

WEEK 1: PARTNERSHIP – GENERAL PROVISIONS

Article 1767. By the contract of partnership, two (2) or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

Two (2) or more persons may also form a partnership for the exercise of a profession (1665a).

Characteristics of Partnership

- | | |
|---------------|----------------|
| a. Consensual | e. Commutative |
| b. Nominate | f. Principal |
| c. Bilateral | g. Preparatory |
| d. Onerous | |

Classification of Partnership

1. As to subject matter
 - a. **Universal partnership:** Refers to all the present property or all profits
 - i. **Universal partnership of all present property:** The partners contribute all the property which actually belongs to them to a common fund, with the intention of dividing the same among themselves, as well as all the profits which they may acquire therewith.
 - ii. **Universal partnership of profits:** One which comprises all that the partners may acquire by their industry or work during the existence of the partnership.
 - b. **Particular partnership:** Has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation.
2. As to the liability of partners
 - a. **General partnership:** Where all partners are unlimitedly liable.
 - b. **Limited partnership:** Where there are one (1) or more general partners who are unlimitedly liable, and one (1) or more limited partners, who are liable for partnership debts only to the extent of their stipulated contributions under the articles of partnership.
3. As to its duration
 - a. **Partnership at will:** Birth and life of a partnership at will are predicated on the mutual desire and consent of the partners.
 - b. **Partnership with a fixed period**
 - c. **For a particular undertaking:** Automatically dissolved upon the achievement of the particular undertaking stipulated in the contract of partnership.

4. As to the legality of its existence
 - a. **De jure partnership:** One which has complied with all the legal requirements for its establishment.
 - b. **De facto partnership:** One with a colorable title or one which has failed to comply with all the legal requirements for its establishment.
5. As to representation to others
 - a. **Ordinary or real partnership:** One which actually exists among the partners and also as to third persons.
 - b. **Ostensible partnership or partnership by estoppel:** One which in reality is not a partnership, but is considered a partnership only in relation to those who, by their conduct or admission, are precluded to deny or disprove its existence.
6. As to publicity
 - a. **Secret partnership:** One wherein the existence of certain persons as partners is not avowed or made known to the public by any of the partners.
 - b. **Open or notorious partnership:** One whose existence is avowed or made known to the public by the members of the firm.
7. As to purpose
 - a. **Commercial or trading partnership:** One formed for the transaction of business.
 - b. **Professional or non-trading partnership:** One formed for the exercise of a profession.

Kinds of Partners

1. As to the nature of contribution
 - a. **Capitalist partner:** Contributes money or property to the common fund.
 - b. **Industrial partner:** Contributes only his industry or personal service.
2. As to liability
 - a. **General partner:** One whose liability to third persons extends to his separate property.
 - b. **Limited partner:** One whose liability to third persons is limited to his capital contribution
3. As to management.
 - a. **Managing partner:** One who manages the affairs or business of the partnership; he may be appointed either in the articles of partnership or after the constitution of the partnership; also known as a general or real partner.
 - b. **Silent partner:** One who does not take an active part in the business although he may be known to be a partner.

- c. **Liquidating partner:** One who takes charge of the winding up of partnership affairs upon dissolution.
4. As to exposure to public perception
 - a. **Ostensible partner:** One who takes active part and known to the public as a partner in the business, whether or not he has an actual interest in the firm.
 - b. **Secret partner:** One who takes active part in the business but is not known to be a partner by outside parties nor held out as a partner by the other partners, although he participates in the profits and losses of the partnership.
 - c. **Dormant partner:** One who does not take active part in the business and is not known or held out as partner.
5. As to membership
 - a. **Real partner:** One who is really a contributing member of an existing legal partnership.
 - b. **Partner by estoppel:** One who is not really a partner, not being a party to a partnership agreement, but is liable as a partner for the protection of innocent third persons.
6. As to value of contribution
 - a. **Majority partner:** One whose contribution represents the majority or controlling interest.
 - b. **Nominal partner:** One whose contribution represents only a minority interest.
7. As to nature of membership
 - a. **Original partner:** One who is a member of the partnership from the time of its organization.
 - b. **Incoming partner:** A person lately, or about to be, taken into a partnership as a member.
 - c. **Continuing partner:** One who continues the business of a partnership after it has been dissolved by reason of the admission of a new partner, or the retirement, death, or expulsion of one or more partners.
 - d. **Retiring partner:** One withdrawn from the partnership, a withdrawing partner.
8. As to state of survivorship
 - a. **Surviving partner:** One who remains after a partnership has been dissolved by the death of any partner.
 - b. **Deceased partner:** One who died while being a member of the partnership.

