNDER THIS ACT.

(d) SUCH OTHER PROVISIONS WITH RESPECT TO THE PROPOSED CONSOLIDATION AS ARE DEEMED NECESSARY OR DESIRABLE.

Merger implies that one of the corporations absorbs the other corporations, which in turn are dissolved. Consolidation, on the other hand, means that two or more corporations form a new corporation, the former losing their legal existence in the process.

SEC. 62. A PLAN OF MERGER OR CONSOLIDATION SHALL BE ADOPTED IN THE FOLLOWING MANNER: THE BOARD OF TRUSTEES SHALL ADOPT A RESOLUTION APPROVING THE PROPOSED PLAN AND DIRECTING THAT IT BE SUBMITTED TO A VOTE AT A MEETING OF MEMBERS HAVING VOTING RIGHTS. WRITTEN NOTICE SETTING FORTH THE PROPOSED PLAN OR A SUMMARY THEREOF SHALL BE GIVEN TO EACH MEMBER ENTITLED TO VOTE WITHIN THE TIME AND IN THE MANNER PROVIDED IN THIS ACT FOR THE GIVING OF NOTICE OF MEETING OF MEMBERS. THE PROPOSED PLAN SHALL BE ADOPTED UPON RECEIVING AT LEAST TWO-THIRDS OF THE VOTES WHICH MEMBERS PRESENT AT EACH SUCH MEETING OR REPRESENTED BY PROXY ARE ENTITLED TO CAST.

WHERE ANY MERGING OR CONSOLIDATING CORPORATION HAS NO MEMBERS HAVING VOTING RIGHTS, A PLAN OF MERGER OR CONSOLIDATION SHALL BE ADOPTED AT A MEETING OF THE BOARD OF TRUSTEES IN SUCH CORPORATION UPON RECEIVING THE VOTE OF A MAJORITY OF THE TRUSTEES IN OFFICE.

AFTER SUCH APPROVAL, AND AT ANY TIME PRIOR TO THE FILING OF THE ARTICLES OF MERGER OR CONSOLIDATION, THE MERGER OR CONSOLIDATION MAY BE ABANDONED PURSUANT TO PROVISIONS THEREOF, IF ANY, SET FORTH IN THE PLAN OF MERGER OR CONSOLIDATION.

SEC. 63. UPON ADOPTION OF THE PLAN IN ACCORDANCE WITH THE PRECEDING SECTION, ARTICLES OF MERGER OR ARTICLES OF CONSOLIDATION, AS THE CASE MAY BE, SHALL

BE EXECUTED IN DUPLICATE BY EACH CORPORATION SIGNED BY ITS PRESIDENT AND BY ITS SECRETARY, AND VERIFIED BY ONE OF THE OFFICERS OF EACH CORPORATION, SIGNING SUCH ARTICLES, AND SHALL SET FORTH:

(a) THE PLAN OF MERGER OR THE PLAN OF CONSOLIDATION.

(b) A STATEMENT SETTING FORTH THE DATE OF THE MEETING OF MEMBERS AT WHICH THE PLAN WAS ADOPTED, THAT A QUORUM WAS PRESENT AT SUCH MEETING, AND THAT SUCH PLAN RECEIVED AT LEAST TWO-THIRDS OF THE VOTES WHICH MEMBERS PRESENT AT SUCH MEETING OR REPRESENTED BY PROXY WERE ENTITLED TO CAST.

WHERE ANY MERGING OR CONSOLIDATING CORPORATION HAS NO MEMBERS HAVING VOTING RIGHTS, A PLAN OF MERGER OR CONSOLIDATION SHALL BE ADOPTED AT A MEETING OF THE BOARD OF TRUSTEES IN SUCH CORPORATION UPON RECEIVING THE VOTE OF A MAJORITY OF THE TRUSTEES IN OFFICE.

AFTER SUCH APPROVAL, AND AT ANY TIME PRIOR TO THE FILING OF THE ARTICLES OF MERGER OR CONSOLIDATION, THE MERGER OR CONSOLIDATION MAY BE ABANDONED PURSUANT TO PROVISIONS THEREFOR, IF ANY, SET FORTH IN THE PLAN OF MERGER OR CONSOLIDATION.

