

LAW ON CORPORATION

TITLE IV POWERS OF CORPORATIONS

CORPORATION CODE OF THE PHILIPPINES
Sec. 36-45



Sec. 36. Corporate powers and capacity. – Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporation name.
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation.
3. To adopt and use a corporate seal.
4. To amend its articles of incorporation in accordance with the provisions of this code.
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code.
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this code; and to admit members to the corporation if it be a non-stock corporation.
7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may be reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
8. To enter into with other corporations merger or consolidation as provided in this code.
9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: *Provided*, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity.
10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees.
11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation.

Powers of a corporation

A corporation has such powers, and such powers only, as are conferred upon it by law or by its agreement. Powers may be conferred upon a corporation:

1. Expressly.
2. Impliedly, because they are incidental to corporate existence.
3. Impliedly, because they are necessary or proper in order to exercise the powers expressly conferred.

General express powers

Section 36 of the Corporation Code enumerates the general and express powers of corporations.

Other corporate powers

The Corporation Code enumerates other express powers of corporations as follows:

1. Power to extend or shorten corporate term (*Sec. 37*).

2. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness (*Sec. 38*).
3. Power to deny pre-emptive right (*Sec. 39*).
4. Power to sell or dispose assets (*Sec. 40*).
5. Power to acquire own shares (*Sec. 41*).
6. Power to invest corporate funds in another corporation or business or for any other purpose (*Sec. 42*).
7. Power to declare dividends (*Sec. 43*).
8. Power to enter into management contracts (*Sec. 44*).

Sec. 37. Power to extend or shorten corporate term. – A private corporation may extend or shorten its terms as stated in the articles of incorporation when improved by a majority vote of the board of directors or trustees and ratified at a meeting by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members in case of non-stock corporations. Written notice of proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: *Provided*, That in case of extension of corporate term, any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

Extension of corporate term limited to 50 years

The corporate term may be extended for periods not exceeding 50 years in any single instance as provided by section 11 of the Corporation Code. No extension can be made earlier than 5 years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as determined by the SEC.

Corporation cannot extend expired term.

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.

Sec. 38. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. – No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholders' meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of and bonded indebtedness. Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholders' meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

A certificate in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and secretary of the stockholders' meeting, setting forth:

1. That the requirements of this section have been complied with.
2. The amount of the increase or diminution of the capital stock.
3. If an increase of the capital stock, the amount of capital stock or number of shares of no-par stock thereof actually subscribed, the names, nationalities and residences of the persons

subscribing, the amount of capital stock or number of shares of no-par stock subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital stock or number of shares of no-par stock allotted to each stockholder if such increase is for the purpose of making effective stock dividend therefor authorized.

4. Any bonded indebtedness to be incurred, created, or increased.

5. The actual indebtedness of the corporation on the day of the meeting.

6. The amount of the stock represented at the meeting.

7. The vote authorizing the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.

Any increase or decrease in the capital stock or the incurring, creating or increasing of any bonded indebtedness shall require prior approval of the Securities and Exchange Commission.

One of the duplicate certificate shall be kept on file in the office of the corporation and the other shall be filed with the Securities and Exchange Commission and attached to the original articles of incorporation. From and after approval by the Securities and Exchange Commission and the issuance by the Commission of its certificate of filing, the capital stock shall stand increased or decreased and the incurring, creating or increasing of any bonded indebtedness authorized, as the certificate of filing may declare: *Provided*, That the Securities and Exchange Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by the sworn statement of the Treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty-five percent (25%) of such increased capital stock has been subscribed and that at least twenty-five percent (25%) of the amount subscribed has been paid either in actual cash to the corporation or that there has been transferred to the corporation property the valuation of which is equal to twenty-five percent (25%) of the subscription: *Provided, further*, That no decrease of the capital stock shall be approved by the Commission, if its effect shall prejudice the rise of corporate creditors.

Non-stock corporations may incur or create bonded indebtedness, or increase the same, with the approval by a majority vote of the board of trustees and of at least two-thirds (2/3) of the members in a meeting duly called for the purpose.

Bonds issued by a corporation shall be registered with the Securities and Exchange Commission, which shall have the authority to determine the sufficiency of the terms thereof.

Bonds – Bonds are in form and effect similar to promissory notes, secured by mortgage or trust deed upon specified property of the debtor corporation.