Commencement of a Partnership

A partnership is a consensual contract (Article 1767); hence, it exists from the moment of the celebration of the contract by the partners.

Dissolution/Termination of the Partnership

The partnership of a fixed term or particular undertaking is dissolved and a new one, a partnership at will, is created, the continued existence of which will depend upon the will of the partners. Unless otherwise provided by the partners, a partnership is "at will," meaning that a partner may terminate the partnership relationship is a personal one, and thus, the law will not force anyone to continue as a partner or to become a partner.

WEEK 2: OBLIGATION OF PARTNERS

Article 1786. Every partner is a debtor of the partnership for whatever he may have promised to contribute thereto.

He shall also be bound for warranty in case of eviction with regard to specific and determinate things which he may have contributed to the partnership, in the same cases and in the same manner as the vendor is bound with respect to the vendee. He shall also be liable for the fruits thereof from the time they should have been delivered, without the need of any demand.

Article 1788. A partner who has undertaken to contribute a sum of money and fails to do so becomes a debtor for the interest and damages from the time he should have complied with his obligation.

The same rule applies to any amount he may have taken from the partnership coffers, and his liability shall begin from the time he converted the amount to his own use.

Article 1790. Unless there is a stipulation to the contrary, the partners shall contribute equal shares to the capital of the partnership.

Article 1791. If there is no agreement to the contrary, in case of an imminent loss of the business of the partnership, any partner who refuses to contribute an additional share to the capital, except an industrial partner, to save the venture, shall be obliged to sell his interest to the other partners.

Article 1792. If a partner authorized to manage collects a demandable sum, which was owed to him in his own name, from a person who owed the partnership another sum also demandable, the sum thus collected shall be applied to the two (2) credits in proportion to their amounts, even though he may have given a receipt for his own credit only; but should he have given it for the account of the

partnership credit, the amount shall be fully applied to the latter.

Article 1793. A partner who has received, in whole or in part, his share of a partnership credit, when the other partners have not collected theirs, shall be obliged, if the debtor should thereafter become insolvent, to bring to the partnership capital what he received even though he may have given receipt for his share only.

Article 1794. Every partner is responsible to the partnership for damages suffered by it through his fault, and he cannot compensate them with the profits and benefits which he may have earned for the partnership by his industry. However, the courts may equitably lessen this responsibility if through the partner's extraordinary efforts in other activities of the partnership, unusual profits have been realized.

Article 1796. The partnership shall be responsible to every partner for the amounts he may have disbursed in behalf of the partnership and for the corresponding interest, from the time the expenses are made; it shall also answer to each partner for the obligations he may have contracted in good faith in the interest of the partnership business, and for risks in consequence of its management.

Article 1797. The losses and profits shall be distributed in the conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.

In the absence of stipulation, the share of each partner in the profits and losses shall be in proportion to what he may have contributed, but the industrial partner shall not be liable for the losses. As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances. If, besides his services he has contributed capital, he shall also receive a share in the profits in proportion to his capital.

WEEK 3: DISSOLUTION AND WINDING UP

Three (3) stages of ending a partnership:

1. **Dissolution:** Change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business; partnership is not terminated but continues until the winding up of partnership affairs is completed.
 - a. **Extrajudicial dissolution:** The termination of a partnership's existence that is affected

outside the course of regular judicial proceedings.

- b. **Judicial dissolution:** The termination of a partnership's existence handled by the courts located within the state of the company's incorporation.

Grounds for Dissolution by Decree of Court (Article 1831)

- a. Partner declared insane in any judicial proceeding or shown to be of unsound mind
- b. Incapacity of partner to perform his part of the partnership contract
- c. Partner guilty of conduct prejudicial to business of partnership
- d. Willful or persistent breach of partnership agreement or conduct which makes it reasonably impracticable to carry on partnership with him
- e. Business can only be carried on at a loss.
- f. Other circumstances which render dissolution equitable

Effects of Dissolution

- A. All authority of partners to bind partnership is terminated.
 - a. Except when there are acts necessary to wind up partnership affairs.
 - b. Except when there are acts necessary to complete transactions begun but not finished.
- B. Dissolution does not automatically discharge existing liability of partner **EXCEPT** when there is an agreement between the partner concerned, person/partnership continuing the business, and partnership creditors.
2. **Winding Up:** The process of settling the business or partnership affairs after dissolution.