SEC. 64. UPON ADOPTION OF THE PLAN IN ACCORDANCE WITH THE PRECEDING SECTION, ARTICLES OF MERGER OR ARTICLES OF CONSOLIDATION, AS THE CASE MAY BE, SHALL BE EXECUTED IN DUPLICATE BY EACH CORPORATION, SIGNED BY ITS PRESIDENT AND BY ITS SECRETARY, AND VERIFIED BY ONE OF THE OFFICERS OF EACH CORPORATION, SIGNING SUCH ARTICLES, AND SHALL SET FORTH:

(a) THE PLAN OF MERGER OR THE PLAN OF CONSOLIDATION.

(b) A STATEMENT SETTING FORTH THE DATE OF THE MEETING OF MEMBERS AT WHICH THE PLAN WAS ADOPTED, THAT A QUORUM WAS PRESENT AT SUCH MEETING, AND THAT SUCH PLAN RECEIVED AT LEAST TWO-THIRDS OF THE VOTES WHICH MEMBERS PRESENT AT SUCH MEETING OR REPRESENTED BY PROXY WERE ENTITLED TO CAST.

(c) WHERE ANY MERGING OR CONSOLIDATING CORPORATION HAS NO MEMBERS, OR MEMBERS HAVING VOTING RIGHTS, THEN AS TO EACH SUCH CORPORATION A STATEMENT TO SUCH FACT, THE DATE OF THE MEETING OF THE BOARD OF TRUSTEES AT WHICH THE PLAN WAS ADOPTED AND A STATEMENT OF THE FACT THAT SUCH PLAN RECEIVED THE VOTE OF A MAJORITY OF THE DIRECTORS IN OFFICE.

DUPLICATE ORIGINALS OF THE ARTICLES OF MERGER OR ARTICLES OF CONSOLIDATION SHALL BE DELIVERED TO THE SECURITIES AND EXCHANGE COMMISSION. IF THE COMMISSIONER FINDS THAT SUCH ARTICLES CONFORM TO LAW, HE SHALL, UPON THE PAYMENT OF THE FEE OF TWENTY PESOS,

(1) ENDORSE ON EACH OF SUCH DUPLICATE ORIGINALS THE WORD "FILED" AND THE MONTH, DAY, AND YEAR OF THE FILING THEREOF.

(2) FILE ONE OF SUCH DUPLICATE ORIGINALS IN HIS OFFICE.

(3) ISSUE A CERTIFICATE OF MERGER OR A CERTIFICATE OF CONSOLIDATION, AS THE CASE MAY BE, TO WHICH HE SHALL AFFIX THE OTHER DUPLICATE ORIGINAL.

UPON THE ISSUANCE OF THE CERTIFICATE OF MERGER OR THE CERTIFICATE OF CONSOLIDATION, THE MERGER OR CONSOLIDATION SHALL BE EFFECTED. THE CERTIFICATE, TOGETHER WITH THE DUPLICATE ORIGINAL OF THE ARTICLES OF MERGER OR OF CONSOLIDATION AFFIXED THERETO, SHALL BE RETURNED TO THE SURVIVING OR NEW CORPORATION, AS THE CASE MAY BE, OR ITS REPRESENTATIVE.

SEC. 65. WHEN SUCH MERGER OR CONSOLIDATION HAS BEEN EFFECTED:

(a) THE SEVERAL CORPORATIONS PARTIES TO THE PLAN OF MERGER OR CONSOLIDATION SHALL BE A SINGLE CORPORATION, WHICH, IN THE CASE OF A MERGER, SHALL BE THAT CORPORATION DESIGNATED IN THE PLAN OF MERGER AS THE SURVIVING CORPORATION, AND, IN THE CASE OF A CONSOLIDATION, SHALL BE THE NEW CORPORATION PROVIDED FOR IN THE PLAN OF CONSOLIDATION.

(b) THE SEPARATE EXISTENCE OF ALL CORPORATIONS PARTIES TO THE PLAN OF MERGER OR CONSOLIDATION, EXCEPT THE SURVIVING OR NEW CORPORATION, SHALL CEASE.

(c) SUCH SURVIVING OR NEW CORPORATION SHALL HAVE ALL THE RIGHTS, PRIVILEGES, IMMUNITIES, AND POWERS AND SHALL BE SUBJECT TO ALL THE DUTIES AND LIABILITIES OF A CORPORATION ORGANIZED UNDER THIS ACT.

