

# **LAW ON CORPORATION**

## **TITLE VII STOCKS AND STOCKHOLDERS**

**CORPORATION CODE OF THE PHILIPPINES  
Sec. 60-73**



**Sec. 60. Subscription contract.** – Any contract for the acquisition of unissued stock in an existing corporation or a corporation still to be formed shall be deemed a subscription within the meaning of this Title, notwithstanding the fact that the parties refer to it as a purchase or some other contract.

**How can a person become a shareholder in a stock corporation?**

1. By subscription contract with an existing corporation for the acquisition of unissued shares.
2. By purchase from the corporation of treasury shares.
3. By transfer from a previous stockholder of the outstanding shares or existing subscription to shares.

**Binding effect of subscription**

No person can become a stockholder in a corporation by virtue of a subscription for stock unless there is a valid contract between him and the corporation. When a contract of subscription for stock in a corporation is binding it is a contract between the subscriber or subscribers and the corporation, and its formation and validity are governed by the same principles substantially as any other contract except in so far as such principles may be rendered inapplicable by particular charter or statutory provisions. No express promise to pay is necessary to make the subscriber liable.

**No form required of subscription contracts**

Unless otherwise required by law. Thus, a person who accepts a certificate of stock from a corporation, or who acts as a stockholder by participating in stockholders' meeting, making payments, or otherwise, thereby becomes a stockholder and liable as such, not only to creditors, but also to the corporation, although there may have no express contract of subscription.

**Sale of Shares of Stock Needs SEC Approval**

The Securities Act requires that before a corporation, except a public utility, bank, corporation association and a few others, sells, or offers for sale in the Philippines any of its securities, like shares of stocks or bonds, it must register the same and/or secure a permit from the SEC for the purpose. The authorization is in the form of an exemption from the requirements of registration and licensing, and is issued by the way of resolution of the SEC.

**Power to issue shares is lodged in the board of directors** and no stockholders' meeting is necessary to consider it because additional issuance of shares of stock does not need approval of the stockholders. The "Board of Trustees shall, in of stock of the corporation and shall prescribe the form of the certificate of stock of corporation."

**Kinds of Subscription:**

- 1.1. Pre-incorporation – is one agreed upon before the incorporation of the proposed corporation.
- 1.2. Post-incorporation Subscription – entered into after the incorporation or formation of the corporation.
2. Absolute Subscription – one not subject to any condition or happening of certain unknown events.

3. Conditional Subscription – its fulfillment depends upon the happening of uncertain events of contingencies. It does not make the subscriber a stockholder or render him liable to pay the amount of the subscription, until performance or fulfillment of the condition.

4. Subscription upon special terms – where “the corporation agreed, as an independent element, to do a certain thing or things, but not as condition to the accrual of liability of the subscriber or the acquisition of the rights of a stockholder.

**Sec. 61. *Pre-incorporation subscription.*** – A subscription for shares of stock of a corporation still to be formed shall be irrevocable for a period of at least six (6) months from the date of subscription, unless all of the other subscribers consent to the revocation, or unless the incorporation of said corporation fails to materialize within said period or within a longer period as may be stipulated in the contract of subscription: Provided, That no pre-incorporation subscription may be revoked after the submission of the articles of incorporation to the Securities and Exchange Commission.

SEC. 61 Pre-incorporation subscription is mandatory (Sec. 13 & 14) at least 25% of the authorized capital stock has been subscribed and at least 25% of the total subscription has been fully paid.

Subscription for shares of stock of a corporation still to be formed shall be irrevocable for a period of at least 6 months from the date of subscription, unless:

1. All subscribers consent to its revocation.
2. The incorporation fails to materialize within 6 months or a longer period as agreed upon.

The irrevocability of pre-incorporation prevents a subscriber from speculating on the stocks of the proposed corporation and protects the corporation from financially irresponsible subscribers.

**Sec. 62. *Considering for stocks.*** – Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two or more of the following:

1. Actual cash paid to the corporation.
2. Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued.
3. Labor performed for or services actually rendered to the corporation.
4. Previously incurred indebtedness of the corporation.
5. Amounts transferred from unrestricted retained earnings to stated capital.
6. Outstanding shares exchanged for stocks in the event of reclassification or conversion.

Where the consideration is other than actual cash, or consists of intangible property such as patents or copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.

