# Business Planning and Organizing

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# Why do you go for business?

## Evaluate your..

- Interest,
- Experiences,
- Skills,
- The community needs

# Positive Personal Qualities

- Human Relations
- Social Contracts
- Business Experience
- Physically fit

# Reasons why people go to business:

- Personal Satisfaction
- Family Involvement
- Independence and Power ; Profit Expectation
- Social Activities

# Types of Business Organizations

1. Sole Proprietorship
2. Partnership
3. Corporation

# Sole Proprietorship

An individual does business. The owner - personally conducts business. He can do it under his own name or he can do it under a business name.

The essence of a sole proprietorship is that the person doing the business is the business. The business is not a separate entity from the owner.

# Partnership

A partnership is both a contract and a business organization.

A partnership is where two or more individuals contribute money, property, or industry for the purpose of sharing profits among themselves.

# Corporation

The most common type of business organization.

A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence

# Difference between partnership and corporation (As to creation)

**Partnership:**

Made by mere consent or agreement of the parties

**Corporation:**

Upon approval of the Securities and Exchange Commission (SEC) evidenced by the issuance of the certificate of incorporation

# Difference between partnership and corporation (As to composition)

**Partnership:**

At least two persons

**Corporation:**

Not more than 15 incorporators, natural or juridical. May be a One Person Corporation

# Difference between partnership and corporation (As to powers exercised)

**Partnership:**

Depends on what the partners agree upon for as long as it is not contrary to laws, morals, good customs, public order or public policy

**Corporation:**

Based on what is provided in the Corporation Code and any incidental powers which are expressly granted

# Difference between partnership and corporation
# (As to the management)

**Partnership:**

As a general rule, a partner can bind the partnership.

**Corporation:**

Only the board of directors acting as a board can bind the corporation. Individually, a director cannot bind the the corporation. They have to act as a board.

# Difference between partnership and corporation (As to the liability)

**Partnership:**

A partner can be held liable with his personal property.

**Corporation:**

General rule, all the stockholders will be held liable up to the extent of their contribution. They cannot be liable beyond what they contributed. This is what is known as ***limited liability.***

# Difference between partnership and corporation (As to transfer of interest)

**Partnership:**

When a partner transfers his interest, the person to whom his interest is transferred to does not become a partner automatically, he needs the consent of the other partners.

**Corporation:**

As a general rule, a stockholder does not need the consent of other stockholders in order to transfer his shares.

# Difference between partnership and corporation (As to successional rights)

**Partnership:**

The death of a partner dissolves the partnership.

**Corporation:**

The death of a stockholder does not dissolve the corporation. Rather, his shares are transmitted to his heirs. This is because a corporation has the right of succession.

# Attributes of a corporation

- Artificial Being
- Created by operation of law
- Successional Rights
- Power and attributes or properties expressly provided for by law

# Artificial Being

It has a separate legal personality created by fiction of law. It is considered a separate juridical entity from its stockholders.

## Created by Operation of Law

In order to create a corporation is mere agreement is not sufficient. It has to have the **consent of the state** done through the submission of requirements to the SEC. The consent of the state is manifested by the **issuance** of the certificate of incorporation.