(d) SUCH SURVIVING OR NEW CORPORATION SHALL THEREUPON AND THEREAFTER POSSESS ALL THE RIGHTS, PRIVILEGES, IMMUNITIES, AND FRANCHISES, AS WELL OF A PUBLIC AS OF A PRIVATE NATURE, OF EACH OF THE MERGING OR CONSOLIDATING CORPORATIONS: AND ALL PROPERTY, REAL AND PERSONAL, AND ALL DEBTS DUE ON WHATEVER ACCOUNT, AND ALL OTHER CHOSES IN ACTION, AND EVERY OTHER INTEREST, OF OR BELONGING TO OR DUE TO EACH OF THE CORPORATIONS SO MERGED OR CONSOLIDATED, SHALL BE TAKEN AND DEEMED TO BE TRANSFERRED TO AND VESTED IN SUCH SINGLE CORPORATION WITHOUT FURTHER ACT OR DEED; AND THE TITLE TO ANY REAL ESTATE, OR ANY INTEREST THEREIN, VESTED IN ANY OF SUCH CORPORATIONS SHALL NOT REVERT OR BE IN ANY WAY IMPAIRED BY REASON OF SUCH MERGER OR CONSOLIDATION.

(e) SUCH SURVIVING OR NEW CORPORATION SHALL HENCEFORTH BE RESPONSIBLE AND LIABLE FOR ALL THE LIABILITIES AND OBLIGATIONS OF EACH OF THE CORPORATIONS SO MERGED OR CONSOLIDATED; AND ANY CLAIM

EXISTING OR ACTION OR PROCEEDING PENDING BY OR AGAINST ANY OF SUCH CORPORATIONS MAY BE PRESENTED AS IF SUCH MERGER OR CONSOLIDATION HAD NOT TAKEN PLACE, OR SUCH SURVIVING OR NEW CORPORATION MAY BE SUBSTITUTED IN ITS PLACE. NEITHER THE RIGHTS OF CREDITORS NOR ANY LIENS UPON THE PROPERTY OF ANY SUCH CORPORATION SHALL BE IMPAIRED BY SUCH MERGER OR CONSOLIDATION.

(f) IN CASE OF A MERGER, THE ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION SHALL BE DEEMED TO BE AMENDED TO THE EXTENT, IF ANY, THAT CHANGES IN ITS ARTICLES OF INCORPORATION ARE STATED IN THE PLAN OF MERGER; AND, IN THE CASE OF CONSOLIDATION, THE STATEMENTS SET FORTH IN THE ARTICLES OF CONSOLIDATION AND WHICH ARE REQUIRED OR PERMITTED TO BE SET FORTH IN THE ARTICLES OF INCORPORATION OF CORPORATIONS ORGANIZED UNDER THIS ACT SHALL BE DEEMED TO BE THE ARTICLES OF INCORPORATION OF THE NEW CORPORATION.

SPECIAL PROVISIONS
EDUCATIONAL CORPORATIONS

SEC. 66. FIVE OR MORE PERSONS MAY INCORPORATE FOR THE PURPOSE OF CONDUCTING A UNIVERSITY, COLLEGE, SCHOOL OR OTHER INSTITUTION OF LEARNING. SUCH CORPORATIONS ARE HEREINAFTER CALLED EDUCATIONAL CORPORATIONS.

IN THE ABSENCE OF ANY SPECIAL PROVISION IN THIS CHAPTER, EDUCATIONAL CORPORATIONS SHALL BE GOVERNED BY THE GENERAL PROVISIONS OF THIS ACT AND BY OTHER SPECIAL LAWS.

SEC. 67. UNLESS EXEMPTED FOR SPECIAL REASONS BY THE SECRETARY OF EDUCATION, ANY PRIVATE SCHOOL, COLLEGE OR OTHER INSTITUTION OF LEARNING SEEKING RECOGNITION BY THE GOVERNMENT UNDER EXISTING LAWS MUST BE INCORPORATED UNDER THE PROVISIONS OF THIS ACT AS NON-STOCK CORPORATIONS.

