

LAW ON CORPORATION

TITLE XV FOREIGN CORPORATIONS

**CORPORATION CODE OF THE PHILIPPINES
Sec. 123-136**



Section 123. *Definition and rights of foreign corporations.* – For the purposes of this Code, a foreign corporation is one 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. It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency.

Definition

Foreign Corporation is one 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.

Section 124. *Application to existing foreign corporations.* – Every foreign corporation which on the date of the effectivity of this Code is authorized to do business in the Philippines under a license therefore issued to it, shall continue to have such authority under the terms and condition of its license, subject to the provisions of this Code and other special laws.

A foreign corporation can have no legal existence beyond the bounds of the state or sovereignty by which it is created. It exists only in contemplation of law and by force of the law, and where that law ceases to operate, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty.

Foreign corporations may do business in the Philippines either by directly entering into transactions with resident persons, firms or corporations or by creating a domestic subsidiary corporation which would have its own distinct personality.

Licensed foreign corporations is authorized to do business in the Philippines shall continue to have such authority under the terms and condition of its license, subject to the provisions of the Code and other special laws.

Section 125. *Application for a license.* – A foreign corporation applying for a license to transact business in the Philippines shall submit to the Securities and Exchange Commission a copy of its articles of incorporation and by-laws, certified in accordance with law, and their translation to an official language of the Philippines, if necessary. The application shall be under oath and, unless already stated in its articles of incorporation, shall specifically set forth the following:

1. The date and term of incorporation.
2. The address, including the street number, of the principal office of the corporation in the country or state of incorporation.
3. The name and address of its resident agent authorized to accept summons and process in all legal proceedings and, pending the establishment of a local office, all notices affecting the corporation.
4. The place in the Philippines where the corporation intends to operate.
5. The specific purpose or purposes which the corporation intends to pursue in the transaction of its business in the Philippines: Provided, That said purpose or purposes are those specifically stated in the certificate of authority issued by the appropriate government agency.

6. The names and addresses of the present directors and officers of the corporation.
7. A statement of its authorized capital stock and the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any.
8. A statement of its outstanding capital stock and the aggregate number of shares which the corporation has issued, itemized by classes, par value of shares, shares without par value, and series, if any.
9. A statement of the amount actually paid in.
10. Such additional information as may be necessary or appropriate in order to enable the Securities and Exchange Commission to determine whether such corporation is entitled to a license to transact business in the Philippines, and to determine and assess the fees payable.

Attached to the application for license shall be a duly executed certificate under oath by the authorized official or officials of the jurisdiction of its incorporation, attesting to the fact that the laws of the country or state of the applicant allow Filipino citizens and corporations to do business therein, and that the applicant is an existing corporation in good standing. If such certificate is in a foreign language, a translation thereof in English under oath of the translator shall be attached thereto.

The application for a license to transact business in the Philippines shall likewise be accompanied by a statement under oath of the president or any other person authorized by the corporation, showing to the satisfaction of the Securities and Exchange Commission and other governmental agency in the proper cases that the applicant is solvent and in sound financial condition, and setting forth the assets and liabilities of the corporation as of the date not exceeding one (1) year immediately prior to the filing of the application.

Foreign banking, financial and insurance corporations shall, in addition to the above requirements, comply with the provisions of existing laws applicable to them. In the case of all other foreign corporations, no application for license to transact business in the Philippines shall be accepted by the Securities and Exchange Commission without previous authority from the appropriate government agency, whenever required by law.

Section 126. *Issuance of a license.* – If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license. Upon issuance of the license, such foreign corporation may commence to transact business in the Philippines and continue to do so for as long as it retains its authority to act as a corporation under the laws of the country or state of its incorporation, unless such license is sooner surrendered, revoked, suspended or annulled in accordance with this Code or other special laws.

Within sixty (60) days after the issuance of the license to transact business in the Philippines, the license, except foreign banking or insurance corporation, shall deposit with the Securities and Exchange Commission for the benefit of present and future creditors of the licensee in the Philippines, securities satisfactory to the Securities and Exchange Commission, consisting of bonds or other evidence of indebtedness of the Government of the Philippines, its political subdivisions and instrumentalities, or of government-owned or controlled corporations and entities, shares of stock in “registered enterprises” as this term is