# Rights of Succession

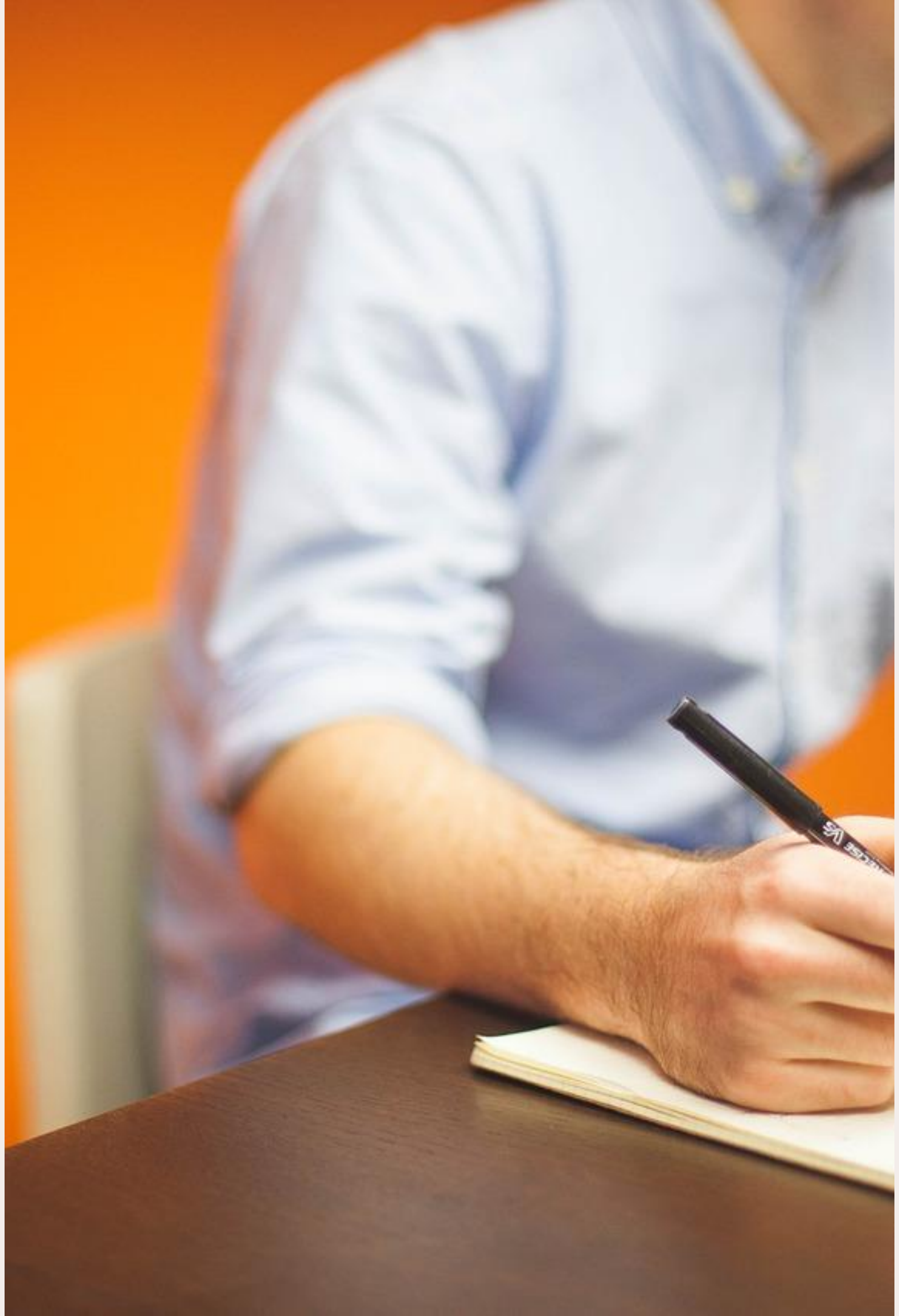
Means that if there is a change in the stockholders or board of directors, the corporation continues to exist.

## Powers and Attributes

The corporation also has powers and attributes given by law and incidental to its existence. It means that a corporation can:

1. Sue in its own name
2. Acquire properties
3. Enter into contract

Liability of Corporations



## Piercing the Corporate Veil

Only the corporation can be held liable even if it was the member of the board who signed the contract in behalf of the corporation.

The consequence of having a separate and distinct personality is that it can enter into contracts under its own name and incur obligations solely in its own name. It is not the obligation of its BOD, Officers and stockholders.

**Existence of a corporation as a separate entity is given by law as a concession for:**

1. Convenience and
2. To facilitate business and economic transactions.

> *If you can film an idea in your mind, follow that film idea shot for shot, scene for scene, that idea is worth making.*

Craig Mapp

# Types of Corporation

1. Stock Corporations
2. Non-stock corporation

# Stock Corporations

- those whose purpose is to derive profit and there will be dividends distributed among stockholders.

**2 essential elements:**

1. Capital must be divided into shares of stock
2. Authorized to distribute its shares in the form of dividends

# Non-stock corporation

– its purpose is for general welfare or other purposes not intended for profit.

