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**The New
CORPORATION CODE
OF THE PHILIPPINES
and the
REVISED SECURITIES ACT**

Edited & Compiled by:

CBSI EDITORIAL STAFF

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

TITLE I.—GENERAL PROVISIONS
DEFINITIONS AND CLASSIFICATIONS

SECTION 1. *Title of the Code.*—This Code shall be known as "The Corporation Code of the Philippines." (n)

Explanatory Note.—This bill is intended to supplant the present Corporation Law (Act No. 1459), as amended, and to be hereafter known as the "Corporation Code of the Philippines."

The proposed Code seeks to establish a new concept of business corporations so that they are not merely entities established for private gain but effective partners of the National Government in spreading the benefits of capitalism for the social and economic development of the nation.

Significant changes have been introduced in the proposed Code in order to update the provisions of our present Corporation Law. Among the significant changes in this Code is the grant of ample powers to the Securities and Exchange Commission to enable it to exercise adequate supervision over the operations and activities of private corporations. The other innovative provisions constitute definite improvements to make the proposed Code more responsive to the plans and policies of the Government. (*Cabinet Bill No. 3.*)

1987 Constitutional Provisions.—This is intended to protect the investing public as it insures uniformity of standards not only of private corporations but also of government-owned or controlled corporations especially on their capitalization. Special charters for these corporations must be established in the interest of the common good and subject to the test of economic viability. (*Art. XII, Sec. 16.*)

SEC. 2. *Corporation defined.*—A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence. (2)

SEC. 3. *Classes of corporations.*—Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into

shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations. (3a)

SEC. 4. *Corporations created by special laws or charters.*—Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of this Code, insofar as they are applicable. (n)

SEC. 5. *Corporations and incorporators, stockholders and members.*—Corporators are those who compose a corporation, whether as stockholders or as members. Incorporators are those stockholders or members mentioned in the articles of incorporation as originally forming and composing the corporation and who are signatories thereof.

Corporators in a stock corporation are called stockholders or shareholders. Corporators in a non-stock corporation are called members. (4a)

SEC. 6. *Classification of shares.*—The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: *Provided*, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: *Provided, further*, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation: *Provided, however*, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code: *Provided*, That preferred shares of stock may be issued only with a stated par value. The Board of Directors, where authorized in the articles of incorporation, may fix the terms

and conditions of preferred shares of stock or any series thereof: *Provided*, That such terms and conditions shall be effective upon filing of a certificate thereof with the Securities and Exchange Commission.

Shares of capital stock issued without par value shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: *Provided*, That shares without par value may not be issued for a consideration less than the value of five (P5.00) pesos per share: *Provided, further*, That the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided by the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and
8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights. (5a)

SEC. 7. *Founder's shares.*—Founder's shares classified as such in the articles of incorporation may be given certain

rights and privileges not enjoyed by the owners of other stocks, provided that where the exclusive right to vote and be voted for in the election of directors is granted, it must be for a limited period not to exceed five (5) years subject to the approval of the Securities and Exchange Commission. The five (5) year period shall commence from the date of the aforesaid approval by the Securities and Exchange Commission.

SEC. 8. *Redeemable shares.*—Redeemable shares may be issued by the corporation when expressly so provided in the articles of incorporation. They may be purchased or taken up by the corporation upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation, and upon such other terms and conditions as may be stated in the articles of incorporation, which terms and conditions must also be stated in the certificate of stock representing said shares. (n)

SEC. 9. *Treasury shares.*—Treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means. Such shares may again be disposed of for a reasonable price fixed by the board of directors. (n)

TITLE II—INCORPORATION AND ORGANIZATION OF PRIVATE CORPORATIONS

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. (6a)

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 in-

corporation, 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. (6)

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. (n)

SEC. 13. *Amount of capital stock to be subscribed and paid for purposes of incorporation.*—At least twenty five (25%) percent 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 (25%) percent 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 a 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 (P5,000.00) pesos. (n)

SEC. 14. *Contents of articles of incorporation.*—All corporations 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 law:

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

* See Rules Governing Redeemable and Treasury Shares, post.

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 persons who shall act as directors or trustees until the first regular directors or trustees are duly elected and qualified in 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 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 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; and

10. Such other matters as 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 subscribers showing that at least twenty-five (25%) percent of the authorized capital stock of the corporation has been subscribed, and at least twenty-five (25%) percent of the total subscription has been fully paid to him in actual cash and/or in property the fair valuation of which is equal to at least twenty-five (25%) percent of the said subscription, such paid-up capital being not less than five thousand (P5,000.00) pesos. (6a, 9a)

SEC. 15. *Form of articles of incorporation.*—Unless otherwise prescribed by special law, articles of incorporation of all domestic corporations shall comply substantially with the following form:

ARTICLES OF INCORPORATION
OF

(Name of Corporation)

KNOW ALL MEN BY THESE PRESENTS:

The undersigned incorporators, all of legal age and a majority of whom are residents of the Philippines, have this day voluntarily agreed to form a (stock) (non-stock) corporation under the laws of the Republic of the Philippines:

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be "_____, INC. or CORPORATION";

SECOND: That the purpose or purposes for which such corporation is incorporated are: (If there is more than one purpose, indicate primary and secondary purposes).