Persons Authorized to Wind Up

- A. Partners designated by the agreement
- B. In absence of agreement, all partners who have not wrongfully dissolved the partnership
- C. Legal representative of last surviving partner not insolvent

NOTE: The court, at its discretion, may appoint a receiver to wind up the partnership affairs where such step is shown to be the best interest of all persons concerned.

3. **Termination:** That point when all partnership affairs are completely wound up and finally

settled. It signifies the end of the partnership life.

WEEK 4: LIMITED PARTNERSHIP

GENERAL	LIMITED
Personally liable for partnership obligations	Liability extends only to his capital contributions
When manner of management is not agreed upon, all general partners have an equal right in the management of the business	No participation in management
Contribute cash, property, or industry	Contribute cash or property only, not industry
Proper party to proceedings by/against partnership	Not proper party to proceedings by/against partnership
Interest not assignable without consent of other partners	Interest is freely assignable
Name may appear in firm name	Name must appear in firm name
Prohibition against engaging in business	No prohibition against engaging in business
Retirement, death, insolvency, insanity of general partner dissolves partnership	Does not have same effect; rights transferred to legal representative

Contributions of Limited Partners (Article 1845)

1. Cash
2. Other property (but not services)

WEEK 6: CORPORATION – GENERAL PROVISIONS

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.

A corporation has a separate personality distinct from its stockholders and members.

Tests to Determine Nationality

- a. **Incorporation test:** Determines the state of incorporation, regardless of the nationality of the stockholders.

- b. **Control test (Wartime Test):** Determines the nationality of the controlling stockholders or members. This is used to determine nationality for investment purposes. This test is adopted under the Foreign Investment Act.

Attributes of a Corporation

1. **Right of succession:** A corporation has the capacity for continuous existence despite the death or replacement of its shareholders or members, for it has a personality separate and distinct from those who compose it.
2. **Creature of law:** The juridical existence of a corporation is dependent on the consent or grant of the state.
3. **Artificial being:** It is the fiction of law which creates the “person” of the corporation, with the same attributes of an individual with full capacity to enter into contractual relations.
4. Creature of enumerated powers, attributes, and properties

Advantages of a Corporate Form of Business

1. Strong separate juridical personality
2. Centralized management
3. Limited liability to investors
4. Free transferability of units of investment

Disadvantages of a Corporate Form of Business

1. To have valid and binding corporate act, formal proceedings, such as board meetings, are required.
2. The business transactions of a corporation are limited to the State of its incorporation and may not act as such corporation in other jurisdiction unless it has obtained a license or authority from the foreign state.
3. The shareholders’ limited liability tends to limit the credit available to the corporation as a separate legal entity.
4. By the very nature of shares of stock, which are personal properties, transferable at will by the owners thereof, transfers of share may result to uniting incompatible and conflicting interests.
5. The minority shareholders have practically no say in the conduct of corporate affairs.
6. In large scale enterprises, stockholders’ voting rights may become merely fictitious and theoretical because of disinterest in management, wide-scale ownership, and inaccessible place of meeting.
7. Double taxation may be imposed on corporate income.

8. Corporations are subject to governmental regulations supervision and control, including submission of reportorial requirements not otherwise imposed in other business forms.

Classification of Corporations

1. As to stock
 - a. **Stock:** Those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits based on the shares held.
 - b. **Non-stock:** Corporations wherein no part of their income is distributable as dividends to its members, trustees, or officers subject to the provisions on dissolution.
2. As to organizers
 - a. **Public:** By state only
 - b. **Private:** By private persons alone or with the State
3. As to purpose
 - a. **Public:** A corporation organized for the government of a portion of a State for the purpose of serving general good and welfare..
 - b. **Private:** A corporation formed for some private purpose, benefit, aim, or end. They may be stock or non-stock corporations
 - c. **Government owned or controlled corporation:** Created by the government or of which the government is the majority stockholder (e.g., GSIS, NAPOCOR).
 - d. **Quasi-public:** Private corporations which have accepted from the State the grant of a franchise or contract involving the performance of public duties.
4. As to legal right to corporate existence
 - a. **De jure:** A corporation organized in strict or substantial conformity with requirements of law and cannot be successfully attacked or questioned by any party even in a direct proceeding for that purpose by the state.
 - b. **De facto:** A corporation organized with a colorable compliance with the requirements of a valid law, and its existence cannot be inquired collaterally but, such inquiry may be made by the Solicitor General in a quo warranto proceeding.
 - c. **Corporations by estoppel:** A group of persons which holds itself out as a corporation and enters into a contract with a third person on the strength of such appearance cannot be permitted to deny its existence in an action under said contract.
5. As to laws of incorporation
 - a. **Domestic:** A corporation formed, organized, or existing under Philippine laws.
 - b. **Foreign:** A corporation formed, organized, or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state.
6. As to whether they are open to the public or not
 - a. **Close:** Those whose shares of stock are held by limited number of persons.
 - b. **Open:** Those formed to openly accept outsiders as stockholders or investors.
7. As to relationship of management and control
 - a. **Holding:** Corporations that confine their activities to owning stock in, and supervising management of other companies.
 - b. **Subsidiary:** Those which another corporation owns at least a majority of the shares, and thus have control.
 - c. **Affiliates:** Those corporations which are subject to common control and operated as part of a system.
8. As to number of persons who compose them
 - a. **Aggregate:** Those composed of more than one (1) person or member.
 - b. **Sole:** Those that consist of one (1) person or individual only and who are made of bodies corporate and politic in order to give them some legal capacity and advantage which, as natural persons, they cannot have.
9. As to purpose
 - a. **Ecclesiastical:** Corporations composing entirely of spiritual persons like bishops, deacons, and the like and are established for the furtherance of religion and for perpetuating the rights of a church.
 - b. **Lay:** All corporations other than ecclesiastical are lay corporations.
 - c. **Eleemosynary:** Established for or devoted to charitable purposes or those supported by charity.
 - d. **Civil:** Established for business or profit.