Properties to a bond

Every bond issue usually involve three parties: (1) the debtor – corporation; (2) the creditor – bondholder; and (3) the trustee.

Bonds classified

Bonds are classified into: coupon or registered bonds, mortgage bonds, debentures, convertible bonds, participating bonds, collateral trust bands, and guaranteed bonds.

Coupon or registered bonds

Coupon bonds are payable to bearer or to the order of a person, and have attached to them coupon notes for each instalment of interest as it falls due.

Mortgage bond

A mortgage bond is one secured by a mortgage on corporate property.

Debenture bonds

Debenture bonds are not secured by specific corporate property but rather solely on the issuer's ability to pay the indebtedness.

Convertible bonds

Convertible bonds are those which includes a provision which permits the holder of the bond to convert the bond into a specified number of shares of stock of the corporation at his option within a period fixed therein.

Participating bonds

The owners or holders of participating bonds entitle them to participate in earnings of the corporation above the specified rates of interest fixed.

Collateral trust bonds

Collateral trust bonds are secured by a lien on securities deposited with a named trustee constituting the collateral.

Guaranteed bonds

Guaranteed bonds are guaranteed or secured by another corporation other than the issuing corporation.

Sec. 39. Power to deny pre-emptive right. – All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto: *Provided*, That such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.

Pre-emptive right – It means literally to establish a prior right. A stockholder's pre-emptive right is his right to subscribe to new shares of stock in proportion to his existing stockholdings, before the new shares are issued to others.

Sec. 40. Sale or other disposition of assets. – Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock; or in case of non-stock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee

in the post office with the postage prepaid, or served personally: *Provided*, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

After such authorization or approval by the stockholders or members, the board of directors or trustees may, nevertheless, in its discretion, abandon such sale, lease, exchange, mortgage, pledge or other disposition of property and assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by the stockholders or members.

Nothing in this section is intended to restrict the power of any corporation, without the authorization by the stockholders or members, to sell, lease, exchange, mortgage, pledge or otherwise dispose of any of its property and assets if the same is necessary in the usual and regular course of business of said corporation or if the proceeds of the sale or other disposition of such property and assets be appropriated for the conduct of its remaining business.

In non-stock corporations, where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section.

Sec. 41. Power to acquire own shares. – A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: *Provided*, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired:

1. To eliminate fractional shares arising out of stock dividends.
2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale.
3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code.

Sec. 42. Power to invest corporate funds in another corporation or business or for any other purpose. – Subject to the provisions of this code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two-thirds (2/3) of the members in the case of non-stock corporations, at a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally; *Provided*, That any dissenting stockholder shall have appraisal right as provided in this Code: *Provided, however*, That were the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.

Sec. 43. Power to declare dividends. – The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them: *Provided*, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid: *Provided, further*, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purposes.

Stock corporation are prohibited from retaining surplus profits in excess of one hundred percent (100%) of their paid-in capital stock, except: (1) when justified approved by the Board of Directors; or (2) when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its/his consent, and such consent has not yet been secured; or (3) when it can be clearly shown that such retention is necessary under special circumstance obtaining in the corporation, such as when there is a need for special reserve for probable contingencies.

Concept of dividends

A dividend is a corporate profit set aside, declared and ordered by the directors to be paid to the stockholders on demand or at a fixed time.

Dividends distinguished from profits

“Dividends” means the profits or that portion of the profits of the corporation which its board of directors, by proper resolution, sets apart for rotatable distribution among the stockholders. It is distinguished from “profits” for the profits in the hands of a corporation do not become dividends until they have been set apart, or at least declared, as dividends and transferred to the separate property of the individual stockholders.

Surplus profits – Surplus or net profits of a corporation is the difference between the total present value of its assets, after deducting losses and liabilities, and the amount of its capital stock. (*11 Fletcher, Sec. 5335*)

Basis of dividend declaration

The board of directors of a stock corporation may declare dividends on the basis of outstanding stock held by the stockholders. The basis therefore is the stockholder’s total subscription and not on the amount paid by him on the subscription. This is for the reason that his entire subscription represents his holding in the corporation for which he pays interests on any unpaid portion. (*SEC Opinion, Dec. 17, 1973*)

Classes of dividends

Dividends which a corporation may declare and distribute to its stockholders may be classified into: cash dividend, stock dividend, property dividend, scrip dividend, and liquidating dividend.

Cash dividend

Cash dividend is one payable in money.

