

# **LAW ON CORPORATION**

## **TITLE III BOARD OF DIRECTORS/TRUSTEES AND OFFICERS**

**CORPORATION CODE OF THE PHILIPPINES**  
**Sec. 23-35**



**Sec. 23. *The board of directors or trustees.*** – Unless otherwise provided in this Code, the corporate powers of all corporation formed under this Code shall be exercised such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stock, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is the director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

**Qualifications of directors**

1. He must own at least one (1) share of the capital stock of the corporation in his name.
2. Majority of the directors must be a resident citizen of the Philippines.
3. A director must not have been convicted by final judgement of an offense punishable by imprisonment exceeding six (6) years or a violation of the provisions of the Corporation Code committed within five (5) years prior to the date of election or appointment.

The directors, once elected, become the representatives of the corporation itself, not its stockholders. The directors of a non-stock corporation are required to be members thereof and like stock corporations “majority of the directors and trustees of all corporations organized under the Corporation Code must be residents citizen of the Philippines”. There are some special corporation not organized with the Corporation Code where directors are required to be citizens of the Philippines. They are as follows:

1. Bank and banking institution, at least 2/3 of the members of the board of directors shall be citizen of the Philippines.
2. Rural banks, every member of the board of directors shall be citizens of the Philippines.
3. Domestic air carrier, the directing head or 2/3 of the board of directors and other managing officers shall be citizens of the Philippines.
4. Registered investments companies, the directors thereof must be Filipino citizen.
5. Private development banks, all the members of the board of directors shall be citizen of the Philippines.
6. In case of financing corporation, at least 2/3 of all members of the board of directors shall be citizen of the Philippines.

**Sec. 24. *Election of directors or trustees.*** – At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said shareholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidate as he shall see fit; *Provided*, That the total number of votes cast by him shall not exceed the numbers of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected: *Provided, however*, that no delinquent stocks shall be voted. Unless otherwise provided in

the articles of incorporation, or in the by-laws, members of corporation which have no capital stock may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. Candidates receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not *sine die* or definitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote.

### **Methods of voting**

The voting methods which may be resorted to by a voting stockholder are as follows:

1. Straight voting.
2. Cumulative voting for one candidate.
3. Cumulative voting by distribution.

### **Example of Straight Voting**

A owns 100 shares of stock in X corporation. During the meeting for the purpose of electing five directors, he may cast his vote by giving each of the five candidates 100 votes, hence, he distribute equally his vote without preference or discrimination.

### **Example of Cumulative voting for one candidate**

In the preceding illustration, if A owns 100 voting shares and there are five directors to be elected, A is entitled to 500 votes which he may “cumulate” by giving it to candidate Z alone.

### **Example of Cumulative voting by distribution**

As in the same example above, if A owns 100 voting shares, and there are five directors to be elected, A is entitled to 500 votes which he may distribute to candidate Y and Z giving the former 300 and the latter 200 provided that the total number of votes cast by him does not exceed 500 votes.

### **Voting of sequestered shares of stock**

It has been held that the “Presidential Commission on Good Government may properly exercise the prerogative to vote sequestered stock of corporation, granted to it by the President of the Philippines xxx pending the outcome of proceeding to determine the ownership of sequestered shares of stock. xxx Substitution of directors is not be done without reason or rhyme, and undertaken only when essential to prevent disappearance or wastage of corporate property, and always under such circumstance as assure that replacements are truly processed of competence, experience and probity.

**Sec. 25. Corporate officers, quorum.** – Immediately after their election, the directors of a corporation must formally organized by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for

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the election of the officers which shall require the vote of a majority of all the members of the board.

### **Qualification of corporate officer**

1. **President.** He must be a director.
2. **Treasurer.** He may or may not be a director.
3. **Secretary.** He must be a resident and citizen of the Philippines
4. Other officers provided for in the by-laws.

### **Three levels of corporate control**

1. The board of director which is responsible for the corporate policies and the general management of the business affairs of the corporation.
2. The officers, who in theory execute the policies lay down by the board , but in practice often have wide latitude in determining the course of business operations.
3. Stockholders who like amendments of the articles of incorporation.

### **Teleconferencing of Board Members**

In the Philippines, teleconferencing and videoconferencing of members of board of directors of private corporation is a reality, in light of the Republic Act No. 8792. The Securities and Exchange Commission issued

SEC Memorandum Circular No. 15, on November 30, 2001, providing the guidelines to be complied with related to such conferences. Thus, the court agrees with the RTC that persons in the Philippines may have a teleconference with a group of persons in South Korea relating to business transactions or corporate governance.

### **Directors and officers distinguished**

The officers of a corporation, unlike the directors, are true agent of the corporation. Each officer may bind the corporation by his individual acts within the actual or apparent scope of authority. On the other hand, a director has no authority to act for the corporation.

### **Authority of corporate officers**

The corporation transact its business through its officers or agents. An officer's power as an agent of the corporation must be sought from the statute, charter, and the by-laws or in a delegation of authority to such officers, from the acts of board of directors, formally expressed or implied from a habit or custom of doing business.