THIRD: That the principal office of the corporation is located in the City/Municipality of _____, Province of _____, Philippines;

FOURTH: That the term for which the said corporation is to exist is _____ years from and after the date of issuance of the certificate of incorporation;

FIFTH: That the names, nationalities and residences of the incorporators of the corporation are as follows:

Name	Nationality	Residence
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SIXTH: That the number of directors or trustees of the corporation shall be _____; and the names, nationalities and residences of the first directors or trustees of the corporation are as follows:

Name	Nationality	Residence
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SEVENTH: That the authorized capital stock of the corporation is _____ (P _____) PESOS in lawful money of the Philippines, divided into _____ shares with the par value of _____ (P _____) pesos per share.

(In case all the shares are without par value):

That the capital stock of the corporation is _____ shares without par value. (In case some shares have par value and some are without par value): That the capital stock of said corporation consists of _____ shares of which _____ shares are of the par value of _____ (P _____) pesos each, and of which _____ shares are without par value.

EIGHTH: That at least twenty-five (25%) percent of the authorized capital stock above stated has been subscribed as follows:

Name of Subscriber	Nationality	No. of Shares Subscribed	Amount Subscribed
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NINTH: That the above-named subscribers have paid at least twenty-five (25%) percent of the total subscription as follows:

Name of Subscriber	Amount Subscribed	Total Paid-in
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Modify Nos. 8 and 9 if shares are with no par value. In case the corporation is non-stock, Nos. 7, 8 and 9 of the above articles may be modified accordingly, and it is sufficient if the articles stated the amount of capital or money contributed or donated by specified persons, stating the names, nationalities and residences of the contributors or donors and the respective amount given by each).

TENTH: That _____ has been elected by the subscribers as Treasurer of the Corporation to act as such until his successor is duly elected and qualified in accordance with the by-laws, and that as such Treasurer, he has been authorized to receive for and in name and for the benefit of the corporation, all subscriptions (or fees) or contributions or donations paid or given by the subscribers or members.

ELEVENTH: (Corporation which will engage in any business or activity reserved for Filipino citizens shall provide the following):

"No transfer of stock or interest which will reduce the ownership of Filipino citizens to less than the required percentage of the capital stock as provided by existing laws shall be allowed or permitted to be recorded in the proper books of the corporation and this restriction shall be indicated in all the stock certificates issued by the corporation."

IN WITNESS WHEREOF, we have hereunto signed these Articles of Incorporation, this _____ day of _____, 19____, in the City/Municipality of _____, Province of _____, Republic of the Philippines.

(Names and signatures of the incorporators)

SIGNED IN THE PRESENCE OF:

(Notarial Acknowledgment)

TREASURER'S AFFIDAVIT

REPUBLIC OF THE PHILIPPINES }
 CITY/MUNICIPALITY OF _____ } S.S.
 PROVINCE OF _____ }

I, _____, being duly sworn, depose and say:

That I have been elected by the subscribers of the corporation as Treasurer thereof, to act as such until my successor has been duly elected and qualified in accordance with the by-laws of the corporation, and that as such Treasurer, I hereby certify under oath 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 paid, and received by me, in cash or property, in the amount of not less than P5,000.00, in accordance with the Corporation Code.

 (Signature of Treasurer)

SUBSCRIBED AND SWORN to before me, a Notary Public, for and in the City/Municipality of _____, Province of _____ this _____ day of _____, 19____; by _____ with Res. Cert. No. _____ issued at _____ on _____, 19____.

NOTARY PUBLIC
 My commission expires on _____, 19____

Doc. No. _____;
 Page No. _____;
 Book No. _____;
 Series of 19____ (7a)

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 ar-

ticles 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 right of dissenting stockholders in accordance with the provisions 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 together shall contain all provisions 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 a copy thereof duly certified under oath by the corporate secretary and a majority of the directors or trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the stockholders or members, shall be submitted to the Securities and Exchange Commission.

The amendments 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.

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 disapprove any amendment thereto if the same is not in compliance with 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 rejection 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 regulations;

(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 or the Constitution.

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

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 is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name. (n)

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. (n)

SEC. 20. *De facto corporations.*—The due incorporation of 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. (n)

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. (n)

SEC. 22. *Effects of non-use of corporate charter and continuous inoperation 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 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 a ground for the suspension or revocation of its corporate franchise or certificate of incorporation. (19a)

This provision shall not apply if the failure to organize, commence the transaction of its business 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.

