

LAW ON CORPORATION

TITLE II INCORPORATION AND ORGANIZATION OF PRIVATE CORPORATIONS

CORPORATION CODE OF THE PHILIPPINES
Sec. 10-22



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Incorporation is the act of creating a corporation.

Sec. 10. *Number and qualifications of incorporators.* – Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation.

Qualifications of incorporators

1. Must be a natural person.
2. Must be of legal age.

Sec. 11. *Corporate term.* – A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission.

Sec. 12. *Minimum capital stock required of stock corporations.* – Stock corporations incorporated under this Code shall not be required to have any minimum authorized capital stock except as otherwise specifically provided for by special law, and subject to the provisions of the following section.

Sec.13. *Amount of capital stock to be subscribed and paid for purpose of incorporation.* – At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and at least twenty-five percent (25%) of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of fixed date or dates, upon call for payment by the board of directors: *Provided, however,* that in no case shall the paid-up capital be less than five thousand (P5,0000) pesos.

Amount to be subscribed and paid

Illustration:

If X, Inc. has authorized capital stock of P100, 000 divided into 1,000 shares with par value of P100.00 per share, it must be shown that at least P25, 000 or 250 shares of the authorized capital stock must be subscribed. Of the total subscription of P25, 000, at least P6, 250.00 or 25% of total subscription must be paid. It is not necessary that each subscriber pay Twenty-five percent (25%) on his subscription. On the other hand, where the authorized capital stock is stated at 2,000 no par value shares, it must be shown that at least 500- no par value share have been subscribed. The basis of computation is on the number of shares.

Securities and Exchange Commission (SEC) may conduct compliance with paid-up capital requirements because it has come to the knowledge of the Commission that some corporation have been organized merely as fronts for some hidden objectives with no real intention of carrying out the purported purposes in their articles of incorporation. If a bigger capital stock is required, the abuse of the privileges of a corporation would be minimized.

Capital stock requirements under the special laws

1. In case of mining and agricultural incorporation, or corporation organized for the purpose of the disposition, exploitation, development or utilization of natural resources of the Philippines, as well as corporation organized for the operations of public utilities, the Constitution provides that at least 60 % of the capital stock of such corporation must be owned by citizens of the Philippines.
2. The Insurance Code provide that “no domestic insurance company shall, if a stock corporation, engage in business in the Philippines unless possess of a paid up capital stock equal to at least two million pesos”. Where the insurance company is to engage in insurance business it must have a “paid-up capital stock of at least five million pesos” to be invested in securities specified by law, which securities are to be deposited with the Insurance Commissioner.
3. The Financing Company Act requires that “at least sixty *per centum* of the capital of financing companies must be owned by citizens of the Philippines and shall have a paid-up capital of not less than five hundred thousand pesos”.
4. Commercial banks are required to have a paid-up capital of 100 million pesos. When a commercial bank having licence to operate an expanded foreign currency deposit system it must have a paid-up capital of at least 150 million pesos and when a commercial bank is authorized to engage in universal banking it must have a paid up capital of at least 500 million pesos.
5. The New Constitution provides that: “The ownership and management of mass media shall be limited to citizens of the Philippines or to corporations or association wholly-owned and manage by such citizen”.
6. Under the Retail Trade Nationalization law “no person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail trade business.
7. Only vessels of domestic ownership are authorized to engage in coastwise shipping in the Philippines. Vessels are considered of domestic ownership when such ownership is vested in some one or more of the following: (1) Citizens of the Philippines; (2) any corporation or any company composed wholly of the citizens of the Philippines; (3) any corporation or company created under the laws of the Philippines, provided at least 75% of the capital stock thereof or of any interested in said capital is wholly owned by the citizens of the Philippines.

Sec.14. Contents of articles of the incorporations. – All corporation organized under this Code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages, duly signed and acknowledged by all of the incorporators containing substantially the following matters, except as otherwise prescribed by this Code or by special laws:

1. The name of the corporation.
2. The specific purpose or purposes for which the corporation is being incorporated. Where the corporation have more than one stated purpose, the article of incorporation shall state which the primary is and which is/are the secondary purpose or purposes: *Provided*, That a

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non-stock corporation may not include a purpose which would change or contradict its nature as such.