### **Chairman of the Board**

A chairman of the board of directors must himself director be a director of the corporation. His duty as presiding officer is not an executive one. It has been suggested that he well be given advisory duties in determining executive salaries, bonus plans and pensions, determining dividend policy, selecting auditors, and dealing questions with labor and company policy.

### **President**

The president must be a director of the corporation. The powers of the president of a corporation are vested in him by law or the by-laws; otherwise, he has no power over the corporate property and business than has any other director. However, he may be given actual authority to make particular contracts, or to execute conveyances, borrow money, execute mortgages, and do other acts, by the charter, the by-laws, resolutions of directors or their informal acquiescence.

**Vice- President**

In the absence of the president, or if the office of the president becomes vacant, as a rule, the vice president elected and appointed by the shareholders or directors has authority to act in his stead, and to perform the duties of the office.

**Secretary**

A secretary must be a resident citizen of the Philippines. It is generally its duty to make and keep corporate records; to make proper entries of the votes, resolution and proceedings of the shareholders and directors in the management of the corporation, and of all other matters required to be entered in the records. The secretary is the ministerial officer who cannot bind the corporation unless he is authorized to do so.

**Treasurer**

The treasurer of the corporation “may or may not be a director”. He is the proper officer and the only proper officer in the absence of express provision to the contrary, to receive and keep the money of the corporation and to disburse them as he may be authorized.

**Other officers**

The by-laws of the corporation may provide for such other officers and agent as may be necessary and convenient considering the nature and needs of the business. Their compensation is provided for by the by-laws and the board of directors in a suitable manner. Quorum – signifies the number of persons belonging to a corporation required to transact business.

Section 25 of the Corporation Code requires more people than a simple majority to form a quorum. If no such defining number is determined, a quorum is a simple majority.

**Directors cannot vote by proxy**

The directors cannot vote by proxy but must personally present, and act by themselves.

**Sec. 26. Report of election of directors, trustees and officers.** – Within thirty (30) days after the election of the officers, trustees and directors of the corporation, the secretary, or any other officer of the corporation shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees and officers elected.

Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission.

**Sec. 27. Disqualification of directors, trustees or officers.** – No person convicted by final judgement of an offense punishable by imprisonment for a period exceeding six (6) years, or a violation of this Code, committed within five (5) years prior to the date of his election or appointment, shall qualify as a director, trustee or officer of any corporation.

Sec. 27 of the Corporation Code is an additional safeguard that only upright and honest individuals be entrusted with management of the corporate affairs.

A director of a cooperative who is subsequently elected as member of the *Sangguniang Panglungsod* (City Council) becomes automatically disqualified from continuing as such director by virtue of the clear mandate of PD No. 269 providing that except for “*barrio captains* and councillors” elective officials are ineligible to become officers and/or directors of any cooperative.

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The SEC ruled that firms engage in wholly or partially nationalized activities, aliens are banned from being appointed to management position such as president, vice-president, treasurer, auditor, secretary, etc. of said companies. However, they can be elected directors in preparation to their allowable participation or share in the capital of such activities, in accordance with the Commonwealth Act No. 108, as amended by PD 715, otherwise known as the Anti- Dummy Law.

**Sec. 28. Removal of director or trustees.** – Any director or trustee of the corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: *Provided*, That such removal shall take place either at a regular meeting of the corporation or at the special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of the corporation for the purpose of removal of directors or trustees, or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or, if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. Should the secretary failed to refuse to call the special meeting upon such demand, or fail or refuse to give the notice, or if there is no secretary, the call for the meeting may be addressed directly to the stockholders or members of any by any stockholder or member of the corporation signing the demand. Notice of the time and place of such meeting, as well as the intention to propose such removal, must be given by publication or by written notice as prescribed in this Code. The vacancy resulting from removal pursuant to this section may be filled by election at the same meeting without further notice, or at any regular or at any special meeting called for the purpose after giving notice as prescribed in this Code. Removal may be with or without cause: *Provided*, That removal without cause may not be used to deprived minority stockholders or members of the right of representation to which they may be entitled under Section 24 of this Code.

### **Directors or trustee may be removed even without cause**

The legislative policy is that the shareholders shall be the ultimate masters, not the directors. The shareholders should be clothed with the power of judging the competency and fitness of the directors and of choosing a board that will carry out of their business policy.

Directors representing minority may not be removed without cause. The power to removed director or trustee even without cause given to shareholders or members may not be used to deprived minority shareholders or members of the right of representation to which they may be entitled under Section 24 of the Corporation Code. Cumulative voting of directors in a stock corporation is mandatory and cannot be dispensed with in the by-laws. Being a statutory right, the stockholders cannot be deprived of the use of cumulative voting.

### **May the result of the duly held election of directors be altered by mere agreement of the directors?**

The Securities and Exchange Commission ruled that: “An agreement by which director is reposed in any body except majority of stockholders is in violation of ‘public policy’ and ‘enforceable’ ”.

The Securities and Exchange Commission has jurisdiction or authority to “hear and decide cases” involving controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations. Controversy concerning removal of directors or trustees may also be heard by the SEC.