TITLE III—BOARD OF DIRECTORS/ TRUSTEES/OFFICERS

SEC. 23. *The Board of Directors or Trustees.*—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. (28a)

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corpo-

rations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines. (30a)

SEC. 24. *Election of directors or trustees.*—At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: *Provided*, That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected: *Provided, however*, That no delinquent stock shall be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of corporations which have no capital stock may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. Candidates receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not *sine die* or indefinitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. (31a)

SEC. 25. *Corporate officers, quorum.*—Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other

officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings. (33a)

SEC. 26. *Report of election of directors, trustees and officers.*—Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees and officers elected. Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission. (n)

SEC. 27. *Disqualification of directors, trustees or officers.*—No person convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years, or a violation of this Code, committed within five (5) years prior to the date of his election or appointment, shall qualify as a director, trustee or officer of any corporation. (n)

SEC. 28. *Removal of directors or trustees.*—Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock or if the corporation be a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote: *Provided*, That such removal shall

take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees, or any of them, must be called by the secretary on order of the president or on the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or, if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. Should the secretary fail or refuse to call the special meeting upon such demand or fail or refuse to give the notice, or if there is no secretary, the call for the meeting may be addressed directly to the stockholders or members by any stockholder or member of the corporation signing the demand. Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed in this Code. The vacancy resulting from removal pursuant to this section may be filled by election at the same meeting without further notice, or at any regular or at any special meeting called for the purpose, after giving notice as prescribed in this Code. Removal may be with or without cause: *Provided*, That removal without cause may not be used to deprive minority stockholders or members of the right of representation to which they may be entitled under Section 24 of this Code. (34a)

SEC. 29. *Vacancies in the office of director or trustee.*—Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a *quorum*; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office.

Any directorship or trusteeship to be filled by reason of an increase in the number of directors or trustees shall be filled only by an election at a regular or at a special meeting of stockholders or members duly called for the purpose, or in the same meeting authorizing the increase of directors or trustees if so stated in the

notice of the meeting. (n)

SEC. 30. *Compensation of directors.*—In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems: *Provided, however*, That any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year. (n)

SEC. 31. *Liability of directors, trustees or officers.*—Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (n)

SEC. 32. *Dealings of directors, trustees or officers with the corporation.*—A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the following conditions are present:

1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;
2. That the vote of such director or trustee was not necessary for the approval of the contract;
3. That the contract is fair and reasonable under the circumstances; and
4. That in the case of an officer, the contract with the

officer has been previously authorized by the Board of Directors.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of two-thirds (2/3) of the members in a meeting called for the purpose: *Provided*, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: *Provided, however*, That the contract is fair and reasonable under the circumstances. (n)

SEC. 33. *Contracts between corporations with interlocking directors.*—Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone: *Provided*, That if the interest of the interlocking director in one corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section insofar as the latter corporation or corporations are concerned.

Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors. (n)

SEC. 34. *Disloyalty of a director.*—Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders, owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (n)

SEC. 35. *Executive committee.*—The by-laws of a corporation may create an executive committee, composed of not less than three members of the board to be appointed by the board. Said committee may act, by majority vote of all its members, on such specific matters within the competence of the board, as may be delegated to it in the by-laws or on a majority vote of the board, except with respect to: (1) approval of any action for which shareholders' approval is also required; (2) the filling of vacancies in the board; (3) the amendment or repeal of by-laws or the

adoption of new by-laws; (4) the amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable; and (5) a distribution of cash dividends to the shareholders.

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 corporation, 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 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 its

articles of incorporation. (13a)

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 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 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 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 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 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 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 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 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 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 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 a 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 (a) 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 (b) 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 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)

TITLE V—BY-LAWS

SEC. 46. *Adoption of by-laws.*—Every corporation formed under this Code, must, within one (1) month after receipt of

official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a 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 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 this 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. (20a)

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 of proxies of stockholders and members and the manner of voting them;

5. The qualifications, duties and compensation of directors or trustee, officers 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 officers 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; and

10. Such other matters as may be necessary for the proper or convenient transaction of its corporate business and affairs. (21a)

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 two-thirds (2/3) of the outstanding capital stock or two-thirds (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 to amend or repeal any by-laws or adopt new by-laws 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.

The amended or new by-laws shall only be effective upon the issuance by the Securities and Exchange Commission of a certification that the same are not inconsistent with this Code. (22a and 23a)

TITLE VI—MEETINGS

SEC. 49. *Kinds of meetings.*—Meetings of directors, trustees, stockholders, or members may be regular or special. (n)

SEC. 50. *Regular and special meetings of stockholders or members.*—Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: *Provided*, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws.

Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: *Provided, however*, That at least one (1) week written notice shall be sent to all stockholders or members, unless otherwise provided in the by-laws.

Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member. (24a)

Whenever, for any cause, there is no person authorized to call a meeting, the Securities and Exchange Commission, upon petition of a stockholder or member, and on the showing of good cause therefor, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen one of their member as presiding officer. (24, 26)

SEC. 51. *Place and time of meetings of stockholders or members.*—Stockholders' or members' meetings, whether regular or special, shall be held in the city or municipality where the principal office of the corporation is located, and if practicable in the principal office of the corporation: *Provided*, That Metro Manila shall, for the purposes of this section, be considered a city or municipality.

Notice of meetings shall be in writing, and the time and place thereof stated therein. (24a)

All proceedings had and any business transacted at any meeting of the stockholders or members, if within the powers or authority of the corporation, shall be valid even if the meeting be

improperly held or called, provided all the stockholders or members of the corporation are present or duly represented at the meeting. (24 and 25)

SEC. 52. *Quorum in meetings.*—Unless otherwise provided for in this Code or in the by-laws, a *quorum* shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in case of non-stock corporations. (n)

SEC. 53. *Regular and special meetings of directors or trustees.*—Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise. -

Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the by-laws.

Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least one (1) day prior to the scheduled meeting, unless otherwise provided by the by-laws. A director or trustee may waive this requirement, either expressly or impliedly. (n)

SEC. 54. *Who shall preside at meetings.*—The president shall preside at all meetings of the directors or trustees as well as of the stockholders or members, unless the by-laws provide otherwise. (n)

SEC. 55. *Right to vote of pledgors, mortgagors, and administrators.*—In case of pledged or mortgaged shares in stock corporations, the pledgor or mortgagor shall have the right to attend and vote at meetings of stockholders, unless the pledgee or mortgagee is expressly given such right in writing which is recorded on the appropriate corporate books by the pledgor or mortgagor. (n)

Executors, administrators, receivers, and other legal representatives duly appointed by the court may attend and vote in behalf of the stockholders or members without need of any written proxy. (27a)

SEC. 56. *Voting in case of joint ownership of stock.*—In case of shares of stock owned jointly by two or more persons, in order to

vote the same, the consent of all the co-owners shall be necessary, unless there is a written proxy, signed by all the co-owners, authorizing one or some of them or any other person to vote such share or shares: *Provided*, That when the shares are owned in an "and/or" capacity by the holders thereof, any one of the joint owners can vote said shares or appoint a proxy therefor. (n)

SEC. 57. *Voting right for treasury shares.*—Treasury shares shall have no voting right as long as such stock remains in the Treasury. (n)

SEC. 58. *Proxies.*—Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall be in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. (n)

PROXY FORM (SAMPLE)

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, a stockholder of the _____ do hereby substitute, name and appoint _____ as my proxy to represent me and vote upon the stock owned by me and standing in my name on the books of said corporation, at the Annual Meeting of the Stockholders and Election of Directors on _____ (specific date) or any adjournments, continuations or postponements thereof which may be held or called by the board of directors or by the duly authorized representative of the said corporation for any matter or business that may be brought up therein; and hereby giving and granting unto said proxy all the powers which the undersigned would possess if personally present.

This specific proxy, and only this proxy, and the power and authority herein granted which shall continue to exist until the same is expressly revoked by me in writing, expressly stating in a separate document that I hereby revoke the other proxies I have issued. Any other proxy or proxies issued by me on or before, or after this date is invalid and will have no effect whatsoever as this is the only proxy I shall consider as validly issued by me and other proxies other than this proxy are hereby revoked and declared null and void.

Should I personally attend, this proxy shall be deemed of no force and effect.

Given this _____ day of _____ at _____, Philippines

Printed name and signature of stockholder

SEC. 59. *Voting trusts.*—One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for a period not exceeding five (5) years at any time: *Provided*, That in the case of a voting trust specifically required as a condition in a loan agreement, said voting trust may be for a period exceeding five (5) years but shall automatically expire upon full payment of the loan. A voting trust agreement must be in writing and notarized, and shall specify the terms and conditions thereof. A certified copy of such agreement shall be filed with the corporation and with the Securities and Exchange Commission; otherwise said agreement is ineffective and unenforceable. The certificate or certificates of stock covered by the voting trust agreement shall be cancelled and new ones shall be issued in the name of the trustee or trustees stating that they are issued pursuant to said agreement. In the books of the corporation, it shall be noted that the transfer in the name of the trustee or trustees is made pursuant to said voting trust agreement.

The trustee or trustees shall execute and deliver to the transferors voting trust certificates, which shall be transferable in the same manner and with the same effect as certificates of stock.

The voting trust agreement filed with the corporation shall be subject to examination by any stockholder of the corporation in the same manner as any other corporate book or record: *Provided*, That both the transferor and the trustee or trustees may exercise the right of inspection of all corporate books and records in accordance with the provisions of this Code.

Any other stockholder may transfer his shares to the same trustee or trustees upon the terms and conditions stated in the voting trust agreement, and thereupon shall be bound by all the provisions of said agreement.

No voting trust agreement shall be entered into for the purpose of circumventing the law against monopolies and illegal combinations in restraint of trade or used for purposes of fraud.