3. The place where the principal office of the corporation is to be located, which must be within the Philippines.
 4. The term for which the corporation is to exist.
 5. The names, nationalities and residences of the incorporators.
 6. The number of directors or trustees which shall not be less than five (5) nor more than fifteen (15).
 7. The names, nationalities and residences of the person who shall act as directors or trustees until the first regular directors or trustees are duly elected and qualified accordance with this Code.
 8. If it be a stock corporation, the amount of its authorized capital stock in lawful money of the Philippines, the number of shares which it is divided, and in case the shares are par value shares, the par value of each, the names, nationalities and residences of the original subscriber, and the amount subscribed and paid by each on his subscription, and if some or all of the shares are without par value, such fact must be stated.
 9. If it be a non-stock corporation, the amount of its capital, the names, nationalities and residences of the contributors and the amount, contributed by each.
 10. Such other matters are not inconsistent with law and which the incorporators may deem necessary and convenient.
- The Securities and Exchange Commission shall not accept the articles of incorporation of any stock corporation unless accompanied by a sworn statement of the Treasurer elected by the subscriber showing that at least 25% of the authorized capital stock of the corporation has been subscribed, and at least 25% of the total subscription has been fully paid to him in actual cash and/or in property the fair valuation of which are equal to at least 25% of the said subscription , such paid up capital being not less than five-thousand pesos (P5,000).

Sec.15. *Forms of Articles of Incorporation.* – Unless otherwise prescribed by special law, articles of incorporation of all domestic corporations shall supply substantially the following requirements in the form as provided for by the SEC:

1. The name of the corporation.

Incorporators may choose any name they see fit , however strange, uneuphonious, or unrheterical it may be , provided it is one not identical with or prejudicially similar to a name which has previously been adopted by and is being use by another corporation as its corporate name

Change of Corporate name

The change of the corporate name doesn't mean a new corporation, nor the successor of the original corporation. It is the same corporation with a different name having its character with no respect change. The corporation continues, as before, responsible in its new name for all debts or other liabilities it had previously contracted or incurred.

2. Specific purpose or purposes.

The statement of the purpose has its principal function the affirmative authorization of the management to enter into those contracts and business transactions which may be considered as incidental to its attainment of the purposes. It also imposes implied limitations of their authority by the exclusion of lines of activity which are not covered.

3. Principal office of the Corporation.

The principal office of the corporation must be within the Philippines. It is where the books of the corporation are kept and its officers usually and ordinarily meet for the purpose of managing the affairs and transactions of the business of the corporation.

4. Terms of Existence of the Corporation.

The corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended.

5. Names, Nationalities and residences of incorporators.

The names, nationalities and residences of the incorporators must be stated in the articles of the corporation for the purpose of complying with legal requirement that majority of the incorporators must be residents of the Philippines and complying with the statutory requirement on share ownership and in other instances where Filipino Citizens are required.

6. Number of directors and trustees.

The number of the director and trustees must not be less than five (5) nor more than fifteen (15).

7. Names, nationalities and residences of directors.

A majority of the directors or trustees of all corporation organized under this Code must be a residents citizens of the Philippines.

8. Amount of authorized capital stock.

A stock corporation must state the “amount of its authorized capital stock in lawful money of the Philippines, the number of shares into which it is divided, and in case the shares are par value shares, the par value of each, the names, nationalities, and residences of the original subscribers, and the amount subscribed and paid by each on his subscription, and if some or all the shares are without par value, such fact must be stated”.

9. Non-stock Corporation.

The Corporation Code requires the articles of the non-stock corporation to states: the amount of its capital, the names, nationalities and residences of its contributors and the amount contributed by each. A non-stock corporation may have capital but it has no authorized capital stock.

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10. Inclusion of other matters.

The articles of incorporation “may include other matters that is not inconsistent with law and which the incorporators may deem necessary and convenient”.