# Other Classifications of corporations:

1. *Whether for private purpose*

a.) **public corporation** – created by law ; formed by the government for public welfare;

b.) **private corporation** – created by operation of law ; its purpose is for profit

*2.) Whether they are open to public or not*

a.) **open corporation** – membership is open to public

b.) **closed corporation** – membership is limited within the family

# Other Classifications of corporations:

*4. Their relation to another corporation*

**a.) Parent/holding corporation** – owns and controls other corporations

**b.) Subsidiary corporation** – a corporation controlled by another corporation i.e. parent corporation

**c.) Affiliated corporation** – one related to another by owning or being owned by common management.

# Other Classifications of corporations:

*7. As to number of persons who compose them*

**a.) Corporation aggregate** – a corporation consisting of more than one member or corporator.

**b.) Corporation sole** – it is a religious corporation which consists of one member or corporator.

Example: chief archbishop, bishop, rabbi

# Components of a Corporation:

1. **Corporators –** those who compose the corporation, whether stockholders or members. They are those who subscribe to the shares of the corporation.
2. **Incorporators –** those corporators mentioned in the articles of incorporation as originally forming and composing the corporation and who executed and signed the articles of incorporation as such.

# Components of a Corporation:

**3. Stockholders or shareholders –** the corporators or owners of shares of stock in a stock corporation. They may be natural or juridical persons.

**4. Members –** corporators of a corporation which has no capital stock

# Other components:

**5. BODs or trustees**

**6. Officers –** president, secretary, treasurer (minimum requirement). They can have additional officers in the by-laws, but the minimum required are those three.

# Stock or Share of Stocks

It represents the interest or right which the owner has

a.) In the management of the corporation in which he takes part through his right to vote;

- If voting rights are permitted

b.) In a portion of the corporate earnings, if and when segregated in the form of dividends;

c.) Upon its dissolution and winding up, in the property and assets thereof remaining after the payment of corporate debts and liabilities.



# Stock or Share of Stocks

**Residual Assets** – Assets leftover after payment to creditors and liabilities.

**Net Assets** – Assets minus liabilities.

A share of stock is an asset of a stockholder. It is intangible because it is merely a representation of a right or interest in those three mentioned above.

If you have here a capital of P1,000, P1 per share. P1,000/P1 or 1,000 is the capital stocks of the corporation.

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# Types of Capital

1. Authorized Capital Stock
2. Subscribed Capital Stock or Issued Capital Stock
3. Paid-Up Capital Stock
4. Unissued Capital Stock
5. Outstanding Capital Stock

# Authorized Capital Stock

It is the amount fixed in the articles of incorporation, to be subscribed and paid in by the shareholders of a corporation, either in money or property, labor or services, at the organization of the corporation or afterwards and upon which it is to conduct its operation. It represents the equity of the stockholders in the corporate assets.

It is the amount of stocks the corporation is authorized to issue. Anything beyond that, the corporation can no longer issue. You have to go to SEC and apply for the increase of authorized capital stock.



# Subscribed/Issued Capital Stock

It is the amount of capital subscribed whether fully paid or not. It connotes an original subscription contract for the acquisition by a subscriber of unissued shares and would therefore preclude the acquisition of shares by reason of subsequent transfer from a stockholder or resale of treasury shares.

## *Will you be issued a certificate of stock?*

No. Just because the stock is subscribed, it doesn’t mean that it can have a stock certificate. It can only be issued if the subscription is fully paid.

It can be paid or unpaid, as long as it is covered by a subscription agreement.

# Subscribed/Issued Capital Stock

***Subscription*** - the transaction when you buy shares from the unissued capital stock of the corporation. It is a primary offering. You buy it directly from the issuing corporation. The document is the subscription agreement.

***Secondary offering*** – If you are buying the shares from another stockholder and not from the corporation, it means that you are already buying issued shares. The document is the deed of assignment.

## *Does it matter if the subscription is paid or unpaid?*

No. Even if the subscription is unpaid, the moment that there is a subscription agreement, the shares are already subscribed and they are considered as issued.

# Paid-Up Capital Stock

It is the portion of the subscription which has been paid by the subscriber or stockholder.