Unless expressly renewed, all rights granted in a voting trust agreement shall automatically expire at the end of the agreed period, and the voting trust certificates as well as the certificates of stock in the name of the trustee or trustees shall thereby be deemed cancelled and new certificates of stock shall be reissued in the name of the transferors.

The voting trustee or trustees may vote by proxy unless the agreement provides otherwise. (36a)

TITLE VII—STOCKS AND STOCKHOLDERS

SEC. 60. *Subscription contract.*—Any contract for the acquisition of unissued stock in an existing corporation or a corporation still to be formed shall be deemed a subscription within the meaning of this Title, notwithstanding the fact that the parties refer to it as a purchase or some other contract. (n)

SEC. 61. *Pre-incorporation subscription.*—A subscription for shares of stock of a corporation still to be formed shall be irrevocable for a period of at least six (6) months from the date of subscription, unless all of the other subscribers consent to the revocation, or unless the incorporation of said corporation fails to materialize within said period or within a longer period as may be stipulated in the contract of subscription: *Provided*, That no pre-incorporation subscription may be revoked after the submission of the articles of incorporation to the Securities and Exchange Commission. (n)

SEC. 62. *Consideration for stocks.*—Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two or more of the following:

1. Actual cash paid to the corporation;
2. Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued;
3. Labor performed for or services actually rendered to the corporation;
4. Previously incurred indebtedness by the corporation;
5. Amounts transferred from unrestricted retained earnings to stated capital; and

6. Outstanding shares exchange for stocks in the event of reclassification or conversion.

Where the consideration is other than actual cash, or consists of intangible property such as patents or copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.

Shares of stock shall not be issued in exchange for promissory notes or future services.

The same consideration as provided for in this section, insofar as they may be applicable, may be used for the issuance of bonds by the corporation.

The issued price of no-par value shares may be fixed in the articles of incorporation or by the board of directors pursuant to authority conferred upon it by the articles of incorporation or the by-laws, or in the absence thereof, by the stockholders at a meeting duly called for the purpose representing at least a majority of the outstanding capital stock. (5 & 16)

SEC. 63. *Certificate of stock and transfer of shares.*—The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (35)

SEC. 64. *Issuance of stock certificates.*—No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid. (37a)

SEC. 65. *Liability of directors for watered stocks.*—Any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary, shall be solidarily liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same. (n)

SEC. 66. *Interest on unpaid subscriptions.*—Subscribers for stock shall pay to the corporation interest on all unpaid subscriptions from the date of subscription, if so required by, and at the rate of interest fixed in, the by-laws. If no rate of interest is fixed in the by-laws, such rate shall be deemed to be the legal rate. (37)

SEC. 67. *Payment of balance of subscription.*—Subject to the provisions of the contract of subscription, the board of directors of any stock corporation may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same or such percentage of said unpaid subscriptions, in either case with interest accrued, if any, as it may deem necessary.

Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date specified in the contract of subscription or on the date stated in the call made by the board. Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance, unless a different rate of interest is provided in the by-laws, computed from such date until full payment. If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon become delinquent and shall be subject to sale as hereinafter provided, unless the board of directors orders otherwise. (38a)

SEC. 68. *Delinquency sale.*—The board of directors may, by resolution, order the sale of delinquent stock and shall specifically state the amount due on each subscription plus all accrued interest, and the date, time and place of the sale which shall not be less than thirty (30) days nor more than sixty (60)

days from the date the stocks become delinquent.

Notice of said sale, with a copy of the resolution, shall be sent to every delinquent stockholder either personally or by registered mail. The same shall furthermore be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the province or city where the principal office of the corporation is located.

Unless the delinquent stockholder pays to the corporation, on or before the date specified for the sale of the delinquent stock, the balance due on his subscription, plus accrued interest, costs of advertisement and expenses of sale, or unless the board of directors otherwise orders, said delinquent stock shall be sold at public auction to such bidder who shall offer to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share. The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor. The remaining shares, if any, shall be credited in favor of the delinquent stockholder who shall likewise be entitled to the issuance of a certificate of stock covering such shares.

Should there be no bidder at the public auction who offers to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share, the corporation may, subject to the provisions of this Code, bid for the same, and the total amount due shall be credited as paid in full in the books of the corporation. Title to all the shares of stock covered by the subscription shall be vested in the corporation as treasury shares and may be disposed of by said corporation in accordance with the provisions of this Code. (39a-46a)

SEC. 69. *When sale may be questioned.*—No action to recover delinquent stock sold can be sustained upon the ground of irregularity or defect in the notice of sale, or in the sale itself of the delinquent stock, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, with interest from the date of sale at the legal rate; and no such action shall be maintained

unless it is commenced by the filing of a complaint within six (6) months from the date of sale. (47a)

SEC. 70. *Court action to recover unpaid subscription.*—Nothing in this Code shall prevent the corporation from collecting by action in a court of proper jurisdiction the amount due on any unpaid subscription, with accrued interest, costs and expenses. (49a)