Stock dividend

Stock dividend is a dividend payable in stock instead of cash or property.

Property dividend

The directors in their discretion may authorize distributions in bonds or in property, such as warehouse receipts for whiskey or shares of stock of a subsidiary corporation.

Scrip dividend

Scrip dividend is a writing or a certificate issued to a stockholder entitling him to the payment of money or the like at some future time inasmuch as the company, at the time the scrip dividends are declared, has profits not in cash.

Liquidating dividend

Liquidating dividend involves the distribution of assets by a corporation to its stockholders upon dissolution.

Sec. 44. Power to enter into a management contract. – No corporation shall conclude a management contract with another corporation unless such contract shall have been approved by the Board of Directors and by stockholders owning at least the majority of the outstanding capital stock, or by at least majority of the members in the case of a non-stock corporation, of both the managing and the managed corporation, at a meeting duly called for the purpose: *Provided*, That (a) where a stockholder or stockholders representing the same interest of both the managing and the managed corporations own and control more than one-third (1/3) of the total outstanding capital stock entitled to vote of the managing corporation; or (b) where the majority of the members of the Board of Directors of the managing corporation also constitute a majority of the members of the Board of Directors of the managed corporation, then the management contract must be approved by the stockholders of the managed corporation owning of at least two-thirds (2/3) of the total outstanding capital stock entitled to vote, or by at least two-thirds (2/3) of the members in case of a non-stock corporation. No management contract shall be entered into for a period longer than five years for any one term.

The provisions of the next preceding paragraph shall apply to any contract whereby a corporation undertakes to manage or operate all or substantially all of the business of the other corporation, whether such contracts are called service contracts, operating agreements or otherwise: *Provided, however*, That such service contracts or operating agreements which relate to the exploration, development, exploitation or utilization of natural resources may be entered into for such periods as may be provided by the pertinent laws or regulations.

Concept of management contract

A management contract is an agreement under which the board of directors of a corporation delegates the powers of management to another person or corporation for a period of time provided for in the agreement.

Effects of Management contracts

Contracts by which the board of directors delegates the power of supervision and management to another person or corporation for a specified period are invalid if they involve a *surrender* by the board of its power and duty of supervision and control.

Management prerogatives

An owner of a business enterprise is given considerable margin in managing his business because it is deemed important to society as a whole that he should succeed.

Sec. 45. Ultra vires acts of corporations. – No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

Intra vires – The acts of a corporation within its express or implied powers.

Ultra vires – The acts of a corporation outside its express or implied powers.

It denotes some act or transaction on the part of a corporation which, although not unlawful or contrary to public policy of executed by an individual, is yet beyond the legitimate powers of the corporation as they are defined by the statute under which it is formed, or which are applicable to it, or by its charter or incorporation papers.

Admittedly, if the contract is executed on both sides neither party can maintain an action to set aside the transaction or to recover what has been parted with. The courts will not interfere in such a case to deprive either the corporation or the other part of money or property acquired under the contract. On the other hand, the great weight of authority is to consider executor contracts as unenforceable.

Ultra vires contracts accepted doctrines

1. If the contract is fully executed on both sides, the contract is effective and the courts will not interfere to deprive either part of what has been acquired under it.
2. If the contract is executor on both sides, as a rule either party can maintain an action for its non-performance.
3. Where the contract is executor on side only, and has been fully performed on the other, the courts differ as whether an action will lie on the contract against the party who has received benefits of performance under it. Majority of the courts hold that the party who has received benefits from the performance is stopped" to set up that the contract us ultra vires to defeat an action on the contract. There is, however, a rule which is widely recognized by the courts that ultra vires. "Should not be allowed to prevail, when involved for or against the corporation, where it will defeat the ends of justice or work a legal wrong.

Acts which are **ultra vires are voidable but may be ratified**. In order that such ultra vires may be ratified it must be shown that

1. The act was consummated or executed.
2. No creditors are prejudiced or they have given their consent thereto.
3. The right of the public or the state are not involved.
4. All of the stockholders consent thereto.

A corporation, like an individual, **may ratify and thereby render binding upon it the originally authorized acts of its officers or other agents**. This is true because the questioned investment is neither contrary to law, morals, public order or public policy. It is a corporate transaction or contract which is within the corporate powers but which is defective from a purported failure to observe in its execution the requirement of the law that the investment must be authorized by the affirmative vote of the stockholders holding $\frac{2}{3}$ of the voting power.