Under this provision, no school or institution of learning recognized by the Government may operate except as a non-stock corporation. This amends the rule under Section 5 of Act 2706, as amended by C. A. No. 180, under which all educational institutions must incorporate, without specifying whether as a stock or non-stock corporation.

By Memorandum Circular No. 45, series of 1960, the Director of Private Schools required all recognized private schools which had not yet incorporated, to incorporate under section 165 of the Corporation Law as *non-stock corporations*. This circular was based on the Director's interpretation of section 165 as allowing educational corporations in the

form of non-stock corporations only. The Secretary of Justice, however, when requested for his opinion on the matter, found this interpretation unjustifiable due to the already established practice of the Securities and Exchange Commission of allowing these educational institutions to incorporate as stock corporations.[48] The opinion implied that the requirement may be made by statute. The proposed provision will, therefore, solve the legal problem involved.

Experience in the Philippines has shown that many educational institutions are run mainly for profit, relegating the education of the youth to the background, thus earning for themselves the title of "diploma mills." It is believed that if organized as non-stock corporations under this Act, with the accompanying prohibition against distribution of profits in any form during the lifetime of the corporation, educational standards in this country will improve. It should be remembered, however, that profits which an educational corporation may earn may be used for its expansion, and any assets existing at the dissolution of the corporation may be distributed to its members, subject to the provisions of Section 49 of this Act.

> SEC. 68. EVERY EDUCATIONAL CORPORATION, BEFORE BEING AUTHORIZED TO FILE ITS ARTICLES OF INCORPORATION, SHALL BE REQUIRED TO PRESENT A WRITTEN STATEMENT TO THE SECURITIES AND EXCHANGE COMMISSION FROM THE SECRETARY OF EDUCATION THAT:
>
> 1. THE HOUSING SPACE AND ADMINISTRATION FACILITIES WHICH IT POSSESSES OR PROPOSES TO PROVIDE FOR ITS DECLARED FIELD OR FIELDS OF EDUCATION ARE ADEQUATE;
>
> 2. ITS PROPOSED EDUCATION PROGRAM LEADING TO THE DIPLOMAS OR DEGREES WHICH IT PROPOSES TO OFFER IS ADEQUATE;
>
> 3. ITS LABORATORY, LIBRARY, AND OTHER TEACHING FACILITIES WHICH IT POSSESSES OR PROPOSES TO PROVIDE ARE ADEQUATE;
>
> 4. IT HAS OR PROPOSES TO EMPLOY AN ADEQUATE STAFF, FULLY TRAINED, FOR THE INSTRUCTION PROPOSED; AND
>
> 5. AT LEAST 50% OF ITS CAPITAL, WHETHER IN GIFTS, DEVISES, LEGACIES, BEQUESTS OR OTHER CONTRIBUTIONS OF MONEY OR PROPERTY, HAS BEEN PAID IN OR REDUCED TO POSSESSION.

This provision is taken from Section 266 of the Michigan General Corporation Act. It is complementary to section 3 of Act 2706 as amended by Commonwealth Act No. 180, under which similar information is required to be furnished to the Secretary of Education. The above provision

[48] See Opinion No. 324, s. 1961 (December 21, 1961).

insures that before an educational institution can be allowed to incorporate, it is adequately equipped, physically, financially and academically, to train and educate the youth of the land.

> SEC. 69. IN ADDITION TO THE OTHER REQUIREMENTS OF THIS ACT, THE ARTICLES OF INCORPORATION OF EVERY EDUCATIONAL CORPORATION SHALL CLEARLY SET FORTH THE EDUCATIONAL SYSTEM OF THE INSTITUTION TO BE FOUNDED AND THE CHARACTER OF THE DEGREES, HONORS, DIPLOMAS, OR CERTIFICATES WHICH IT PROPOSES TO GRANT; AND SUCH EDUCATIONAL SYSTEM AND OTHER AFOREMENTIONED ITEMS SHALL BE APPROVED BY THE SECRETARY OF EDUCATION PRIOR TO THE FILING OF THE ARTICLES OF INCORPORATION. IF A UNIVERSITY, THE ARTICLES SHALL STATE THE NUMBER AND NAME OF THE FACULTIES TO BE ESTABLISHED; AND IF A DENOMINATIONAL RELIGIOUS SCHOOL OR COLLEGE, THE NAME OF SUCH DENOMINATION AND THE BODY SUPPORTING OR CONTROLLING THE SAME. THE ARTICLES SHALL ALSO STATE THE AMOUNT OF CAPITAL THE CORPORATION PROPOSES TO RAISE, IN THE FORM OF MONEY OR OTHERWISE, FROM CONTRIBUTIONS FROM ITS MEMBERS OR OUTSIDERS. SAID ARTICLES SHALL BE EXECUTED AND FILED AS PROVIDED IN SECTION 4 OF THIS ACT.