Shares of stock shall not be issued in exchange for promissory notes or future service. The same considerations provided for in this section, insofar as they may be applicable, may be

used for the issuance of bonds by the corporation. The issued price of no-par value shares may be fixed in the articles of incorporation or by the board of directors pursuant to authority conferred upon it by the articles of incorporation or the by-laws, or in the absence thereof, by the stockholders representing at least a majority of the outstanding capital stock at a meeting duly called for the purpose.

**Consideration for issuance of stock may be any or any combination of any two or more of the ff:**

1. Cash
2. Property – tangible or intangible
3. Labor performed or services actually rendered
4. Previously incurred indebtedness by the corporation
5. Amounts transferred from unrestricted retained earnings to stated capital
6. Outstanding shares exchanged for stock in the event of reclassification or conversion

**Sources of corporate capital**

1. Funds furnished by shareholders
2. Borrowings
3. Profits and stock dividends

**Different modes by which a corporation may issue shares of stock**

1. By subscription before and after incorporation, to original, unissued stocks.
2. By sale of treasury stock after incorporation for money property, or service.
3. By subscription to new stocks, when all the original stocks have been issued and the amount of the capital stock increased.
4. By making a stock dividend.

**Limitations in the issuance of stocks**

1. Shall not be issued for a consideration less than the par or issued price thereof except treasury shares so long as the price is reasonable.
  2. Shall not be issued in exchange of promissory notes or future services.
  3. When the consideration is other than actual cash or consists of intangible property, the value thereof shall be initially determined by the incorporators or the board of directors, subject to the approval of the SEC.
  4. The issued price of no par value shares must be fixed as provided in Sec. 62.
- issued price may vary from time to time but value may not be less than P5.

**Sec. 63. *Certificate of stock and transfer of shares.*** – The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

SEC. 63 The capital stock of stock corporation shall be divided into shares Certificate of stock shall be issued for said shares.

**Nature of a certificate of stock**

1. It is a written instrument signed by the proper officer of a corporation stating or acknowledging that the person named therein is the owner of a designated number of shares of stock.
  2. It indicates the name of the holder, the number, kind and class of shares represented, and the date of issuance.
  3. It is merely the evidence of the holder's interest in the corporation, his ownership of the share represented thereby.
  4. It is not essential to make one a stockholder in a corporation.
- Every stockholder has a right to have proper certificate issued to him as soon as he has complied with the conditions which entitle him to one.
  - A corporation cannot issue shares in excess of the maximum authorized in its AOI.
  - An over issued stock is absolutely void even if possessor is in good faith.
  - Shares can be transferred represented by the certificate by its endorsement by the owner or his agent and delivery to the transferee.

**Restrictions on transfer of stock**

1. A by-law prohibits a transfer of stock without the consent or approval of all stockholders or of the president or board of directors is **ILLEGAL**.
2. A provision in the certificate that is transferable only to some person first approved by the board of directors unlawfully restricts the right of the stockholder.
3. The condition "non-transferable" appearing on certificates of stock is **VOID**.
4. corporations which will engage in any business reserved for Filipino citizens are required to indicate in AOI and all certificates.

**Two requirements to effect transfer of stocks**

**Endorsement** and **delivery** of stock certificate

- the usual practice is for the stockholder to sign the form on the back of the stock certificate.
- if the holder of the certificate desires to assume the legal right of the stockholder he fills up the blank in the form inserting his name as transferee.
- then he delivers the certificate to the secretary of the corporation so that the transfer may be entered in the books.

**Other modes of transfer**

1. Assignment thru a separate instrument.
2. Judicial or extra-judicial settlement of the estate.

**Validity of stock transfer**

1. As between parties

-merely the delivery of the certificate indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.

2. As against third persons

-the transfer of shares must be entered and noted upon the books of the corporation  
-only absolute transfer are recorded

**Effects of unregistered shares**

1. It is valid and binding as between the transferor and transferee.

2. It is invalid insofar as the corporation is concerned except when notice is given to the corporation for purposes of registration.
  - a) the transferor has the right to vote and to be voted for, and has the right to participate in any meeting
  - b) the transferor has the right to dividends as against the corporation but the transferor, as the nominal owner of the share, is the trustee for the benefit of the real owner.
3. It is invalid as against corporate creditors, and the transferor is still liable to the corporation. The transfer of stock by a shareholder does not relieve him from the liability to creditors of the corporation for unpaid subscription until the transfer is consummated by being registered in the books.
4. It is invalid as against creditors of the transferor without notice of the transfer.

