

**THE
CORPORATION CODE
OF THE
PHILIPPINES**
[Batas Pambansa Blg. 68]

**TITLE IV
POWERS OF CORPORATIONS**

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 corporate 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 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 reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
8. To enter into merger or consolidation with other corporations 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; and
11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

Sec. 37. Power to extend or shorten corporate term. - A private corporation may extend or shorten its term as stated in the articles of incorporation when approved 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 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 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. (n)

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 stockholder's 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 any 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 stockholder's 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 the 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 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 stock-holder 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 stock represented at the meeting; and
- (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 certificates 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 (25%) percent of such increased capital stock has been subscribed and that at least twenty-five (25%) percent 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 (25%) percent of the

subscription: Provided, further, That no decrease of the capital stock shall be approved by the Commission if its effect shall prejudice the rights 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. (17a)

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.

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 stockholder's or member's 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 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. (28 1/2a)

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; and
3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code. (n)

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 stockholder's or member's 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 where 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. (17 1/2a)

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 purpose. (16a)

Stock corporations are prohibited from retaining surplus profits in excess of one hundred (100%) percent of their paid-in capital stock, except: (1) when

justified by definite corporate expansion projects or programs 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 circumstances obtaining in the corporation, such as when there is need for special reserve for probable contingencies. (n)

Sec. 44. Power to enter into 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 a 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 (1) where a stockholder or stockholders representing the same interest of both the managing and the managed corporations own or control more than one-third (1/3) of the total outstanding capital stock entitled to vote of the managing corporation; or (2) where a 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 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 the 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 another 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. (n)

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. (n)