WEEK 7: INCORPORATION AND ORGANIZATION OF PRIVATE CORPORATIONS

Articles of Incorporation

It is the basic contract document in corporate law, defining the charter of the corporation.

- a. A contract between the State and the corporation

- b. A contract between the corporation and its stockholders
- c. A contract between the stockholders

Components of a Corporation

1. **Corporators:** Those who compose the corporation, whether stockholders or shareholders in a stock corporation or as members in a nonstock corporation.
2. **Incorporators:** Those stockholders or members mentioned in the articles of incorporation as originally forming and composing the corporation, having signed the Articles of Incorporation and acknowledged the same before a notary public.
3. **Stockholders:** They are the owners of shares of stock in a stock corporation.
4. **Members:** They are corporators of a non-stock corporation.
5. **Promoters:** Persons who, acting alone or with others, take initiative in founding and organizing the business or enterprise of the issuer and receives consideration therefor.
6. **Subscribers:** Persons who have agreed to take and pay for original, unissued shares of a corporation formed or to be formed.
7. **Underwriters:** Persons who guarantee on a firm commitment and/or declared best effort basis the distribution and sale of securities of any kind by another company.

Shares

Where the articles of incorporation do not provide for any distinction of the shares of stock, all shares issued by the corporation are presumed to be equal and enjoy the same rights and privileges and are also subject to the same liabilities.

Classes of Shares

1. Par and no-par value shares
 - a. Par value shares
 - b. No par value shares
2. Voting and non-voting shares
 - a. Voting shares
 - b. Non-voting shares
3. Common and preferred shares

Kinds:

 - Cumulative preferred share
 - Non-cumulative preferred share
 - Participating preferred share
 - Non-participating preferred share
 - Cumulative participating
4. Other Classes
 - a. Redeemable shares

- b. Treasury shares
- c. Founders' share
- d. Escrow stock
- e. Over-issued stock
- f. Watered stock
- g. Convertible share
- h. Fractional share
- i. Promotion share
- j. Scrippless shares

Non-Use of Corporate Charter (Sec. 21)

If a corporation does not formally organize and commence its business within five (5) years from the date of its incorporation, its certificate of incorporation shall be deemed revoked as of the day following the end of the 5-year period.

However, if a corporation has commenced its business but subsequently becomes inoperative for at least five (5) consecutive years, the Commission may, after due notice and hearing, place the corporation under delinquent status.

WEEKS 8-9, 11-13: POWERS OF A CORPORATION

Kinds of Powers

1. **Express powers:** Granted by law, Corporation Code, and its Articles of Incorporation or Charter.
2. **Implied/necessary powers:** Exist as a necessary consequence of the exercise of the express powers of the corporation or the pursuit of its purposes as provided for in the Charter.
3. **Incidental/inherent powers:** Not expressly stated but are deemed to be within the capacity of corporate entities.

Express Powers

A. General Powers (Sec. 35)

- a. To sue and be sued in its corporate name.
- b. To have perpetual existence unless the certificate of incorporation provides otherwise..
- c. To adopt and use a corporate seal.
- d. To amend its articles of incorporation in accordance with the provisions of this Code.
- e. To adopt by-laws, not contrary to law, morals or public policy, and to amend or repeal the same in accordance with this Code.