SEC. 71. *Effect of delinquency.*—No delinquent stock shall be voted for or be entitled to vote or to representation at any stockholders' meeting, nor shall the holder thereof be entitled to any of the rights of a stockholder except the right to dividends in accordance with the provisions of this Code, until and unless he pays the amount due on his subscription with accrued interest, and the costs and expenses of advertisement, if any. (50a)

SEC. 72. *Rights of unpaid shares.*—Holders of subscribed shares not fully paid which are not delinquent shall have all the rights of a stockholder. (n)

SEC. 73. *Lost or destroyed certificates.*—The following procedure shall be followed for the issuance by a corporation of new certificate(s) of stock in lieu of those which have been lost, stolen or destroyed:

1. The registered owner of certificate(s) of stock in a corporation or his legal representative shall file with the corporation an affidavit in triplicate setting forth, if possible, the circumstances as to how the certificate(s) were lost, stolen or destroyed, the number of shares represented by each certificate, the serial number(s) of the certificate(s) and the name of the corporation which issued the same. He shall also submit such other information and evidence which he may deem necessary;

2. After verifying the affidavit and other information and evidence with the books of the corporation, said corporation shall publish a notice in a newspaper of general circulation published in the place where the corporation has its principal office, once a week for three (3) consecutive weeks at the expense of the registered owner of the certificate(s) of stock which have been lost, stolen or destroyed. The notice shall state the name of said corporation, the name of the registered owner and the serial number(s) of said certificate(s), and the number of shares represented by such certificate(s), and that after the

expiration of one (1) year from the date of the last publication, if no contest has been presented to said corporation regarding said certificate(s) of stock, the right to make such contest shall be barred and said corporation shall cancel in its books the certificate(s) of stock which have been lost, stolen or destroyed and issue in lieu thereof new certificate(s) of stock, unless the registered owner files a bond or other security in lieu thereof as may be required, running for a period of one (1) year for a sum and in such form and with such sureties as may be satisfactory to the board of directors, in which case a new certificate may be issued even before the expiration of the one (1) year period provided herein: *Provided*, That if a contest has been presented to said corporation or if an action is pending in court regarding the ownership of said certificate(s) of stock which have been lost, stolen or destroyed, the issuance of the new certificate(s) of stock in lieu thereof shall be suspended until the final decision by the court regarding the ownership of said certificate(s) of stock which have been lost, stolen or destroyed.

Except in case of fraud, bad faith, or negligence on the part of the corporation and its officers, no action may be brought against any corporation which shall have issued certificate(s) of stock in lieu of those lost, stolen or destroyed pursuant to the procedure above-described. (R.A. 201a)

TITLE VIII—CORPORATE BOOKS AND RECORDS

SEC. 74. *Books to be kept; stock transfer agent.*—Every corporation shall, at its principal office, keep and carefully preserve a record of all business transactions, and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the *yeas* and *nays* must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder

or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal is pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book", in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection of any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfer of stocks in behalf of a stock

corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewed annually: *Provided*, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable. (51a and 32a; P.B. No. 268)

SEC. 75. Right to financial statements.—Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

At the regular meeting of stockholders or members, the board of directors or trustees shall present to such stockholders or members a financial report of the operations of the corporation for the preceding year, which shall include financial statements, duly signed and certified by an independent certified public accountant.

However, if the paid-up capital of the corporation is less than P50,000.00, the financial statements may be certified under oath by the treasurer or any responsible officer of the corporation. (n)

TITLE IX—MERGER AND CONSOLIDATION

SEC. 76. Plan of merger or consolidation.—Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

The board of directors or trustees of each corporation, party to the merger or consolidation, shall approve a plan of merger or consolidation setting forth the following:

1. The names of the corporations proposing to merge or consolidate, hereinafter referred to as the constituent corporations;

2. The terms of the merger or consolidation and the mode of carrying the same into effect;

3. A statement of the changes, if any, in the articles of incorporation of the surviving corporation in case of merger; and, with respect to the consolidated corporation in case of consolidation, all the statements required to be set forth in the articles of incorporation for corporations organized under this Code; and

4. Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable. (n)

SEC. 77. *Stockholders' or members' approval.*—Upon approval by majority vote of each of the board of directors or trustees of the constituent corporations of the plan of merger or consolidation, the same shall be submitted for approval by the stockholders or members of each of such corporations at separate corporate meetings duly called for the purpose. Notice of such meetings shall be given to all stockholders or members of the respective corporations, at least two (2) weeks prior to the date of the meeting, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger or consolidation, as the case may be. The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporation in case of stock corporations or at least two-thirds (2/3) of the members in case of non-stock corporations, shall be necessary for the approval of such plan. Any dissenting stockholder in stock corporations may exercise his appraisal right in accordance with this Code: *Provided*, That if after the approval by the stockholders of such plan, the board of directors should decide to abandon the plan, the appraisal right shall be extinguished.