This is taken substantially from Section 280 of the Michigan Act.

> SEC. 70. THE CONTROL OF THE BUSINESS AND SECULAR AFFAIRS OF EVERY EDUCATIONAL CORPORATION SHALL BE VESTED IN A BOARD OF TRUSTEES, THE MEMBERS OF WHICH SHALL BE NO LESS THAN FIVE NOR MORE THAN FIFTEEN. SUCH BOARD 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 SHALL HOLD OFFICE FOR FIVE YEARS. TRUSTEES ELECTED TO FILL VACANCIES CAUSED BY EXPIRATION OF TERM SHALL HOLD OFFICE ONLY FOR THE UNEXPIRED TERM.

The minimum number of trustees of an educational corporation is set at five, instead of at three as in the case of other non-profit corporations. It is believed that since the board of trustees of an educational corporation lays down the educational policies of the institution, a body of five members would prove more beneficial, from the viewpoint of contribution of ideas and experience. The staggered term of the trustees will insure a reasonable amount of continuation of policies without prejudice to the introduction of new and better ideas. This provision is similar to Section 169 of the present Corporation Law.

> SEC. 71. IN ADDITION TO THE GENERAL CORPORATE POWERS CONFERRED BY THE PROVISIONS OF THIS ACT, THE BOARD OF TRUSTEES SHALL HAVE EXCLUSIVE CONTROL

OVER THE EDUCATIONAL AFFAIRS AND POLICY OF THE EDUCATIONAL CORPORATION, AND AS SUCH MAY:

1. APPOINT, EMPLOY AND PAY THE SALARY OF A PRESIDENT, OR PRINCIPAL, AND SUCH PROFESSORS, INSTRUCTORS, ASSISTANTS AND EMPLOYEES, AS THE BOARD SHALL DETERMINE NECESSARY;

2. DIRECT AND PRESCRIBE THE COURSE OR COURSES OF STUDY AND THE RULES OF DISCIPLINE FOR SUCH INSTITUTION, AND ENFORCE THE SAME; AND PRESCRIBE THE TUITION AND OTHER FEES TO BE PAID BY STUDENTS ATTENDING SUCH INSTITUTION;

3. GRANT SUCH DIPLOMAS, CERTIFICATES OF GRADUATION, OR HONORS AND DEGREES, AS THE NATURE OF THE INSTITUTION MAY WARRANT, OR AS CONTEMPLATED IN THE ARTICLES;

4. DELEGATE TO THE PRESIDENT OR PRINCIPAL, AND THE VARIOUS PROFESSORS AND TEACHERS, SUCH AUTHORITY OVER THE EDUCATIONAL AFFAIRS OF THE INSTITUTION AS THE BOARD MAY DEEM ADVISABLE;

5. COOPERATE WITH OTHER SCHOOLS, COLLEGES AND EDUCATIONAL INSTITUTIONS IN PROMOTING THE BEST INTERESTS OF EDUCATION..

This is taken from Section 282, Michigan Act.

RELIGIOUS CORPORATIONS

SEC. 72. RELIGIOUS CORPORATIONS MAY BE INCORPORATED BY ONE OR MORE PERSONS. SUCH CORPORATIONS SHALL BE CLASSIFIED INTO CORPORATIONS SOLE AND RELIGIOUS SOCIETIES.

IN THE ABSENCE OF ANY SPECIAL PROVISION IN THIS CHAPTER, RELIGIOUS CORPORATIONS SHALL BE GOVERNED BY THE GENERAL PROVISIONS ON NON-PROFIT CORPORATIONS, AS FAR AS THEY MAY BE APPLICABLE.