- f. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation.
- g. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
- h. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, that no foreign corporation shall give donations in aid of any political party or candidate or for purposes of partisan political activity.
- i. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees.
- j. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

B. Specific Powers

- a. Power to extend or shorten corporate term (Sec. term (Sec.36)
- b. Power increase or decrease capital stock; incur, create, or increase bonded indebtedness (Sec. 37)
- c. Power to deny pre-emptive right (Sec. 38)
Preemptive right is not available in the following instances:
 - (1) *When the right is denied in the Articles of Incorporation;*
 - (2) *When shares are issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; and*
 - (3) *When shares are issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.*
- d. Sale or other disposition of assets (Sec. 39)

- e. Power to acquire own shares (Sec. 40)
- f. Power to invest corporate funds in another corporation or business or for any other purpose (Sec. 41)
- g. Power to declare dividends (Sec. 42)
The Board of Directors has the discretion to declare dividends. The decision of the board alone is necessary to declare cash or property dividends.
- h. Power to enter into management contract (Sec. 43)
No management contract shall be entered into for a period longer than five (5) years for any one (1) term.

Subscription Contract

The subscribed shares need not be paid in full in order that the subscription may be valid. The subscription contract is a consensual contract that is perfected upon the meeting of the minds of the parties. The name of the subscriber is recorded in the stock and transfer book, and from that time, such subscriber becomes a stockholder of record entitled to all the rights of a stockholder. Until the stocks are fully paid, it continues to be a subsisting liability that is legally enforceable. A person cannot be recognized as a stockholder by mere presentation of dividend coupons if his ownership is not recorded.

Warrant

A type of security which entitles the holder the right to subscribe to, the unissued capital stock of a corporation or to purchase issued shares in the future, evidenced by a Warrant Certificate, whether detachable or not, which may be sold or offered for sale to the public.

Types of Warrants

1. *Subscription warrant:* Entitles the holder to the right to subscribe to a pre-determined number of shares out of the unissued capital stock of the issuer.
2. *Covered warrant:* Entitles the holder to the right to purchase from the issuer a pre-determined number of shares that are already issued.
3. *Warrant certificate:* A certificate representing the right to a warrant, which may be detachable or not, duly issued by the issuer to the warrant holder.
4. *Warrant instrument:* A written document or deed containing the terms and conditions of the issue and exercise of a warrant

5. *Detachable warrant*: A warrant that may be sold, transferred or assigned to any person by the warrant holder separate from, and independent of, the corresponding beneficiary securities.
6. *Nondetachable warrant*: A warrant that may not be sold, transferred or assigned to any person by the warrant holder separate from, and independent of the beneficiary securities.
7. *Beneficiary securities*: Shares of stock and other securities of the issuer, which form the basis of the entitlement of the warrant.
8. *Underlying shares*: Unissued shares of a corporation that may be purchased by the warrant holder upon the exercise of the right granted under the warrant.

Pre-Incorporation Subscription Agreements (PISA)

Despite the non-existence of the corporation, the subscription contract before incorporation is valid and binding. Sec. 61 provides that it is valid, binding, and irrevocable for six (6) months. In addition, even if the six-month period had already expired, the pre-incorporation subscription contract is also irrevocable after the filing of the Articles of Incorporation with the SEC.

The pre-incorporation subscription is irrevocable for a limited period prior to submission of the Articles of Incorporation with the SEC to prevent injustice that may be inflicted on subscribers who already exerted effort to organize the corporation and who already committed financial resources therefor.

Corporate reorganization: One whereby those variously interested financially in a distressed business seek, through continuance of that business as a going concern, to work out of the difficulty for themselves and thus gain more than they could by a sale of the assets or of the business to others.

It is different from:

- a. Merger or consolidation
- b. Sale
- c. Reincorporation
- d. Bankruptcy

Merger: Signifies the absorption of one (1) corporation by another which retains its name and corporate identity with the added capital, franchises, and powers of a merged corporation

- One (1) corporation acquiring all or substantially all of the properties of another corporation in exchange for shares of stock of

the acquiring corporation. The acquiring corporation would end-up with the business enterprise of the selling corporation whereas the latter would end up with basically its remaining assets being the shares of stock of the acquiring corporation and may then distribute it as liquidating dividend to its stockholders.

Consolidation: Signifies a union that necessarily results in the creation of a new corporation and the termination of the constituent ones

Non-stock Corporation

A **nonstock corporation** is one where no part of its income is distributable as dividends to its members, trustees, or officers. However, any profit which a nonstock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized (Sec. 86).