**Sec. 29. Vacancies in the office of director or trustee.** – Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a *quorum*; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill the vacancy shall be elected only for the unexpired term of his predecessor in office.

Any directorship or trusteeship to be filled by reason of an increase in the number of directors or trustees shall be filled only by an election at a regular or at a special meeting of stockholders or members duly called for the purpose, or in the same meeting authorizing the increase of directors or trustees if so stated in the notice of the meeting.

**Sec. 30. Compensation of directors.** – In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems: *Provided, however,* That any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year.

**Sec. 31. Liability of directors, trustees or officers.** – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

#### **Directors are trustees**

It is well-stated rule in corporate law that directors of corporations are trustees and are required to act in the utmost good faith.

#### **Liability of corporate directors and officers for illegal dismissal of employees**

In cases of illegal dismissal, corporate directors and officers are solidarily liable with the corporation, where terminations of employment are done with malice or in bad faith. (*Acesite Corp. vs. NLRC*, G.R. No. 152308, January 26, 2005, 449 SCRA 360)

**Sec. 32. Dealings of directors, trustees or officers with the corporation.** – **A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the conditions are present:**

- 1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting.**
- 2. That the vote of such director or trustee was not necessary for the approval of the contract.**
- 3. That the contract is fair and reasonable under the circumstances.**

**4. That in the case of an officer, the contract with the officer has been previously authorized by the Board of Directors.**

**Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of two-thirds (2/3) of the members in a meeting called for the purpose:**

***Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting; Provided, however, That the contract is fair and reasonable under the circumstances.***

**Director disqualified to vote if he has personal interest**

A director is disqualified to vote at a meeting of the board if he has any personal interest in a matter before the board; in such case, his vote cannot be counted in making up a quorum.

**Disclosure of adverse interest by director**

It has been held that in dealing with their corporation the directors must make full disclosure of all relevant facts or the transaction is voidable. The failure of a director to inform his fellow directors of his adverse bargaining position and other material circumstances should be seriously considered and inspected by the courts as manner on the fairness and good faith of the transaction and whether it is just and reasonable as to the corporation.

**Exceptions in Signing contract without authority of Board of Directors is void**

If a private corporation intentionally or negligently clothed its officers or agents with apparent power to perform acts of it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents. (*Yao Ka Sin Trading vs. Court of Appeals, G.R. No. 53820, June 15, 1992, citing Francisco vs. GSIS, 7 SCRA 577*)

**Corporate president presumed to have authority**

As a strict rule, the corporate president has no inherent power to act for the corporation, slowly giving way to realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of agreement or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general of his or her usual duties. (*People's Aircargo, and Warehousing Co., Inc. vs. Court of Appeals, G.R. No. 117847, Oct. 7, 1998*)

**Sec. 33. Contracts between corporations with interlocking directors.** – Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone; *Provided, That if the interest of the interlocking director in one corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section insofar as the latter corporation or corporations are concerned.*

Stockholdings exceeding twenty percent (20%) of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.

Interlocking directors – Interlocking directors are persons who serve as member of the board of directors of two or more competing corporations or corporations engaged in practically the same kind of business.

**Effect of Corporate contracts with interlocking directors**

Interlocking directors of corporations does not make a contract between or among the corporations void and of no effect provided there in no fraud and reasonable under the circumstances.



**Sec. 34. Disloyalty of a director.** – Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable notwithstanding the fact that the director risked his own funds in the venture.

#### **Duties of directors**

Directors owe a three-fold duty to the corporation. *First*, they must be obedient; they owe a duty to keep within the powers of the corporation as well as within those of the board of directors. *Second*, they must be diligent; they owe a duty to exercise reasonable care and prudence. The third duty owing by directors is that of individual loyalty.

#### **Concept of “corporate or business opportunity.”**

The doctrine of “corporate opportunity” is but one phase of the cardinal rule of undivided loyalty on the part of the fiduciaries. If there is a business opportunity presented to a corporate officer or director which the corporation is financially able to undertake, is from its nature, in the line of the corporation’s business and is of practical advantage to it, is one in which the corporation will be brought into conflict with that of his corporation, the law will not permit him to seize the opportunity for himself.

#### **Director is a fiduciary.**

He who is in such fiduciary position cannot serve himself first and his *cestuis* (beneficiary) second. He cannot manipulate the affairs of his corporation to their disadvantage and in disregard of the standards of common decency. He cannot by the intervention of a corporate entity violate the ancient principle against serving two masters.

**Sec. 35. Executive Committee.** – The by-laws of a corporation may create an executive committee, composed of not less than three members of the board, to be appointed by the board. Said committee may act, by majority vote of all its members, on such specific matters within the competence of the board, as may be delegated to it in the by-laws or on a majority vote of the board, except with respect to: (1) approval of any action for which shareholders’ approval is also required; (2) the filling of vacancies in the board; (3) the amendment or repeal of by-laws or the adoption of new by-laws; (4) the amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable; and (5) a distribution of cash dividends to the shareholders.