The corporation sole is solely for the purpose of administering the properties and affairs of any religious sect or parish. The religious society has a broader scope. It includes religious orders as well as lay societies organized for religious work. A religious order may find it necessary to incorporate in order to conveniently manage and administer its properties, and in doing so, it may take the form of any other kind of non-profit corporation. It differs from the corporation sole in that the latter is composed usually of only one person, who is the head of the parish or religious sect.

SEC. 73. FOR THE PURPOSE OF THE ADMINISTRATION AND MANAGEMENT OF THE AFFAIRS, PROPERTY AND TEMPORALITIES OF ANY RELIGIOUS DENOMINATION, SECT OR CHURCH, A CORPORATION SOLE MAY BE FORMED BY THE ARCHBISHOP,

MINISTER, RABBI OR OTHER PRESIDING OFFICER OF SUCH RELIGIOUS DENOMINATION, SECT OR CHURCH, EXERCISING JURISDICTION OVER ONE OR MORE LOCAL PARISHES, OR COMMUNITIES.

This is taken substantially from section 154 of the Corporation Law.

SEC. 74. THE ARTICLES OF INCORPORATION OF A CORPORATION SOLE SHALL STATE:

(a) THE NAME OF THE CORPORATION.

(b) THAT THE OFFICER FORMING THE CORPORATION IS DULY AUTHORIZED BY THE RULES AND REGULATIONS, OR DISCIPLINE OF THE RELIGIOUS DENOMINATION, SECT OR CHURCH TO TAKE SUCH ACTION.

(c) THE CITY OR MUNICIPALITY WHERE THE PRINCIPAL OFFICE FOR THE TRANSACTION OF THE BUSINESS OF THE CORPORATION IS LOCATED.

(d) THE MANNER IN WHICH ANY VACANCY OCCURRING IN THE OFFICE OF THE ARCHBISHOP, BISHOP, PRIEST, MINISTER, RABBI OR OTHER PRESIDING OFFICER IS REQUIRED TO BE FILLED BY THE RULES, REGULATIONS OR CONSTITUTION OF THE DENOMINATION, SECT OR CHURCH.

THE ARTICLES MAY INCLUDE ANY OTHER PROVISION NOT CONTRARY TO LAW FOR THE REGULATION OF THE AFFAIRS OF THE CORPORATION.

This is taken substantially from Articles 307 and 308 of the proposed Corporation Code.

SEC. 75. THE ARTICLES OF INCORPORATION SHALL BE SIGNED AND VERIFIED BY THE ARCHBISHOP, BISHOP, PRIEST, MINISTER, RABBI OR OTHER PRESIDING OFFICER FORMING THE CORPORATION AND SHALL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. IF THEY ARE IN AC CORDANCE WITH LAW, THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF INCORPORATION, UPON THE PAYMENT OF THE FEE OF TWENTY PESOS

This is taken from Section 309 of the proposed Corporation Code.

SEC. 76. EACH CORPORATION SOLE SHALL FILE A COPY OF ITS ARTICLES OF INCORPORATION, CERTIFIED BY THE SECURITIES AND EXCHANGE COMMISSIONER AND BEARING THE ENDORSEMENT OF THE DATE OF FILING IN HIS OFFICE, IN THE OFFICE OF THE REGISTRAR OF DEEDS OF THE CITY OR PROVINCE IN WHICH THE CORPORATION HAS ITS PRINCIPAL OFFICE, AND OF THE CITY OR PROVINCE IN WHICH IT HOLDS REAL PROPERTY.

This is taken from Section 310 of the proposed Corporation Code.

SEC. 77. EVERY CORPORATION SOLE MAY:

(a) SUE AND BE SUED.

(b) ENTER INTO CONTRACTS FOR THE PURPOSES OF THE TRUST.

(c) BORROW MONEY, CONTRACT DEBTS, AND GIVE SECURITY FOR THE PAYMENT OF ITS OBLIGATIONS.

(d) ACQUIRE, ALIENATE, ENCUMBER, LEASE, POSSESS OR OTHERWISE DEAL IN REAL AND PERSONAL PROPERTY FOR PURPOSES OF THE CORPORATION.

(e) DO ALL OTHER ACTS NECESSARY OR DESIRABLE FOR THE ATAINMENT OF THE PURPOSES OF THE CORPORATION.

This is taken from Section 312 of the proposed Corporation Code.