Sworn Statement of the Treasurer

The Securities and Exchange Commission shall not accept the articles of incorporation of any stock corporation unless accompanied by a sworn statement of the Treasurer elected by the subscribers showing that at least:

1. 25% of the authorized capital stock has been subscribed.
2. 25% of the subscription has been fully paid in actual cash or property.
3. The paid-up capital being not less than P5,000.00.

SEC Policy

Property as subscription payment – Generally, all forms of tangible properties are acceptable for purposes of payment to subscription provided that the three test of paid-up capital determination are complied with, i.e., ownership, existence and valuable, subject to certain restrictions as may be imposed by law.

SEC adopted the policy that discourages the inclusion of intangible assets as goodwill, lease-hold rights, or timber concession rights, payment of such properties Motor vehicle, real estate properties and navigable vessels in payment of pre-incorporation subscription, increases of capital stock or in exchange for additional issuance of shares are allowed only by the SEC provided that:

1. There has been a proof of valid transfer;
2. All taxes due from the properties has been paid; and
3. Such properties have been reasonably valued.

Papers to accompany articles with SEC

The SEC requires the following papers to be submitted to it with the articles of incorporation:

1. A verification slip executed by the Chief of the Record Section states that the proposed name of the corporation has been verified and found to be distinct/ not similar to the names of already existing corporation or those pending registration.
2. Written undertaking to change corporate name in case there is a person, firm or entity with a prior right to the use of said name or one similar to it.
3. Sworn statement of assets and liabilities, duly executed under oath by the corporate treasurer together with the amount P50.00 to defray publication expenses.
4. Bank certificate of deposit, issued under oath by the bank manager or any authorized bank officer, that there is a deposit of the stated amount representing the paid-up capital of the corporation either in the name of the treasurer in trust for the corporation or in the name of the corporation itself.
5. Written authority to verify bank deposit signed by the corporate treasurer empowering the SEC and /or the Central bank to check and inspect the existence of the bank deposit of the corporate paid-up capital.
6. Taxpayer account number of the incorporators pursuant to Executive order No. 213.
7. Registration Data Sheet, a statement in statistical data form, signed by an authorized representative of the corporation regarding important information about the corporate seal, corporate name, principal office, capital structure, their subscription and TAN (*SEC Bulletin, Oct. 1982*).

Sec. 16. Amendment of Articles of Incorporation. – Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or

trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal rights of dissenting stockholders in accordance with the provision of this Code, or the vote or written assent of two-thirds (2/3) of the members if it be a non-stock corporation.

The original and amended articles altogether shall contain all provision required by law to be set out in the articles of incorporation. Such articles, as amended shall be indicated by underscoring the change or changes made, and the copy thereof duly certified under oath by the corporate secretary and the majority of the directors or trustees stating the fact that said amendments have been duly approved by the required vote of the stockholders or members, shall be submitted to the Securities and Exchange Commission.

The amendment shall take effect upon its approval by the Securities and Exchange Commission or from the date of filing with the said Commission if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation.

Law reserves the rights to modify the charter

The constitution and the Corporation Code reserved the right to amend the charter of a private corporation. The constitution provides that “no franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when public interest so requires.

Amendment of Articles of Incorporation

The articles of incorporation may be amended for legitimate purposes that refer to any matter stated in the articles of incorporation. It may refer to:

1. Change of corporate name;
2. Extension of term of corporation;
3. Change in classes or series of shares;
4. Change in rights, privileges or restrictions in share ownership;
5. Increase or decrease in the number of directors; and
6. Change in purpose or purposes and other necessary changes.

Vote or recent assent required in amendment of the articles of incorporation shall be as follows:

Stock Corporation – A majority vote of the directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock. Under section 81 of the Code, a dissenting stockholder may exercise his appraisal right if he is against the amendment to be made and demand payment of the fair value of his shares.

Non-stock Corporation – A majority vote of board of directors and the vote or written assent of 2/3 of the members.

The amendments to the articles of incorporation shall take effect upon its approval by the Securities and Exchange Commission or from the filing with the said Commission if not acted upon within six months from the date of filing for a cause not attributable to the corporation.