A. Purposes of a non-stock corporation

1. Charitable
2. Religious
3. Educational
4. Professional
5. Cultural
6. Fraternal
7. Literary
8. Scientific
9. Social
10. Civic service
11. Similar purposes like:
 - a. Trade
 - b. Industry
 - c. Agricultural

B. Rules on Conversion

- If **stock to non-stock corporation**: Conversion may be made by mere amendment of the Articles of Incorporation.
- If **non-stock to stock corporation**: Cannot be converted by mere amendment because the conversion would change the corporate nature from non-profit to profit.

One Person Corporations

It is a corporation with a single stockholder. Only a natural person, trust, or an estate may form a one (1) person corporation (Sec. 115).

Banks and quasi-banks, pre-need, trust, insurance, public and publicly-listed companies, and non-

chartered government-owned and -controlled corporations may not incorporate as one person corporations.

A natural person who is licensed to exercise a profession may not organize as a one person corporation for the purpose of exercising such profession except as otherwise provided under special laws.

No minimum authorized capital stock is required, except as otherwise provided by special law.

A one person corporation shall indicate the letters “OPC” either below or at the end of its corporate name.

The single stockholder shall be the sole director and president of the one person corporation.

A single stockholder may not be appointed as the corporate secretary, but he can be self-appointed treasurer of the corporation but should give a bond to the SEC.

Foreign Corporations

It is a corporation formed, organized, or existing under any law other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state.

A. License to do business

The object of the statute in requiring that foreign corporations doing business in the Philippines be licensed to do so and that they appoint an agent for service of process is to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts.

B. What are considered as “doing or transacting business” in the Philippines for foreign corporations

- a. Soliciting orders, service contracts, and opening offices
- b. Appointing representatives, distributors domiciled in the Philippines or who stay for a period or periods totaling 180 days or more
- c. Participating in the management, supervision or control of any domestic business, firm, entity, or corporation in the Philippines
- d. Any act or acts that imply a continuity of commercial dealings or arrangements,

and contemplate to some extent the performance of acts or works or the exercise of some functions normally incident to and in progressive prosecution of, the purpose and object of its organization

C. Consequence of doing business without a license

No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

D. Modes of entry for foreign corporations

- a. Subsidiary
- b. Branches
- c. Representative
- d. Regional headquarters

E. Rights

A foreign corporation that does business in the Philippines **WITH** a license **can** sue before the Philippine courts. However, **WITHOUT** a license, it **cannot** sue.

A foreign that does business in the Philippines **WITH** or **WITHOUT** a license **may be** sued in the Philippine courts.

Securities and Regulation Code Terminologies

- A. **Securities:** Shares, participation, or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character.
- B. **Tender offer:** A publicly announced intention by a person acting alone or in concert with other persons to acquire equity securities of a public company.
- C. **Public company:** A corporation which is listed on an exchange, or a corporation with assets exceeding P50,000,000.00 and with 200 or more stockholders, at least 200 of them holding not less than 100 shares of such company (CEMCO Holdings, Inc. v. National Life Insurance Company of the Philippines, Inc., G.R. NO. 171815, August 7, 2007).
- D. **Insider:** Means (a) the issuer; (b) a director or officer (or person performing similar functions)

of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any of the foregoing insiders.

- E. **Broker:** A person engaged in the business of buying and selling securities for the account of others.
- F. **Dealer:** Any person who buys and sells securities for his/her own account in the ordinary course of business..
- G. **Salesman:** A natural person, employed as such or as an agent, by a dealer, issuer or broker buy and sell securities.

Dissolution

It signifies the extinguishment of its franchise to be a corporation and the termination of its corporate existence.

- a. **De jure dissolution:** A dissolution in law adjudged and determined by judicial sentence, or brought about by an act of or with the consent of the sovereign power, or which results from the expiration of the charter period of corporate life.
- b. **De facto dissolution:** One which takes place in substance and in fact when the corporation by reason of insolvency, cessation of business, or otherwise, suspends all its operations and, as it may be, goes into liquidation still retaining its primary franchise to be a corporation.

A. Methods of Corporate Dissolution

- a. Voluntary
 - i. Voluntary dissolution where no creditors are affected (Sec. 134)
 - ii. Voluntary dissolution where creditors are affected (Sec. 135)
 - iii. Dissolution by shortening corporate term (Sec. 136)
- b. Involuntary dissolution
Grounds for Dissolution:
 - (1) Non-use of corporate charter as provided under Section 21;

- (2) Continuous in operation of a corporation as provided under Section 21;
- (3) Upon receipt of a lawful court order dissolving the corporation;
- (4) Upon finding by final judgment that the corporation procured its incorporation through fraud;
- (5) Upon finding by final judgment that the corporation:
 - a. Was created for the purpose of committing, concealing, or aiding the commission of securities violations, smuggling, tax evasion, money laundering or graft and corrupt practices;
 - b. Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew of the same; and
 - c. Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

SEC Circulars and Issuances

SEC shares with and makes available the GIS to interested parties in order to fulfill the aforementioned functions and mandate, for purposes such as:

- a. Complying with court orders, subpoenas and/or other legal obligations;
- b. Complying with requests from law enforcement agencies in the conduct of their investigations;
- c. Complying with requests from regulatory and administrative agencies in the conduct of their investigations, due diligence and policy and research studies;
- d. Sharing of information with domestic and international organizations and other researchers for their research initiatives;
- e. Complying with requests from investing public, prospective business partners and clients in the conduct of due diligence of companies and their stockholders and officers including their personal and financial information to enable them to form an informed investment and business decision;

- f. Determining the compliance of companies and their stockholders with foreign ownership limitations in cases where the entities are engaged in fully or partially nationalized activities;
- g. Monitoring the effect of the securities issue on ownership, on the mix of ownership, especially foreign and local ownership;
- h. Monitoring the companies' implementation of good corporate governance practice of having board diversity in terms of gender, age, ethnicity, culture, skills, competence, and knowledge;
- i. Complying with the requests from claimants against companies and their stockholders and officers in the enforcement of their legal claims through the addresses provided in the gis;
- j. Complying with the bureau of internal revenue requirement to reflect the valid taxpayer information number of the companies and their stockholders and officers, and discourage and prevent the use of fake and multiple tins in corporate and business transactions; and
- k. Complying with legal mandate to provide true, correct, timely and complete information such that the filing is under oath.

WEEKS 15-17: COOPERATIVES

Member	A person either natural or juridical who, adhering to the principles set forth in this Code and in the articles of cooperation, has been admitted by the cooperative as member.
General Assembly	The full membership of the cooperative duly assembled for the purpose of exercising all the rights and performing all the obligations pertaining to cooperatives, as provided by this Code, its articles of cooperation and bylaws: Provided that for cooperatives with numerous and dispersed membership, the general assembly may be composed of delegates elected by each sector, chapter or district of the cooperative in accordance with the rules and regulations of the Cooperative Development Authority (CDA).

Board of Directors	The body entrusted with the management of the affairs of the cooperative under its articles of cooperation and bylaws.
Committee	Anybody entrusted with specific functions and responsibilities under the bylaws or resolution of the general assembly or the board of directors.
Registration	The operative act granting juridical personality to a proposed cooperative and is evidenced by a certificate of registration.
Cooperative Development Authority	The government agency in charge of the registration and regulation of cooperatives as such, hereinafter referred to as the Authority.
Universally Accepted Principles	The body of cooperative principles adhered to worldwide by cooperatives.
Representative Assembly	The full membership of a body of representatives elected by each of the sectors, chapter or district of the cooperative duly assembled for the purpose of exercising such powers lawfully delegated unto them by the general assembly in accordance with its bylaws.
Officers of the Cooperatives	The members of the board of directors, members of the different committees created by the general assembly, general manager or chief executive officer, secretary, treasurer, and members holding other positions as may be provided for in their bylaws.
Social Audit	A procedure wherein the cooperative assesses its social impact and ethical performance vis-a-vis its stated mission, vision, goals, and code of social responsibility for cooperatives to be established by the Authority in consultation with the cooperative sector. It enables the cooperatives to

	develop a process whereby it can account for its social performance and evaluate its impact on the community and be accountable for its decisions and actions to its regular members.
Performance Audit	An audit on the efficiency and effectiveness of the cooperative as a whole; its management and officers; and its various responsibility centers as basis for improving individual, team or overall performance and for objectively informing the general membership on such performance.
Single-line or Single-purpose Cooperative	A cooperative undertaking activity which are related to its main line of business or purpose.
Service Cooperative	Those which provide any type of service to its members, including but not limited to, transport, information and communication, insurance, housing, electric, health services, education, banking, and savings and credit.
Subsidiary Cooperative	Any organization all or majority of whose membership or shareholders come from a cooperative, organized for any other purpose different from that of, and receives technical, managerial and financial assistance from, a cooperative, in accordance with the rules and regulations of the Authority.
Federation of Cooperatives	Three (3) or more primary cooperatives doing the same line of business, organized at the municipal, provincial, city, special metropolitan political subdivision, or economic zones created by law, registered with the Authority to undertake business activities in support of its member-cooperatives.

