

LAW ON CORPORATION

TITLE X APPRAISAL RIGHT

CORPORATION CODE OF THE PHILIPPINES
Sec. 81-86



Sec. 81. *Instances of appraisal right.* – Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence.
2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code.
3. In case of merger or consolidation.

Sec. 81, *not exclusive.*

Such appraisal right may also be exercised when a stockholder dissents when a corporation or business or for a purpose other than its main purpose. (Sec. 42)

When a stockholder of a close corporation may for any reason compel the corporation to purchase his shares from the par or issued value, when the corporation has sufficient assets in its books to cover its debts and liabilities, exclusive of capital stock. (Sec. 105)

Sec. 82. *How right is exercised.* – The appraisal right may be exercised by any stockholder who shall have voted against the proposed corporate action, by making a written demand on the corporation within thirty (30) days after the date on which the vote was taken for payment of the fair value of his shares: *Provided*, That failure to make the demand within such period shall be deemed a waiver of the appraisal right. If the proposed corporate action is implemented or effected, the corporation shall pay to such stockholder, upon surrender of the certificate(s) of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.

If within a period of sixty (60) days from the date the corporate action was approved by the stockholders, the withdrawing stockholder and the corporation cannot agree on the fair value of the shares, it shall be determined and appraised by three (3) disinterested persons, one of whom shall be named by the stockholder, another by the corporate and the third by the two (2) thus chosen. The findings of the majority of the appraisers shall be final, and their award shall be paid by the corporation within thirty (30) days after such award is made: *Provided*, That no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retain earnings in its books to cover such payment: and *Provided, further*, That upon payment by the corporation of the agreed or awarded price, the stockholder shall forthwith transfer his shares to the corporation.

Exercising the appraisal right

By one who has voted against the proposed corporate action, by making a written demand on the corporation within thirty (30) days after the date on which the vote was taken for payment of the fair value of his shares. Those who are absent and present abstained their vote cannot exercise the appraisal right.

Sec. 83. *Effect of demand and termination of right.* – From the time of demand for payment of the fair value of a stockholder's shares until either the abandonment of the corporate action involved or the purchase of the said shares by the corporation, all rights accruing to such shares, including voting and dividend rights, shall be suspended in accordance with the provisions of this Code, except the right of such stockholder to receive payment of the fair value thereof: *Provided*, That if the dissenting stockholder is not paid the

value of his shares within 30 days after the award, his voting and dividend rights shall be immediately be restored.

Sec. 84. *When right to payment ceases.* – No demand for payment under this Title may be withdrawn unless the corporation consents thereto. If, however, such demand for payment is withdrawn with the consent of the corporation, or if the proposed corporate action is abandoned or rescinded by the corporation or disapproved by the Securities and Exchange Commission where such approval is necessary, or if the Securities and Exchange Commission determines that such stockholder is not entitled to the appraisal right, then the right of said stockholder to be paid the fair value of his shares shall cease, his status as a stockholder shall thereupon be restored, and all dividend distributions which would have accrued on his shares shall be paid to him.

Effect of refusal of corporation to pay If...	Then...
FV of the shares within thirty (30) days from the award	Restore all his rights automatically.
Insufficiency of the unrestricted RE	Restore by reacquiring his former status as a stockholder.
Abandoned; Rescinded; Unsecured approval of the SEC; Stockholder is not entitled; Withdrawal (dissenting stockholder with consent of the corp)	Same effects as above.

Sec. 85. *Who bears costs of appraisal.* – The costs and expenses of appraisal shall be borne by the corporation, unless the fair value ascertained by the appraisers is approximately the same as the price which the corporation may have offered to pay the stockholder, in which case they shall be borne by the latter. In case of an action to recover such fair value, all costs and expenses shall be assessed against the corporation, unless the refusal of the stockholder to receive payment was unjustified.

Consideration of the costs of appraisal

Expenses of appraisal:

- Appraisers' fees
- Attorneys' fees
- Expert accountants' fees
- Witnesses before the appraisers' fees

Thus, clarifies an otherwise delicate aspect of appraisal proceeding.

Sec. 86. *Notation on certificate(s); right of transferee.* – Within ten (10) days after demanding payment for his shares, a dissenting stockholder shall submit the certificate(s) of stock representing his shares to the corporation for notation thereon that such shares are dissenting shares. His failure to do so shall, at the option of the corporation, terminate his rights under this Title. If shares represented by the certificate(s) bearing such notation are transferred, and the certificate(s) consequently cancelled, the rights of the transferor as a dissenting stockholder under this Title shall cease and the transferee shall have all the rights of a regular stockholder; and all dividend distributions which would have accrued on such shares shall be paid to the transferee.

Valuation of shares of dissenting shareholders

Appraisers should consider the elements that tend to affect market quotations:

- The rate of dividends
- The regularity with which they have been paid
- The management and reputation of the company
- Its prospects for the future
- All other circumstances which will aid them in estimating the future course of the stock in the market

The important thing to consider in arriving at the appraisal value is whether the valuation arrived at is **fair, just and reasonable** to all parties concerned.

Other instances when appraisal right may be granted

1. Amendment of “any provision or matter stated in the articles of incorporation.”
2. When the corporate term is extended.
3. Any purpose other than the primary purpose.
4. Close corporation – a stockholder may compel the corporation to purchase FV “for any reasons.”

Exercise of appraisal right provided compensatory alternative to investor

Appraisal statutes extending to corporate purpose or duration amendments would seem to be of limited value.

Appraisal rights cannot challenge this power but they can provide a compensatory alternative to an investor faced with a loss of existing stock rights and should be so employed.

When right of stockholder to payment ceases

1. The demand for payment is withdrawn with the consent of the corporation.
2. The proposed corporate action is abandoned or rescinded by the corporation.
3. Proposed action is disapproved by the SEC where such approval is necessary.
4. Such stockholder is not entitled to exercise his appraisal right.