# Unissued Capital Stock

It is the portion of the capital stock that is not issued or subscribed. They are those not covered by the subscription agreement.

# Outstanding Capital Stock

It is the portion of the capital stock which is issued and held by persons other than the corporation itself. It is the total shares of stock issued to subscribers or stockholders, whether fully or partially paid **except treasury shares.**

# Treasury Shares

Treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means. Such shares may again be disposed of for a reasonable price fixed by the board of directors.

# *What is the difference between Outstanding Capital Stock vs. Subscribed Capital?*

Treasury shares still forms part of Authorized Capital Stock and Subscribed Capital Stock but not Outstanding Capital Stock because by their definition OCS are shares of stock issued to subscribers/stockholders, whether or not fully or partially paid and are held by persons ***except*** the issuing corporation.

So subscribed capital stock is broader.

# Retained Earnings

- are the net profits you have after distributing your dividends to your stockholders. It is the portion of your capital which comes from your profit. So your capital is made up of your contributions, meaning the subscribed capital and you have your retained earnings. Any income by the corporation which have not been distributed to the stockholder will form part of the retained earning of the corporation.

# EQUALITY OF SHARES OF STOCK

- in the absence of any stipulation in the articles of incorporation and certificate of stock to the contrary all stocks regardless of their nomenclature enjoy the same rights and privileges and subject to the same liabilities.

So if the AOI does not say what the characteristic of each share are, its the same characteristic for all.

## *Who has the power to classify?*

1. The incorporators at the very beginning because they approve the AOI.
2. Members of the BOD and the stockholders, subsequently if there are changes done by amending the AOI. So you have to go back to the SEC.

# Classes of Shares

1. Par Value Shares
2. Non-Par Value Shares
3. Common Shares
4. Preferred Shares
5. Founder’s Shares
6. Convertible Shares

# PAR VALUE v. NO PAR VALUE

**Par value –** the amount (price per share) is fixed in the articles of incorporation **AND** in the certificate of stock

**No par value -** value is not fixed in the articles of incorporation and in the certificate of stock

**DIFFERENCE**:

- If the shares have par value, your authorized capital stock would be described in money terms.

# *Can a par value share be issued at a price different from its par?*

It depends. It can be issued for higher but it cannot be issued for lower than the par value. If it's higher that would create your premium or higher paid-in capital. That will not change your authorized capital.

Basically, you are just creating a share premium. It would not change your authorized but it will only change your paid-in. But you cannot issue shares lower than the par value because that would turn in into watered stock and that is not allowed under the corporation code.

# PAR VALUE v. NO PAR VALUE

**LIMITATION:**

A par value share is not as flexible as a no par value share because a no par share can be issued at any price provided that it should not be sold at less than P5 pesos per share.

The no par value shares affords the corporation flexibility in the issue price of its share in any amount provided that it does not go below P5 per share.

*What does subscription have to do with the payment? So again, what does this mean? What is the difference in terms of payment of par value and no par value shares?*

So par value shares can be issued based on a subscription receivables. You still need to pay the price but you don’t have to pay it the moment of subscription. And in fact, you can also choose to pay certain percentage of your subscription. If you opt, you can pay for 10%, 15%, 20% 50%.

There’s no requirement as to the extent of payment if the shares are par value. But if the shares are no par value, the subscription price must be paid right away because all no par value shares are deemed fully paid and non-accessible. Meaning for no par value share you do not recognize a subscription receivable. The moment of subscription the amount that is paid is the full amount of the subscription price.

# COMMON AND PREFERRED

**Common -** is basically represents the residual right of the stockholder over the corporation. This is the most common type of share. You cannot have a corporation without common shares and you cannot deprive them of voting rights. *The only time common shares are deprived of voting rights is when you have founder's shares*. But founders shares are only for a limited period. After that common shares will have voting rights again.

# COMMON AND PREFERRED

Are shares received by the shareholder pro rata. In the order of the receiving of the dividends, it comes after anything that is remaining after the dividends have been given to the preferred share Common shares are the ultimate ownership of a corporation. It is the residual interest after all the creditors have been paid and all the preference have been given.

Preferred shares are those which will have preference either as to assets or dividends.

