

LAW ON CORPORATION

TITLE XIII SPECIAL CORPORATIONS

**CORPORATION CODE OF THE PHILIPPINES
Sec. 106-116**



Sec. 106. *Incorporation.* – Educational corporations shall be governed by special laws and by the general provisions of this Code.

Sec. 107. *Pre-requisites to incorporation.* – Except upon favourable recommendation of the Ministry of Education and Culture, the Securities and Exchange Commission shall not accept or approve the articles of incorporation and by-laws of any educational institution.

Sec. 108. *Board of trustees.* – Trustees of educational institutions organized as non-stock corporations shall not be less than five (5) nor more than fifteen (15): Provided, however, That the number of trustees shall be in multiples of five (5).

Unless otherwise provided in the articles of incorporation on the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years. A majority of the trustees shall constitute a quorum for the transaction of business. The powers and authority of trustees shall be defined in the by-laws.

For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations.

There are three (3) ways by which a religious organization can provide for the administration of its properties:

1. by forming a non-stock corporation
2. by corporation sole
3. by religious aggregate or society

Corporation sole may constitute of one person only so the head of a religious sect would incorporate himself for the purpose of administering the properties of a religious sect. To incorporate what you will file with the SEC is an affidavit. The affidavit will state that the affiant is the head of a religious denomination or sect and would want to become a corporation sole. and the rules of his religion allow him to incorporate as a corporation sole and that he is charged with the administration of its properties and in fact he will be required to submit an inventory and the manner in which the successor will be chosen and the place where he will hold his office.

The Roman Catholic Archbishop of Manila is a corporation sole so if Cardinal Sin dies the new archbishop will simply submit his appointment and he need not incorporate again because the corporation is different from the occupant of the position. The Iglesia ni Kristo is incorporated as a corporation sole.

The court has held in *Roman Catholic Apostolic Adm. of Davao, Inc. v. Land Registration Commission* that although the Bishop was a foreigner, he could register a parcel of land in his name because he is a mere administrator the property really belongs to the faithful and since they are Filipinos they could register the land in the administrator's name.

Under the law if a corporation sole wants to dispose of or mortgage real property, he has to get authorization from the Regional Trial Court unless the rules of the religious sect allow him to dispose of or mortgage real property and that is usually the case.

The last is the religious aggregate or religious society. It can incorporate for the purpose of managing its properties and the articles would indicate that the members constitute a religious order or society and that at least 2/3 of the members have agreed to incorporate, that the rules allow them to incorporate they desire to incorporate to manage their properties in the place where located. The recollects are incorporated to manage their properties, they are the single biggest bloc of stockholder of San Miguel Corporation.

RELIGIOUS CORPORATIONS

Sec. 109. *Classes of religious corporations.* – Religious corporations may be incorporated by one or more persons. Such corporations may be classified into corporations sole and religious societies.

Religious corporations shall be governed by this Chapter and by the general provisions on non-stock corporations insofar as they may be applicable.

a) Corporation Sole

- **Corporation sole** is a special form of corporation usually associated with the clergy and consists of one person only and his successors, who are incorporated by law to give some legal capacities and advantages.
- **Nationality.** A corporation sole does not have any nationality but for purposes of applying our nationalization laws, nationality is determined not by the nationality of its head but by the nationality of the members constituting the sect in the Philippines even if it is headed by the Pope. (Roman Catholic Apostolic Church v. LRC, 1957)
- **Effect of Separation of Members.** Members of the sect who left and who formed a separate religious group are not entitled to any right to vote over the properties of their former sect. (Canete v. CA, 1989)
- **Dissolution.** By filing a verified declaration of dissolution. (JRS at 323)

Who may form and for what purpose?

Sec. 110. *Corporation sole.* – For the purpose of administering and managing, as trustee, the affairs, property and temporalities of any religious denomination, sect or church, a corporation sole may be formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of such religious denomination, sect or church. (154a)

How formed?