SEC. 78. EVERY CORPORATION SOLE HAS CONTINUITY OF EXISTENCE, NOTWITHSTANDING VACANCIES AND CHANGES IN THE INCUMBENCY THEREOF. DURING THE PERIOD OF SUCH VACANCY, THE CORPORATION SOLE THROUGH THE OFFICER TEMPORARILY DESIGNATED UNDER THE RULES AND REGULATIONS OF THE PARTICULAR DENOMINATION, SECT, OR CHURCH, HAS THE SAME CAPACITY AND RIGHT TO RECEIVE AND TAKE ANY DONATION, LEGACY, DEVISE, OR CONVEYANCE OF PROPERTY, EITHER AS GRANTEE FOR ITS OWN USE, OR AS TRUSTEE, TO BE MADE THE BENEFICIARY OF A TRUST, AND TO EXERCISE OTHER POWERS AS THOUGH THERE WERE NO VACANCY.

This is taken from section 312 of the proposed Corporation Code.

SEC. 79. AS SOON AS THE VACANCY MENTIONED IN THE PRECEDING SECTION IS DEFINITELY FILLED, NOTICE THEREOF SHALL BE SENT TO THE SECURITIES AND EXCHANGE COMMISSION BY REGISTERED MAIL, STATING THE NAME OF THE NEW ARCHBISHOP, BISHOP, PRIEST, MINISTER, RABBI OR OTHER OFFICER WHO COMPOSES THE CORPORATION SOLE. FROM THE TIME OF SUCH NOTICE, SAID NEW OFFICER SHALL HAVE ALL THE POWERS AND RESPONSIBILITIES AS IF HE WERE THE ORIGINAL INCORPORATOR.

SEC. 80. A CORPORATION SOLE MAY BE DISSOLVED AND ITS AFFAIRS WOUND UP VOLUNTARILY BY FILING WITH THE SECURITIES AND EXCHANGE COMMISSIONER A VERIFIED DECLARATION OF DISSOLUTION.

This is taken from Section 316 of the proposed Corporation Code.

SEC. 81. THE DECLARATION OF DISSOLUTION SHALL SET FORTH:

(a) THE NAME OF THE CORPORATION.

(b) THE REASON FOR ITS DISSOLUTION AND WINDING UP.

(c) THAT DISSOLUTION OF THE CORPORATION HAS BEEN DULY AUTHORIZED BY THE PARTICULAR RELIGIOUS DENOMINATION, SECT, OR CHURCH.

(d) THE NAMES AND ADDRESSES OF THE PERSONS WHO ARE TO SUPERVISE THE WINDING UP OF THE AFFAIRS OF THE CORPORATION.

This is taken from Section 317 of the proposed Corporation Code.

SEC. 82. THE DECLARATION SHALL BE SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSIONER FOR FILING IN HIS OFFICE. IF IT CONFORMS TO LAW, HE SHALL FILE IT AND ENDORSE THE DATE OF FILING THEREON AND ISSUE A CERTIFICATE OF DISSOLUTION, UPON PAYMENT OF THE FEE OF TWENTY PESOS. THEREUPON THE CORPORATION SHALL CEASE TO CARRY ON BUSINESS, EXCEPT FOR THE PURPOSE OF ADJUSTING AND WINDING UP ITS AFFAIRS.

THE PERSONS DESIGNATED TO SUPERVISE THE WINDING UP OF THE AFFAIRS OF THE CORPORATION SHALL FILE A CERTIFIED COPY OF THE CERTIFICATE OF DISSOLUTION IN THE OFFICE OF THE REGISTRAR OF DEEDS OF THE CITY OR PROVINCE IN WHICH THE CORPORATION HAS ITS PRINCIPAL OFFICE, AND OF THE CITY OR PROVINCE IN WHICH IT HOLDS REAL PROPERTY.

This is taken from Section 318 of the proposed Corporation Code.

SEC. 83. AFTER THE DEBTS AND OBLIGATIONS OF THE CORPORATION SOLE ARE PAID OR ADEQUATELY PROVIDED FOR, ANY ASSETS REMAINING SHALL BE TRANSFERRED TO THE PARTICULAR RELIGIOUS DENOMINATION, SECT, OR CHURCH TO WHICH IT PERTAINS, OR TO TRUSTEES IN ITS BEHALF.