*If the AOI provides for the common and preferred shares but does not state anything else. What is the assumption?*

For preferred shares it is presumed to be non-cumulative and non-participating.

If the articles both provide for the common and preferred but does not provide for anything else. **Doctrine of equality of shares applies.**

# COMMON AND PREFERRED

Definitions:

- ✓ **Preferred as to Assets** – preferred in the distribution of assets of the corporation in case of liquidation
- ✓ **Preferred as to Dividends** – preferred in the distribution of dividends
  - ✓ **Cumulative shares –** right to dividends in arrears. The declaration of dividends is always a management prerogative. If your shares are preferred, it means that for every year that the company did not declare dividends, each cumulative preferred will have an interest in those undeclared dividends.

# COMMON AND PREFERRED

Definitions:

- ✓ **Non-cumulative shares -** they don't get dividends in arrears.
- ✓ **Participating shares –** those which after they get their share of the dividends, they shall participate in the sharing of dividends of the common stockholders.
- ✓ **Non-participating shares —** Once you get your preferred shares, you no longer have a right to what is left.

# VOTING SHARES AND NON-VOTING SHARES

Voting Shares – shares that have a right to vote

Non-voting Shares – shares that do not have the right to vote

***Conditions in the issuance of Non-Voting Shares:***

1. Only preferred or redeemable shares may be non-voting;
2. Required to vote under the instances provided;
3. They cannot issue all non-voting shares – there should always be a class of shares with FULL voting rights.

# VOTING SHARES AND NON-VOTING SHARES

***8 Instances where non-voting shares may still be entitled to vote***:

1. Amendment of AOI;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of this corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this code;
8. Dissolution of the corporation.

# FOUNDER'S SHARE

Common shares cannot be deprived the right to vote.

***Except:*** In the case of Founder's Shares – for a limited period of 5 years, owners of founders' shares shall have an exclusive right to vote and be voted.

**Founders' Shares** – shares issued to the organizers and promoters of a corporation in consideration of some supposed right or property having special rights and privileges not enjoyed by the owners of other classes of shares.

# SHARES IN ESCROW

*Escrow* – a deed, bond, money, or a piece of property held in trust by a third party to be turned over to the grantee only upon fulfillment of a condition *(Merriam-Webster)*

There is a company that handles, it does not give the shares unless the obligation is finished from the other party. So, if the certain obligation is not done, then the shares are not given.

## *When can a share be subject to escrow?*

If you buy shares in a secondary purchase (not a subscription), you are buying from a stockholder not directly from the corporation. If the stockholder/seller wants to be assured of payment before he even gives you the share, what the parties will is that they will deposit the share with the bank put it under escrow. With the condition that the bank will only issue the shares the stock certificates upon the full payment of the price.

# TREASURY SHARES

Treasury shares- it refers to the shares wherein it is fully issued and paid but is subsequently reacquired by the corporation who issued such shares through redemption, donation or any other means.

*What happens to the treasury? What is the status of the treasury shares?*

The treasury shares will become a property of the corporation meaning that the corporation can resell it in an amount which is fixed by the board of directors and it cannot be considered as a retired share because it does revert into unissued shares.

# REDEEMABLE SHARES

**Redeemable shares** – usually preferred which by their terms are redeemable at a fixed date or at the option of either the issuing corporation or the stockholder or both at a certain redemption price.

| | Redeemable Share | Treasury Share |
|---|---|---|
| Mode of acquisition | Share can be acquired even without unrestricted retained earnings – through surplus | Share can only be reacquired when there are unrestricted retained earnings |
| | Expressly stated in the AOI | Not stated in the AOI |



# CONVERTIBLE SHARES

***Convertible shares*** – are shares that allow the holder to convert from one class to another. But the conversion is not automatic, it can be done thru the amendment of the articles.

Ordinarily, if you want to convert but you do not have yet a convertibility feature in your Articles you need to submit two amendments (dual amendment) simultaneously. The first amendment is the convertibility feature and the secod amendment is the actual conversion. You file the two amendments together.

# Status of Shares

1. Shares in escrow
2. Treasury shares

# Tips for businesses

Take risks to lead in product innovation

Listen to customers and learn what they need

Test with customers until you get the product right