defined in Republic Act No. 5186, shares of stock in domestic corporations registered in the stock exchange, or shares of stock in domestic insurance companies and banks, or any combination of these kinds of securities, with an actual market value of at least one hundred thousand (P100,000.) pesos; Provided, however, That within six (6) months after each fiscal year of the licensee, the Securities and Exchange Commission shall require the licensee to deposit additional securities equivalent in actual market value to two (2%) percent of the amount by which the licensee's gross income for that fiscal year exceeds five million (P5,000,000.00) pesos. The Securities and Exchange Commission shall also require deposit of additional securities if the actual market value of the securities on deposit has decreased by at least ten (10%) percent of their actual market value at the time they were deposited. The Securities and Exchange Commission may at its discretion release part of the additional securities deposited with it if the gross income of the licensee has decreased, or if the actual market value of the total securities on deposit has increased, by more than ten (10%) percent of the actual market value of the securities at the time they were deposited. The Securities and Exchange Commission may, from time to time, allow the licensee to substitute other securities for those already on deposit as long as the licensee is solvent. Such licensee shall be entitled to collect the interest or dividends on the securities deposited. In the event the licensee ceases to do business in the Philippines, the securities deposited as aforesaid shall be returned, upon the licensee's application therefor and upon proof to the satisfaction of the Securities and Exchange Commission that the licensee has no liability to Philippine residents, including the Government of the Republic of the Philippines.

Definition

Transacting business means the carrying on of the operations of the corporation, or some portion of them, in the usual and regular course of the prosecution of the corporate enterprise for profit.

The Corporation Code outlines the procedural requirements for the application and issuance of a license before a foreign corporation may transact business in the Philippines. Except in the case of foreign banking, financial and insurance corporations and other subject to special laws, rules and regulations, if the applicant foreign corporation has complied with all the requirements of issuance of a license, the SEC shall issue such license and thereafter the foreign corporation may transact business in the Philippines.

Republic Act No. 5455. Regulates the entry of foreign investments whenever foreign equity participation exceeds 30 percent of the capital stock.

Under Republic Act no. 5455 “doing business includes”:

- a. Soliciting orders, purchases, service contracts, opening offices whether called liaison offices or branches.
- b. Appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more.
- c. Participating in the management, supervision, or control of any domestic business firm, entity, or corporation in the Philippines.
- d. Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplates to that extent the performance of acts or works, or the exercise of some of the function normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

The Board of Investments requires license not only of corporations organized abroad but also of domestic corporations, if more than 40% of its voting shares are owned and held by aliens or more than 30% of its total capitalization is in the hands of aliens.

Guidelines for issuance of certificate of authority to do business under BOI (Rep. Act No.5455)

1. That the operation or activity is not inconsistent with the Investment Priorities Plan.
2. That the business or economic activity will contribute to the sound and balanced development of the national economy on a self-sustaining basis.
3. That the activity will not conflict with the Constitution and laws of the Philippines.
4. That the business or economic activity is not one (1) adequately exploited by Philippine Nationals.
5. That the entry of the applicant will not pose a clear and present danger of promoting monopolies or combination in restraint of trade.

Presidential Decree No. 151 allows citizens of the Philippines or corporations which have acquired lands of the public domain or which or any other law, to enter into service contracts for financial, technical, management or other forms of assistance with any foreign person or entity whenever and wherever such contracts are vital to achieve sound and more expeditious exploration, development, exploitation or utilization of such lands owned, held or controlled by such citizens or corporations.

Section 127. Who may be a resident agent. – A resident agent may be either an individual residing in the Philippines or a domestic corporation lawfully transacting business in the Philippines: Provided, That in the case of an individual, he must be of good moral character and of sound financial standing.

Section 128. Resident agent; service of process. – The Securities and Exchange Commission shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the Securities and Exchange Commission a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office. Any such foreign corporation shall likewise execute and file with the Securities and Exchange Commission an agreement or stipulation, executed by the proper authorities of said corporation, in form and substance as follows:

“The (name of foreign corporation) does hereby stipulate and agree, in consideration of its being granted by the Securities and Exchange Commission a license to transact business in the Philippines, that if at any time said corporation shall cease to transact business in the Philippines, or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then in any action or proceeding arising out of any business or transaction which occurred in the Philippines, service of any summons or other legal process may be made upon the Securities and Exchange Commission and that such service shall have the same force and effect as if made upon the duly-authorized officers of the corporation at its home office.”

Whenever such service of summons or other process shall be made upon the Securities and Exchange Commission, the Commission shall, within ten (10) days thereafter, transmit by mail a copy of such summons or other legal process to the corporation at its home or principal office. The sending of such copy by the Commission shall be necessary part of and shall complete such service. All expenses incurred by the Commission for such service shall be paid in advance by the party at whose instance the service is made.

In case of a change of address of the resident agent, it shall be his or its duty to immediately notify in writing the Securities and Exchange Commission of the new address.

The SEC shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the SEC, a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation.

Section 129. *Law applicable.* – Any foreign corporation lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, except such only as provide for the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties of stockholders, members, or officers of corporations to each other or to the corporation.

Licensed foreign corporations lawfully doing business in the Philippines shall be subject to our laws just like domestic corporations of the same class.