Any amendment to the plan of merger or consolidation may be made, provided such amendment is approved by majority vote of the respective boards of directors or trustees of all the constituent corporations and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of two-thirds (2/3) of the members of each of the constituent corporations. Such plan, together with any amendment, shall be considered as the agreement of merger or consolidation. (n)

SEC. 78. *Articles of merger or consolidation.*—After the approval by the stockholders or members as required by the preceding section, articles of merger or articles of consolidation shall be executed by each of the constituent corporations, to be signed by the president or vice-president and certified by the secretary or assistant secretary of each corporation setting forth:

1. The plan of the merger or the plan of consolidation;

2. As to stock corporations, the number of shares outstanding, or in case of non-stock corporations, the number of members; and

3. As to each corporation, the number of shares or members voting for and against such plan, respectively. (n)

SEC. 79. *Securities and Exchange Commission's approval and effectivity of merger or consolidation.*—The articles of merger or of consolidation, signed and certified as hereinabove required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: *Provided*, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. Where the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, as the case may be, at which time the merger or consolidation shall be effective.

If, upon investigation, the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of said hearing shall be given to each constituent corporation at least two (2) weeks before said hearing. The Commission shall thereafter proceed as provided in this Code. (n)

SEC. 80. *Effects of merger or consolidation.*—The merger or consolidation, as provided in the preceding sections shall have

the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of such constituent corporations shall be impaired by such merger or consolidation. (n)

TITLE X—APPRAISAL RIGHT

SEC. 81. *Instances of appraisal right.*—Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;

2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and

3. In case of merger or consolidation. (n)

SEC. 82. *How right is exercised.*—The appraisal right may be exercised by any stockholder who shall have voted against the proposed corporate action, by making a written demand on the corporation within thirty (30) days after the date on which the vote was taken for payment of the fair value of his shares: *Provided*, That failure to make the demand within such period shall be deemed a waiver of the appraisal right. If the proposed corporate action is implemented or effected, the corporation shall pay to such stockholder, upon surrender of the certificate(s) of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.

If within a period of sixty (60) days from the date the corporate action was approved by the stockholders, the withdrawing stockholder and the corporation cannot agree on the fair value of the shares, it shall be determined and appraised by three (3) disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The findings of the majority of the appraisers shall be final, and their award shall be paid by the corporation within thirty (30) days after such award is made: *Provided*, That no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover such payment: and *Provided, further*, That upon payment by the corporation of the agreed or awarded price, the stockholder shall forthwith transfer his shares to the corporation. (n)

SEC. 83. *Effect of demand and termination of right.*—From the time of demand for payment of the fair value of a stockholder's shares until either the abandonment of the corpo-

rate action involved or the purchase of the said shares by the corporation, all rights accruing to such shares, including voting and dividend rights, shall be suspended in accordance with the provisions of this Code, except the right of such stockholder to receive payment of the fair value thereof: *Provided*, That if the dissenting stockholder is not paid the value of his shares within 30 days after the award, his voting and dividend rights shall immediately be restored. (n)

SEC. 84. *When right to payment ceases.*—No demand for payment under this Title may be withdrawn unless the corporation consents thereto. If, however, such demand for payment is withdrawn with the consent of the corporation, or if the proposed corporate action is abandoned or rescinded by the corporation or disapproved by the Securities and Exchange Commission where such approval is necessary, or if the Securities and Exchange Commission determines that such stockholder is not entitled to the appraisal right, then the right of said stockholder to be paid the fair value of his shares shall cease, his status as a stockholder shall thereupon be restored, and all dividend distributions which would have accrued on his shares shall be paid to him. (n)

SEC. 85. *Who bears costs of appraisal.*—The costs and expenses of appraisal shall be borne by the corporation, unless the fair value ascertained by the appraisers is approximately the same as the price which the corporation may have offered to pay the stockholder, in which case they shall be borne by the latter. In case of an action to recover such fair value, all costs and expenses shall be assessed against the corporation, unless the refusal of the stockholder to receive payment was unjustified. (n)

SEC. 86. *Notation on certificate(s); right of transferee.*—Within ten (10) days after demanding payment for his shares, a dissenting stockholder shall submit the certificate(s) of stock representing his shares to the corporation for notation thereon that such shares are dissenting shares. His failure to do so shall, at the option of the corporation, terminate his rights under this Title. If shares represented by the certificate(s) bearing such notation are transferred, and the certificate(s) consequently cancelled, the rights of the transferor as a dissenting stockholder under this Title shall cease and the transferee

shall have all the rights of a regular stockholder; and all dividend distributions which would have accrued on such shares shall be paid to the transferee. (n)

TITLE XI—NON-STOCK CORPORATIONS

SEC. 87. *Definition.*—For the purposes of this Code, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution: *Provided*, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.

The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title. (n)

SEC. 88. *Purposes.*—Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agriculture and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations. (n)

CHAPTER I—MEMBER

SEC. 89. *Right to vote.*—The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.