Shares of stock against which the corporation holds any unpaid claim shall not be transferable in the books – no unpaid claims against the stock.  
- no unpaid subscriptions due and payable.

**Sec. 64. Issuance of stock certificates.** – No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid.

SEC. 64 It is prohibited to issue certificates of stock to a subscriber who has not paid the full amount of his subscription together with interest and expenses.

Derivative suit – one brought by one or more stockholders or members in the name and in behalf of the corporation to redress wrongs committed against it or to protect or vindicate corporate rights.

Individual suit – one brought by a stockholder in his own name against the corporation for direct violation of his contractual rights such as right to vote, to dividends etc.

Representative suit – a group of stockholders may bring a direct suit against the corporation. This is when a wrong is committed against a group of stockholders.

Certificate of Stock – a written instrument signed by the proper corporate officers, and evidencing the fact that the person therein named is the registered owner of the share or shares therein described.

### **Nature and Functions of Certificates**

It represents the number of shares which the corporation acknowledges that the holder of the certificate is entitled to and is a solemn and continuing affirmation by the corporation that the person to whom it was issued is entitled to all the rights and subject to all the liabilities of a stockholder in the company in respect of the number of shares named, and that the company will respect his rights and the rights of anyone to whom he may transfer such shares, by refusing to admit any new transferee to the rights of a stockholder except upon the surrender of the certificate.

### **Issuance of Stock Certificate. It requires:**

1. sign by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation, and issued in accordance with the law.
2. The certificate must be delivered or mailed to the subscriber, with the documentary stamps required by law affirmed thereon.
3. The par value with respect to shares with par value, or the full subscriptions, as to no-par value shares must be fully paid.
4. Where it involves transfer of outstanding shares, the original certificate must be retained.

**Purpose of Registration of Transfer**

1. To enable the corporation to know at all times who its actual shareholders are, because mutual rights and obligations exist between the corporation and its stockholders.
2. To afford to the corporation an opportunity to object or refuse its consent to the transfer in case it has any claim against the stock sought to be transferred or for any other valid reason.
3. To avoid fraudulent or fictitious transfer.
4. It is intended also for the benefit and protection of persons who may deal with the corporation and become creditors, so that they know who are the stockholders, and as such liable to its creditors.

***Right to Transfer shares of stock***

1. By delivering the certificate, duly indorsed on the back.
2. By delivering the certificate accompanied by a separate assignment.
3. Where stock is levied on in execution of judgment, by delivering the certificate coupled with an assignment by the sheriff who conducted the levy.
4. Transfer by sale of delinquent shares.

**Liabilities of a stockholders**

1. Liability to the corporation for unpaid subscription
2. Liability to the corporation for interest on unpaid subscription
3. Liability to creditors of the corporation on unpaid subscription
4. Liability for watered stock
5. Liability for dividends unlawfully paid
6. Liability for failure to create a corporation

**Sec. 65. Liability of directors for watered stocks.** – Any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary, shall be solidarily, liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same.

SEC. 65 watered stocks – stock issued for no value at all or for a value less than its equivalent either in cash, property, shares, stock dividends, or services the law prohibits the issuance of watered stocks (only refers to original issue)

1. To protect persons who may acquire stock and those who may become the creditors of the corporation on the faith of its outstanding capital stock being fully paid.
2. To secure equality among subscribers and prevents discrimination against those who have paid in full the par or issued value.

**Who are liable for watered stocks?**

Both consenting director or officer and the stockholder concerned for the whole amount of difference.

Trust Fund Theory – involves an implied promise to the corporation to pay the par value of the shares in money or its equivalent, supplementing it by a legal restriction against release or fictitious payment of this obligation to the prejudice of creditors.

**Sec. 66. Interest on unpaid subscriptions.** – Subscribers for stock shall pay to the corporation interest on all unpaid subscriptions from the date of subscription, if so required by, and at the rate of interest fixed in the by-laws. If no rate of interest is fixed in the by-laws, such rate shall be deemed to be the legal rate.

**Sec. 67. *Payment of balance of subscription.*** – Subject to the provisions of the contract of subscription, the board of directors of any stock corporation may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same or such percentage thereof, in either case with accrued interest, if any, as it may deem necessary.

Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date specified in the contract of subscription or on the date stated in the call made by the board. Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance, unless a different rate of interest is provided in the by-laws, computed from such date until full payment. If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon become delinquent and shall be subject to sale as hereinafter provided, unless the board of directors orders otherwise.

#### **Remedies to enforce payment of stock subscription**

1. Extra-judicial sale at public auction – Permits the corporation to put up unpaid stock for sale and dispose of it for the account of the delinquent subscribers (governed by sections 67-69 of the Corporation Code of the Philippines).
2. Judicial action by court action (provided under Section 70)
3. Denying a stockholder delinquent for unpaid subscription the right to vote (under section 71)
4. Collection from cash dividends and withholding stock dividends (under Section 43)

#### **Sanctions on stock delinquent**

1. Rights denied to stockholder shall not be voted or be entitled to vote or representation at any stockholders' meeting, nor entitled the holder thereof to any of the rights of a stockholder except the right to dividends.
2. Right given to the corporation.
3. The corporation has the right to apply cash dividends due on delinquent stock to the unpaid balance on the subscription plus cost and expenses.

While stock dividends, corporation to withhold the same from the delinquent stockholder until his unpaid subscription is fully paid.

#### **When is the balance of subscription payable?**

1. On the date specified in the contract of subscription.
2. In the absence of any specified date in the contract of subscription, on the date stated in the call made by the board of directors.

#### **When does the stock become delinquent?**

A stock becomes delinquent upon failure of the holder to pay the unpaid subscription or balance thereof within 30 days from the date specified in the contract of subscription or on the date stated in the call.

Call – a declaration officially made by a corporation usually expressed in the form of a resolution of the board of directors requiring payment of all or a certain prescribed portion of a subscriber's stock subscription.

#### **Requisites for a valid call**

1. It must be made in the manner prescribed by law.
2. It must be made by the board of directors.
3. It must operate uniformly upon all shares.



**Sec. 68. Delinquency sale.** – The board of directors may, by resolution, order the sale of delinquent stock and shall specifically state the amount due on each subscription plus all accrued interest, and the date, time and place of the sale which shall not be less than thirty (30) days nor more than sixty (60) days from the date the stocks become delinquent.

Notice of said sale, with a copy of the resolution, shall be sent to every delinquent stockholder either personally or by registered mail. The same shall furthermore be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the province or city where the principal office of the corporation is located.

Unless the delinquent stockholder pays to the corporation, on or before the date specified for the sale of the delinquent stock, the balance due on his subscription, plus accrued interest, costs of advertisement and expenses of sale, or unless the board of directors otherwise orders, said delinquent stock shall be sold at public auction to such bidder who shall offer to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share. The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor. The remaining shares, if any, shall be credited in favor of the delinquent stockholder who shall likewise be entitled to the issuance of a certificate of stock covering such shares.

Should there be no bidder at the public auction who offers to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share, the corporation may, subject to the provisions of this Code, bid for the same, and the total amount due shall be credited as paid in full in the books of the corporation. Title to all the shares of stock covered by the subscription shall be vested in the corporation as treasury shares and may be disposed of by said corporation in accordance with the provisions of this Code.

***Procedure:***

1. The board of directors passes a resolution declaring payable the whole or certain percentage of the unpaid subscription stating the date fixed for payment. If the date of payment is specified in the contract of subscription, no call is necessary.
2. The stockholders are given notice of the resolution by the secretary of the corporation. If the stockholders fails to pay within 30 days from date specified, the stocks becomes delinquent.
3. the board of directors, by resolution, orders the sale of delinquent stocks, stating the amount due and the date, time, and place of sale with notice to the delinquent stockholders which notice shall be published.
4. On the date of sale, will be sold at public auction to higher bidder for cash.

Highest bidder – the person offering at the sale to pay the full amount of the balance on the subscription together with accrued interest, cost of advertisement and expenses of sale, for the smallest number of shares.

In the absence of bidders or highest bidder, the corporation may purchase for itself the delinquent stock.

**Sec. 69. When sale may be questioned.** – No action to recover delinquent stock sold can be sustained upon the ground of irregularity or defect in the notice of sale, or in the sale itself of the delinquent stock, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, with interest from the date of sale at the legal rate; and no such action shall be maintained unless it is commenced by the filing of a complaint within six (6) months from the date of sale.

Grounds for the recovery of stock unlawfully sold for delinquency are:

1. Irregularity or defect in the notice of sale
2. Irregularity or defect in the sale itself of the delinquent stock

**Sec. 70. Court action to recover unpaid subscription.** – Nothing in this Code shall prevent the corporation from collecting by action in a court of proper jurisdiction the amount due on any unpaid subscription, with accrued interest, costs and expenses.

As a general rule, a corporation may not maintain a suit for the enforcement of unpaid subscription without first making a call.

Judicial remedy is limited to the amount due on any unpaid subscription with accrued interest, costs and expenses

**Sec. 71. Effect of delinquency.** – No delinquent stock shall be voted for be entitled to vote or to representation at any stockholder's meeting, nor shall the holder thereof be entitled to any of the rights of a stockholder except the right to dividends in accordance with the provisions of this Code, until and unless he pays the amount due on his subscription with accrued interest, and the costs and expenses of advertisement, if any.

SEC. 71 Stock delinquency does not deprive the holder of all his rights as a stockholder except the right to be voted for or be entitled to representation at any stockholders' meeting. He shall still receive dividends. But delinquent stocks shall be subject to delinquency sale.

**Effects of Stocks declared delinquent:**

1. Cannot be voted for or be entitled to vote in corporate meetings or be represented by proxy at any stockholders' meeting.
2. The holder of delinquent stock is not entitled to exercise the rights of a stockholder (i.e. to inspect books and records, etc.).
3. The holder of delinquent stocks is entitled to dividends. Section 43 provides however, that “ any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expense, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid”.

**Sec. 72. Rights of unpaid shares.** – Holders of subscribed shares not fully paid which are not delinquent shall have all the rights of a stockholder.

SEC. 72 Before unpaid shares become delinquent, the holder thereof is not considered to have violated any contract with the corporation, and, therefore, he has all the rights of a stockholder which rights include the right to vote.

**Sec. 73. Lost or destroyed certificates.** – The following procedure shall be followed for the issuance by a corporation of new certificates of stock in lieu of those which have been lost, stolen or destroyed:

1. The registered owner of a certificate of stock in a corporation or his legal representative shall file with the corporation an affidavit in triplicate setting forth, if possible, the circumstances as to how the certificate was lost, stolen or destroyed, the number of shares represented by such certificate, the serial number of the certificate and the name of the corporation which issued the same. He shall also submit such other information and evidence which he may deem necessary.
2. After verifying the affidavit and other information and evidence with the books of the corporation, said corporation shall publish a notice in a newspaper of general circulation published in the place where the corporation has its principal office, once a week for three (3) consecutive weeks at the expense of the registered owner of the certificate of stock which has been lost, stolen or destroyed. The notice shall state the name of said corporation, the name of the registered owner and the serial number of said certificate, and the number of shares represented by such certificate, and that after the expiration of one (1) year from the date of the last publication, if no contest has been presented to said corporation regarding said certificate of stock, the right to make such contest shall be barred and said corporation

shall cancel in its books the certificate of stock which has been lost, stolen or destroyed and issue in lieu thereof new certificate of stock, unless the registered owner files a bond or other security in lieu thereof as may be required, effective for a period of one (1) year, for such amount and in such form and with such sureties as may be satisfactory to the board of directors, in which case a new certificate may be issued even before the expiration of the one (1) year period provided herein: Provided, That if a contest has been presented to said corporation or if an action is pending in court regarding the ownership of said certificate of stock which has been lost, stolen or destroyed, the issuance of the new certificate of stock in lieu thereof shall be suspended until the final decision by the court regarding the ownership of said certificate of stock which has been lost, stolen or destroyed.

Except in case of fraud, bad faith, or negligence on the part of the corporation and its officers, no action may be brought against any corporation which shall have issued certificate of stock in lieu of those lost, stolen or destroyed pursuant to the procedure above-described.

SEC. 73 The registered owner of certificates of stock in a corporation or his legal representative shall file with the corporation an affidavit setting forth how certificate were lost, stolen or destroyed, the number of shares represented by each certificate, the serial numbers of the certificate and name of the corporation which issued the same.

**The affidavit shall be verified**

Corporation shall publish a notice in a newspaper in general circulation published in the place where the corporation has its principal office for 3 consecutive weeks.

After 1 year from the date of the last publication, if no contest presented to the corporation, corporation shall cancel in the books the lost certificates and issue new certificates.