Philippine laws will not apply when it refers to the creation, formation, organization or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of stockholders, members, or officers of corporations to each other or to the corporation.

Section 130. *Amendments to articles of incorporation or by-laws of foreign corporations.* – Whenever the articles of incorporation or by-laws of a foreign corporation authorized to transact business in the Philippines are amended, such foreign corporation shall, within sixty (60) days after the amendment becomes effective, file with the Securities and Exchange Commission, and in the proper cases with the appropriate government agency, a duly authenticated copy of the articles of incorporation or by-laws, as amended, indicating clearly in capital letters or by underscoring the change or changes made, duly certified by the authorized official or officials of the country or state of incorporation. The filing thereof shall not of itself enlarge or alter the purpose or purposes for which such corporation is authorized to transact business in the Philippines.

Section 131. *Amended license.* – A foreign corporation authorized to transact business in the Philippines shall obtain an amended license in the event it changes its corporate name, or desires to pursue in the Philippines other or additional purposes, by submitting an application therefor to the Securities and Exchange Commission, favorably endorsed by the appropriate government agency in the proper cases.

Section 132. *Merger or consolidation involving a foreign corporation licensed in the Philippines.* – One or more foreign corporations authorized to transact business in the Philippines may merge or consolidate with any domestic corporation or corporations if such is permitted under Philippine laws and by the law of its incorporation: *Provided*, That the requirements on merger or consolidation as provided in this Code are followed. Whenever a foreign corporation authorized to transact business in the Philippines shall be a party to a merger or consolidation in its home country or state as permitted by the law of its incorporation, such foreign corporation shall, within sixty (60) days after such merger or consolidation becomes effective, file with the Securities and Exchange Commission, and in proper cases with the appropriate government agency, a copy of the articles of merger or consolidation duly authenticated by the proper official or officials of the country or state under the laws of which merger or consolidation was effected: *Provided*, however, That if the absorbed corporation is the foreign corporation doing business in the Philippines, the latter shall at the same time file a petition for withdrawal of its license in accordance with this Title.

Section 132 covers two legal situations:

1. The merger of a licensed foreign corporation with a domestic corporation.
-Must be accomplished by complying with the provisions of the Corporation Code.
2. The merger of a licensed foreign corporation with another corporation in its country of origin which is not doing business in the Philippines.
-If the licensed foreign corporation is absorbed by merger or consolidation, it must withdraw its license to do business in the Philippines.
- Nevertheless, if the foreign absorbing corporation desire to continue the business of the absorbed corporation in the Philippines, it has to file an application for a license to do business pursuant to the requirements of Philippines law on the matter.

Section 133. *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.

Unlicensed foreign corporations doing business in the Philippine do not have the capacity to sue before the local court is well-established.

A foreign corporation which is not licensed to transact business therein can maintain an action in the courts of the Philippines for the purpose of protecting its reputation, corporate name and goodwill.

A foreign corporation doing business in the Philippines without a license may maintain suit in the Philippines against a domestic corporation or person who is party to a contract as the domestic corporation or person is deemed estopped from challenging the personality of the foreign corporation.

Section 134. *Revocation of license.* – Without prejudice to other grounds provided by special laws, the license of a foreign corporation to transact business in the Philippines may be revoked or suspended by the Securities and Exchange Commission upon any of the following grounds:

1. Failure to file its annual report or pay any fees as required by this Code.
2. Failure to appoint and maintain a resident agent in the Philippines as required by this Title.
3. Failure, after change of its resident agent or of his address, to submit to the Securities and Exchange Commission a statement of such change as required by this Title.
4. Failure to submit to the Securities and Exchange Commission an authenticated copy of any amendment to its articles of incorporation or by-laws or of any articles of merger or consolidation within the time prescribed by this Title.
5. A misrepresentation of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this Title.

6. Failure to pay any and all taxes, imposts, assessments or penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions.

7. Transacting business in the Philippines outside of the purpose or purposes for which such corporation is authorized under its license.

8. Transacting business in the Philippines as agent of or acting for and in behalf of any foreign corporation or entity not duly licensed to do business in the Philippines.

9. Any other ground as would render it unfit to transact business in the Philippines.

Sec. 135. *Issuance of certificate of revocation.* – Upon the revocation of any such license to transact business in the Philippines, the Securities and Exchange Commission shall issue a corresponding certificate of revocation, furnishing a copy thereof to the appropriate government agency in the proper cases. The Securities and Exchange Commission shall also mail to the corporation at its registered office in the Philippines a notice of such revocation accompanied by a copy of the certificate of revocation.

Sec. 136. *Withdrawal of foreign corporations.* – Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the Securities and Exchange Commission unless all the following requirements are met:

1. All claims which have accrued in the Philippines have been paid, compromised or settled.

2. All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions have been paid.

3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines.