

LAW ON CORPORATION

TITLE V BY LAWS

CORPORATION CODE OF THE PHILIPPINES
Sec. 46-48



Sec. 46. by-laws Adoption. – Every corporation formed under this code, must, within one month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a new code of by-laws for its government not inconsistent with this code. For the adoption of by-laws by the corporation the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the outstanding capital stock, or of at least a majority of the members, in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours; and a copy thereof, duly certified to by a majority of the directors or trustees and countersigned by the secretary of the corporation, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation. Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with the Code. The Securities and Exchange Commission shall not accept for filing the by-laws or any amendment thereto of any bank, banking institution, building and loan association, trust company, insurance company, public utility, educational institution or other special corporations governed by special laws, unless accompanied by a certificate of the appropriate government agency to the effect that such by-laws or amendments are in accordance with law.

Necessity of by-laws

The corporation must adopt the code of by-laws for its internal government.

Corporation has inherent power to adopt by-laws

One of its legal incidents and is usually expressly granted by law of the charter subject to such limitations as may be contained in the statute or the charter, subject to such limitations as may be contained in the statute or charter, and the general requirements of validity. If a corporation fails to file its by-laws within the period required by law its certificate of incorporation may be suspended or even revoked.

Section 46 allows **the adoption and filing of the by-laws before incorporation** provided the same is approved by all the incorporators and submitted to the Securities and Exchange Commission together with the articles of incorporation.

By-laws cannot provide for unreasonable restriction

Restriction upon the traffic in stock must have their source in legislative enactment, as the corporation itself cannot create such impediments. By-laws are created for protection and not for restriction.

Elements of valid by-laws

1. Must not be inconsistent with the general law and the Corporation Code.
2. Must not be inconsistent with public policy.
3. Must be general in application and not directed against particular individuals.
4. Must not be inconsistent with the articles of incorporation.
5. Must not impair obligations and contracts.
6. Must not be in restraint of trade.
7. Must not restrict religious freedom.

By-laws validity

As a rule, the by-laws of a corporation are valid if they are reasonable and calculated to carry into effect the objects of the corporation, and are not contradictory to the general policy of the laws of the land.

Binding effect of by-laws

By-laws when valid, substantially the same force and effect as laws of the corporation as have the provisions of its charter in so far as the corporation, the persons within it is concerned. They are in effect written into the charter and in this sense; they become part of the fundamental law of the corporation. And the corporation, and its directors and officers are bound by and must comply with them. Strangers, however, are not bound to know by-laws which are merely provisions for the government of a corporation and notice of them will not be presumed.

Sec 47. Contents of by-laws. – Subject to the provisions of the Constitution, this Code, other special laws, and the articles of incorporation, a private corporation may provide in its by-laws for:

1. The time, place and manner of calling and conducting regular or special meetings of the directors or trustees.
2. The time and manner of calling and conducting regular or special meetings of the stockholders or members.
3. The required quorum in meetings of stockholders or members and the manner of voting therein.
4. The form for proxies of stockholders and members and the manner of voting them.
5. The qualifications, duties and compensation of directors or trustees, officer and employees.
6. The time for holding the annual election of directors or trustees and the mode or manner of giving notice thereof.
7. The manner of election or appointment and the term of office of all offices other than directors or trustees.
8. The penalties for violation of the by-laws.
9. In the case of stock corporations, the manner of issuing stock certificates.
10. Such other matter as may be necessary for the proper or convenient transaction of its corporate business and affairs.

The enumerations of contents of by-laws are not exclusive and neither does the provision require all the matters mentioned to appear in the by-laws.

The By-laws must not violate the Constitution, the Corporation Code, other special laws and the articles of incorporation.

A corporation which has **failed to file its by-laws within the prescribed period** does not *ipso facto* lost its powers as such.

Sec. 48. Amendments to by-laws. – The board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of the members of a non-stock corporation, at a regular or special meeting duly called for the purpose, may amend or repeal any by-laws or adopt new by-laws. The owners of 2/3 of the outstanding capital stock or 2/3 of the members in a non-stock corporation may delegate to the board of directors or trustees the power to amend or repeal any by-laws or adopt new by-laws: provided, that any power delegated to the board of directors or trustees shall be considered as revoked whenever stockholders owning or representing a majority of the outstanding capital stock or a majority of the members in non-stock corporations, shall so vote at a regular or special meeting.

Whenever any amendment or new by-laws are adopted, such amendment or new by-laws shall be attached to the original by-laws in the office of the corporation, and a copy thereof, duly certified under oath by the corporate secretary and a majority of the directors or trustees, shall be filed with the Securities and Exchange Commission, the same to be attached to the original articles of incorporation and original by-laws.

Amendment or new by-laws shall only be effective upon the issuance by the SEC of a certification that the same are not inconsistent with this code.

The authority to make or adopt the original by-laws of a corporation cannot be given to the board of directors or trustees. The stockholders of a stock corporation or the members of the non-stock corporation adopt or make the original by-laws.

An amendment of by-law renders stockholder ineligible as director

It is well-settled xxx that corporations have the power to make by-laws declaring a person employed in the service of a rival company to be **ineligible for the corporation's Board of Directors**. An amendment which renders ineligible, or if elected, subjects to removal, a director if he be also a director in a corporation whose business is in competition with or is antagonistic to the other corporation is valid. This is based upon the principle that where the director is so employed in the service of a rival company, he cannot serve both, but must betray one or the other. Such an amendment advances the benefit of the corporation and is good.

Meetings Necessity

A majority of the stockholders or members can bind the corporation only at a meeting regularly held and conducted. To constitute a legal meeting, so as to render the acts and vote of the majority binding the meeting must be regularly called by one having authority. In the absence of provision to the contrary such authority exists in the directors or managing agents.