SEC. 84. A RELIGIOUS SOCIETY MAY BE INCORPORATED FOR THE PURPOSE OF TEACHING AND SPREADING RELIGIOUS BELIEFS AND PRINCIPLES, FOR PERFOMING ANY RELIGIOUS WORK, OR FOR THE PURPOSE OF ADMINISTERING OR MANAGING THE TEMPORALITIES OR PROPERTIES OF ANY RELIGIOUS ORDER, SYNOD OR ORGANIZATION.

Although corporations sole are strictly for ecclesiastics and for the purpose mainly of administering church properties, religious societies as above described are meant to cover lay organizations devoted to some form of religious work. Ecclesiastics however are not precluded from membership therein. Examples of such societies would be the Legion of Mary, Bible Societies, and the Christian Family Movement. Such societies may or may not be connected with a particular church or parish.

SEC. 85. THE ARTICLES OF INCORPORATION OF A RELIGIOUS SOCIETY SHALL BE, AS FAR AS POSSIBLE AND APPLICABLE, SIMILAR TO THOSE PRESCRIBED FOR NON-PROFIT CORPORATIONS GENERALLY AND SHALL ALSO CONTAIN ANY SPECIAL CONDITIONS OR DISTINGUISHING PRINCIPLES UPON WHICH SUCH CORPORATION IS FOUNDED, AND, IF CONNECTED WITH SOME ORGANIZED CHURCH, THE NAME OF THE CHURCH AND A STATEMENT OF THE EXTENT TO WHICH SUCH CHURCH MAY EXERCISE SUPERINTENDENCE OVER THE AFFAIRS OF, OR DISCIPLINE OF, THE MEMBERS OF SUCH CORPORATIONS. RELIGIOUS SOCIETIES SHALL HAVE ALL THE

RIGHTS, PRIVILEGES, AND POWERS AS WELL AS THE DUTIES AND RESPONSIBILITIES PROVIDED BY THIS ACT FOR NON-PROFIT CORPORATIONS GENERALLY IN THEIR SECULAR AFFAIRS; AND IN THEIR RELIGIOUS AFFAIRS THEY SHALL BE GOVERNED SOLELY BY THEIR ARTICLES AND BY-LAWS, AND THE SYSTEM OF DISCIPLINE THEREIN ADOPTED.

This is taken substantially from Section 186 of the Michigan Act.

MISCELLANEOUS PROVISIONS

SEC. 86. THE SECURITIES AND EXCHANGE COMMISSIONER SHALL HAVE THE POWER TO PROMULGATE SUCH RULES AND REGULATIONS, NOT INCONSISTENT WITH LAW, WHICH MAY BE NECESSARY TO CARRY INTO EFFECT THE PROVISIONS OF THIS ACT.

SEC. 87. ALL PROVISIONS OF ACT ONE THOUSAND FOUR HUNDRED FIFTY NINE AND OF OTHER EXISTING LAWS WHICH ARE INCONSISTENT WITH THIS ACT ARE HEREBY REPEALED.

IN THE ABSENCE OF A SPECIFIC PROVISION IN THIS ACT ON ANY PARTICULAR MATTER, THE PERTINENT PROVISIONS IN ACT ONE THOUSAND FOUR HUNDRED FIFTY NINE, IF ANY, SHALL, IN SO FAR AS MAY BE APPLICABLE, GOVERN.

SEC. 88. ANY WILFUL VIOLATION OF ANY PROVISION OF THIS ACT BY ANY OFFICER, TRUSTEE OR MEMBER OF THE CORPORATION SHALL BE PUNISHED BY A FINE OF FIVE THOUSAND PESOS OR BY IMPRISONMENT FOR ONE YEAR, OR BOTH, IN THE DISCRETION OF THE COURT. WHENEVER PROPER, SUCH VIOLATION MAY ALSO CONSTITUTE A GROUND FOR *QUO WARRANTO* PROCEEDINGS AGAINST THE CORPORATION.

SEC. 89. SHOULD ANY PART OR PARTS OF THIS ACT BE DECLARED INVALID BY THE PROPER COURT, THE OTHER PROVISIONS, SO FAR AS THEY ARE SEPARABLE FROM THE INVALID ONES, SHALL REMAIN EFFECTIVE.