Sec. 17. Grounds when articles of incorporation or amendment may be rejected or disapproved. – The Securities and Exchange Commission may reject the articles of incorporation or disapproved any amendment thereto if the same is not in compliance with

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the requirements of this Code: *Provided*, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such amendment or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein.
2. That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulation.
3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid is false.
4. That the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws of the constitution.

No articles of incorporation or amendment to articles of incorporation of banks, banking and quasi-banking institutions, building and loan association, trust companies, public utilities, educational institution, and other corporations governed by special laws shall be accepted or approved by the Commission unless accompanied by a favourable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law.

Sec. 18. *Corporate name.* – No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or its patently deceptive, confusing or contrary to existing laws. When the change in a corporate name is approved, the commission shall issue an amended certificate of incorporation under the amended name.

Necessity of Corporate name

It is necessary that a corporation should have a name because that is the only way by which the corporation can be identified and distinguished from other corporation, firms or entities.

Change of corporate name

A corporation may change its name by merely amending its charter in the manner prescribed by law. The change of name of the corporation does not result in dissolution. The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person.

Restriction in use in certain names of words

There are special laws prohibiting the use of certain names and/or words. Thus, under the General Banking Act, no person or entity not conducting the business of commercial banking shall use the words "bank", "banking", "banker", "building and loan association", "trust corporation", etc. or words of similar import. The word "National" under Act 2612 may not be use by those doing business as bankers, brokers, or savings institutions. "United Nations" both in its full and abbreviated forms, for commercial and business purposes. There are other names or words which pursuant to other special laws may not be used.

Sec. 19. *Commencement of Corporate Existence.* – A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators,

stockholders/members, and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.

Sec. 20. *De Facto corporation.* – The due incorporation any corporation claiming in good faith to be a corporation under this Code, and its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such corporation may be a party. Such inquiry may be made by the Solicitor General in a *quo warranto* proceeding.

De facto corporation – generally refer to organizations exercising corporate power under colour of a more or less legally constituted corporation.

Elements of De facto corporation

1. Existence of a valid law under which a corporation can be organized.
2. An attempt in good faith to incorporate.
3. Actual exercise of incorporate powers.

Quo warranto – an inquiry made into the right of a corporation to conduct business.

Illustration

Seven competent individual organized a corporation by filing the articles of incorporation and securing a certificate of incorporation with the SEC. However, the addresses of two of the original subscribers were omitted in the articles of incorporation. In suit filed by X, a creditor, against the corporation he alleged that the corporation has no valid existence and sought to hold the seven incorporators (also directors) liable personally on the obligation. X's allegation that the corporation had no valid existence would constitute a collateral (side) attack in a private suit. Only the Solicitor General as government lawyer may raise the question by *quo warranto* proceeding. (Literally by "what right").

Sec. 21. *Corporation by estoppel.* – All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: *Provided, however,* That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.

One who assumes an obligation to an ostensible corporation as such cannot resist performance thereof on the ground that there was in fact no corporation.

Estoppel – It is preclusion, which prevent a man from denying a fact in consequences of his own previous act, allegations, or denial of a contrary tenor. The object of the principle of estoppel is to prevent injustice to an otherwise innocent person.

Sec. 22. *Effect of non-use of corporate charter and continuous in operation of a corporation.* – If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved. However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be ground for the suspension or revocation of its corporate franchise or certificate of incorporation.

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This provision shall not apply if the failure to organize, commence the transactions of its businesses or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission.

Organization

The idea of organization in reference to corporations means executive structure, election of officers, providing for subscription and payment of capital, adoption of by-laws, and other steps necessary to endow the legal entity with capacity to transact business for which it was created.

The Grant of corporate existence, conferred by the issuance of certificate of incorporation, is subject to two subsequent conditions, to wit:

1. The corporation must “formally organize”.
2. The corporation must actually begin the “transaction of its business”.

Failure to comply with either or both of these conditions within two (2) years from the date of its incorporation, its corporate power cease and the corporation must be deemed dissolved.