Sec. 111. *Articles of incorporation.* – In order to become a corporation sole, the chief archbishop, bishop, priest, minister, rabbi or presiding elder of any religious denomination, sect or church must file with the Securities and Exchange Commission articles of incorporation setting forth the following:

1. That he is the chief archbishop, bishop, priest, minister, rabbi or presiding elder of his religious denomination, sect or church and that he desires to become a corporation sole.
2. That the rules, regulations and discipline of his religious denomination, sect or church are not inconsistent with his becoming a corporation sole and do not forbid it.
3. That as such chief archbishop, bishop, priest, minister, rabbi or presiding elder, he is charged with the administration of the temporalities and the management of the affairs, estate and properties of his religious denomination, sect or church within his territorial jurisdiction, describing such territorial jurisdiction.
4. The manner in which any vacancy occurring in the office of chief archbishop, bishop, priest, minister, rabbi or presiding elder is required to be filled, according to the rules, regulations or discipline of the religious denomination, sect or church to which he belongs.
5. The place where the principal office of the corporation sole is to be established and located, which place must be within the Philippines.

The articles of incorporation may include any other provision not contrary to law for the regulation of the affairs of the corporation.

Sec. 112. *Submission of the articles of incorporation.* – The articles of incorporation must be verified, before filing, by affidavit or affirmation of the chief archbishop, bishop, priest, minister, rabbi or presiding elder, as the case may be, and accompanied by a copy of the commission, certificate of election or letter of appointment of such chief archbishop, bishop, priest, minister, rabbi or presiding elder, duly certified to be correct by any notary public. From and after the filing with the Securities and Exchange Commission of the said articles of incorporation, verified by affidavit or affirmation, and accompanied by the documents mentioned in the preceding paragraph, such chief archbishop, bishop, priest, minister, rabbi or presiding elder shall become a corporation sole and all temporalities, estate and properties of the religious denomination, sect or church theretofore administered or managed by him as such chief archbishop, bishop, priest, minister, rabbi or presiding elder shall be held in trust by him as a corporation sole, for the use, purpose, behalf and sole benefit of his religious denomination, sect or church, including hospitals, schools, colleges, orphan asylums, parsonages and cemeteries thereof.

Need for by-laws

-No need for by-laws since the business is conducted by only one man.

Power to acquire and alienate property

Sec. 113. *Acquisition and alienation of property.* – Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such purposes. Such corporation may sell or mortgage real property held by it by obtaining an order for that purpose from the Court of First Instance of the province where the property is situated upon proof made to the satisfaction of the court that notice of the application for leave to sell or mortgage has been given by publication or otherwise in such manner and for such time as said court may have directed, and that it is to the interest of the corporation that leave to sell or mortgage should be granted. The application for leave to sell or mortgage must be made by petition, duly verified, by the chief archbishop, bishop, priest, minister, rabbi or presiding elder acting as corporation sole, and may be opposed by any member of the religious denomination, sect or church represented by the corporation sole: Provided, That in cases where the rules, regulations and discipline of the religious denomination, sect or church, religious society or order concerned represented by such corporation sole regulate the method of acquiring, holding, selling and mortgaging real estate and personal property, such rules, regulations and discipline shall control, and the intervention of the courts shall not be necessary.

Filling of vacancies

Sec. 114. *Filling of vacancies.* – The successors in office of any chief archbishop, bishop, priest, minister, rabbi or presiding elder in a corporation sole shall become the corporation sole on their accession to office and shall be permitted to transact business as such on the filing with the Securities and Exchange Commission of a copy of their commission, certificate of election, or letters of appointment, duly certified by any notary public. During any vacancy in the office of chief archbishop, bishop, priest, minister, rabbi or presiding elder of any religious denomination, sect or church incorporated as a corporation sole, the person or persons authorized and empowered by the rules, regulations or discipline of the religious denomination, sect or church represented by the corporation sole to administer the temporalities and manage the affairs, estate and properties of the corporation sole during the vacancy shall exercise all the powers and authority of the corporation sole during such vacancy.

Dissolution

Sec. 115. *Dissolution.* – A corporation sole may be dissolved and its affairs settled voluntarily by submitting to the Securities and Exchange Commission a verified declaration of dissolution.

The declaration of dissolution shall set forth:

1. The name of the corporation.
2. The reason for dissolution and winding up.
3. The authorization for the dissolution of the corporation by the particular religious denomination, sect or church.
4. The names and addresses of the persons who are to supervise the winding up of the affairs of the corporation.

Upon approval of such declaration of dissolution by the Securities and Exchange Commission, the corporation shall cease to carry on its operations except for the purpose of winding up its affairs.