Cooperative Principles

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training, and information
6. Cooperation among cooperatives
7. Concern for community

Annual Audit (Article 80)

Cooperatives shall be subject to annual financial performance and social audit. The financial audit shall be conducted by an external auditor who satisfies all the following qualifications:

- (1) He is independent of the cooperative or any of its subsidiary that he is auditing; and
- (2) He is a member in good standing of the Philippine Institute of Certified Public Accountants (PICPA) and is accredited by both the Board of Accountancy and the Authority.

The social audit shall be conducted by an independent social auditor accredited by the Authority.

Performance and social audit reports which contain the findings and recommendations of the submitted to the board of directors.

The Authority, in consultation with the cooperative sector, shall promulgate the rules and standards for the social audit of cooperatives.

Types of Cooperatives

1. *Credit cooperative* – Promotes and undertakes savings and lending services among its members. It generates a common pool of funds to provide financial assistance and other related financial services to its members for productive and provident purposes;
2. *Consumers cooperative* – Procure and distributes commodities to members and non-members;
3. *Producers cooperative* – Undertakes joint production, whether agricultural or industrial. It is formed and operated by its members to undertake the production and processing of raw materials or goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members. Any end product or its derivative arising from the raw materials produced by its members, sold in the name and for the account

- of the cooperative, shall be deemed a product of the cooperative and its members;
4. *Marketing cooperative* – Engages in the supply of production inputs to members and markets their products;
 5. *Service cooperative* – Engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, professional, and other services;
 6. *Multipurpose cooperative* – Combines two (2) or more of the business activities of these different types of cooperatives;
 7. *Advocacy cooperative* – A primary cooperative which promotes and advocates cooperativism among its members and the public through socially-oriented projects, education and training, research and communication, and other similar activities to reach out to its intended beneficiaries;
 8. *Agrarian reform cooperative* – Organized by marginal farmers majority of which are agrarian reform beneficiaries for the purpose of developing an appropriate system of land tenure, land development, land consolidation, or land management in areas covered by agrarian reform;
 9. *Cooperative bank* – Provides a wide range of financial services to cooperatives and their members;
 10. *Dairy cooperative* – One whose members are engaged in the production of fresh milk which may be processed and/or marketed as dairy products;
 11. *Education cooperative* – Organized for the primary purpose of owning and operating licensed educational institutions, notwithstanding the provisions of Republic Act No. 9155, otherwise known as the Governance of Basic Education Act of 2001;
 12. *Electric cooperative* – Organized for the primary purpose of undertaking power generation, utilizing renewable energy sources, including hybrid systems, acquisition and operation of subtransmission or distribution to its household members;
 13. *Financial service cooperative* – Organized for the primary purpose of engaging in savings and credit services and other financial services;
 14. *Fishermen cooperative* – Organized by marginalized fishermen in localities whose products are marketed either as fresh or processed products.
 15. *Health services cooperative* – Provides medical, dental, and other health services;
 16. *Housing cooperative* – Assists or provides access to housing for the benefit of its regular members who actively participate in the savings program for housing. It is co-owned and controlled by its members;
 17. *Insurance cooperative* – Engaged in the business of insuring life and property of cooperatives and their members;
 18. *Transport cooperative* – One which includes land and sea transportation, limited to small vessels, as defined or classified under the Philippine maritime laws, organized under the provisions of this Code;
 19. *Water service cooperative* - Owns, operates, and manages water systems for the provision and distribution of potable water for its members and their households; and
 20. *Workers cooperative* - Organized by workers, including the self-employed, who are at the same time, the members and owners of the enterprise. Its principal purpose is to provide employment and business opportunities to its members and manage it in accordance with cooperative principles.

Merger and Consolidation of Cooperatives

Two (2) or more cooperatives may merge into a single cooperative, which shall either be one of the constituent cooperatives or the consolidated cooperative.

No merger or consolidation shall be valid unless approved by a three-fourths (3/4) vote of all the members with voting rights, present and constituting a quorum of each of the constituent cooperatives at separate general assembly meetings. The dissenting members shall have the right to exercise their right to withdraw their membership pursuant to Article 30.

The Authority shall issue the guidelines governing the procedure of merger or consolidation of cooperatives. In any case, the merger or consolidation shall be effective upon the issuance of the certificate of merger or consolidation by the Authority.

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