Religious societies or corporations aggregate

Sec. 116. *Religious societies.* – Any religious society or religious order, or any diocese, synod, or district organization of any religious denomination, sect or church, unless forbidden by the constitution, rules, regulations, or discipline of the religious denomination, sect or church of which it is a part, or by competent authority, may, upon written consent and/or by an affirmative vote at a meeting called for the purpose of at least two-thirds (2/3) of its membership, incorporate for the administration of its temporalities or for the management of its affairs, properties and estate by filing with the Securities and Exchange Commission, articles of incorporation verified by the affidavit of the presiding elder, secretary, or clerk or other member of such religious society or religious order, or diocese, synod, or district organization of the religious denomination, sect or church, setting forth the following:

1. That the religious society or religious order, or diocese, synod, or district organization is a religious organization of a religious denomination, sect or church.
2. That at least two-thirds (2/3) of its membership have given their written consent or have voted to incorporate, at a duly convened meeting of the body.
3. That the incorporation of the religious society or religious order, or diocese, synod, or district organization desiring to incorporate is not forbidden by competent authority or by the constitution, rules, regulations or discipline of the religious denomination, sect, or church of which it forms a part.
4. That the religious society or religious order, or diocese, synod, or district organization desires to incorporate for the administration of its affairs, properties and estate.
5. The place where the principal office of the corporation is to be established and located, which place must be within the Philippines.
6. The names, nationalities, and residences of the trustees elected by the religious society or religious order, or the diocese, synod, or district organization to serve for the first year or such other period as may be prescribed by the laws of the religious society or religious

order, or of the diocese, synod, or district organization, the board of trustees to be not less than five (5) nor more than fifteen (15).

Case

Long v. Basa (2001)

- Since in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals, then a church member who is expelled from the membership by the church authorities, or a priest or minister who is by them deprived of his sacred office, is without remedy in the civil courts. Long v. Basa, 366 SCRA 113 (2001).

Additional Material: SEC Opinion No. 04-45, Nov.28, 2004 to Ferrer and Ferrer Law Office re term of existence of religious corporation.

SEC Opinion No. 04-45, (Nov. 28, 2004)

Re: Term of Existence of Religious Corporations

Section 116 (as well as Sec. 160 of the former Corporation Law) does not provide for a term of existence of religious corporations, whether classified as a corporation sole or a corporation aggregate. As such, the law intends that religious organizations may exist perpetually (SEC Opinion dated Dec. 10, 1981). Moreover, where the Articles of Incorporation does not provide for a term of existence, it shall be understood that the intention is for the corporation to exist for an indefinite period (SEC Opinion dated Oct. 23, 1995)

DISSOLUTION

Dissolution of a corporation is the extinguishment of the franchise of a corporation and termination of its corporate existence.

Modes of Dissolution:

1. Voluntary Dissolution
2. Involuntary Dissolution
3. Shortening of term
4. Expiration of term (JRS at 311)
5. Failure to organize and commence business within two years from the date of issuance of certificate of incorporation
6. Legislative Dissolution (CLV's CLR at 936)

Effects of Dissolution:

1. Transfer of Legal title to corporate property.
2. The corporation ceases as a body corporate to continue the business for which it was established.
3. Continuation of a body corporation (the corporation continues as a body corporate for 3 years for purposes of winding up or liquidation).
4. After the expiration of the 3 year winding up period, the corporation ceases to exist for all purposes. (JRS at 314).

- The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liability of such entity, since it is allowed to continue as a juridical entity for 3 years for the purpose of prosecuting and defending suits by

or against it and enabling it to settle and close its affairs, to dispose of and convey its property, and to distribute its assets. *Republic v. Tancinco*, 394 SCRA 386 (2002).

- A board resolution to dissolve the corporation does not operate to so dissolve the juridical entity. For dissolution to be effective “[t]he requirements mandated by the Corporation Code should have been strictly complied with.” *Vesagas v. Court of Appeals*, 371 SCRA 509, 516 (2002).
- A corporation cannot extend its life by amendment of its articles of incorporation effected during the three-year statutory period for liquidation when its original term of existence had already expired, as the same would constitute new business. *Alhambra Cigar & Cigarette Manufacturing Company, Inc. v. SEC*, 24 SCRA 269 (1968).
- When the period of corporate life expires, the corporation ceases to be a body corporate for the purpose of continuing the business for which it was organized. *PNB v. Court of First Instance of Rizal, Pasig, Br. XXI*, 209 SCRA 294 (1992).