Unless otherwise provided by the articles of incorporation or the by-laws, a member may vote by proxy in accordance with the provisions of this Code. (n)

Voting by mail or other similar means by members of non-stock corporations may be authorized by the by-laws of non-stock corporations with the approval of, and under such conditions which may be, prescribed by, the Securities and Exchange

Commission.

SEC. 90. *Non-transferability of membership.*—Membership in a non-stock corporation, and all rights arising therefrom, are personal and non-transferable, unless the articles of incorporation or the by-laws otherwise provide. (n)

SEC. 91. *Termination of membership.*—Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (n)

CHAPTER II—TRUSTEES AND OFFICERS

SEC. 92. *Election and term of trustees.*—Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of non-stock corporations, which may be more than fifteen (15) in number as may be fixed in their articles of incorporation or by-laws, shall, as soon as organized, so classify themselves that the term of office of one-third (1/3) of their number shall expire every year; and subsequent elections of trustees comprising one-third (1/3) of the board of trustees shall be held annually and trustees so elected shall have a term of three (3) years. Trustees thereafter elected to fill vacancies occurring before the expiration of a particular term shall hold office only for the unexpired period.

No person shall be elected as trustee unless he is a member of the corporation.

Unless otherwise provided for in the articles of incorporation or the by-laws, officers of a non-stock corporation may be directly elected by the members. (n)

SEC. 93. *Place of meetings.*—The by-laws may provide that the members of a non-stock corporation may hold their regular or special meetings at any place even outside the place where the principal office of the corporation is located: *Provided*, That proper notice is sent to all members indicating the date, time and place of the meeting; and *Provided, further*, That the place of meeting shall be within the Philippines. (n)

CHAPTER III—DISTRIBUTION OF ASSETS IN NON-STOCK CORPORATIONS

SEC. 94. *Rules for distribution.*—In case of dissolution of a non-stock corporation in accordance with the provisions of this Code, its assets shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon a condition requiring return, transfer or conveyance, and which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more corporations, societies or organizations engaged in activities in the Philippines substantially similar to those of the dissolving corporation pursuant to a plan of distribution adopted as provided in this Chapter;

4. Assets other than those mentioned in the preceding paragraphs, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws, to the extent that the articles of incorporation or the by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution; and

5. In any other case, assets may be distributed to such persons, societies, organizations or corporations, whether or not organized for profit, as may be specified in a plan of distribution as provided in this Chapter. (n)

SEC. 95. *Plan of distribution of assets.*—A plan providing for the distribution of assets, not inconsistent with the provisions of this Title, may be adopted by a non-stock corporation in the process of dissolution in the following manner:

The board of trustees shall, by majority vote, adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a regular or special meeting of members having voting rights. Written notice setting forth

the proposed plan of distribution or a summary thereof; and the date, time and place of such meeting shall be given to each member entitled to vote, within the time and in the manner provided in this Code for the giving of notice of meetings to members. Such plan of distribution shall be adopted upon approval of at least two-thirds (2/3) of the members having voting rights present or represented by proxy at such meeting. (n)

TITLE XII—CLOSE CORPORATIONS

SEC. 96. *Definition and applicability of Title.*—A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) All of the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall be deemed not a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.

Any corporation may be incorporated as a close corporation, except mining or oil companies, stock exchanges, banks, insurance companies, public utilities, educational institutions and corporations declared to be vested with public interest in accordance with the provisions of this Code.

The provisions of this Title shall primarily govern close corporations: *Provided*, That the provisions of other Titles of this Code shall apply suppletorily except insofar as this Title otherwise provides. (n)

SEC. 97. *Articles of incorporation.*—The articles of incorporation of a close corporation may provide:

1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;

2. For a classification of directors into one or more classes, each of which may be voted for and elected solely by a particular class of stock; and

3. For a greater quorum or voting requirements in meetings of stockholders or directors than those provided in this Code.

The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

1. No meeting of stockholders need be called to elect directors;

2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for purposes of applying provisions of this Code; and

3. The stockholders of the corporation shall be subject to all liabilities of directors.

The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors. (n)

SEC. 98. *Validity of restrictions on transfer of shares.*—Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith. Said restrictions shall not be more onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person. (n)

SEC. 99. *Issuance or transfer of stock of a close corporation in breach of qualifying conditions.*—

1. If stock of a close corporation is issued or transferred to any person who is not entitled under any provision of the articles of incorporation to be a holder of record of stock, and if the certificate for such stock conspicuously shows the qualifications of the persons entitled to be holders of record thereof, such

person is conclusively presumed to have notice of the fact of his ineligibility to be a stockholder.

2. If the articles of incorporation of a close corporation states the number of persons, not in excess of twenty (20), who are entitled to be holders of record of its stock, and if the certificate for such stock conspicuously states such number, and if the issuance or transfer of stock to any person would cause the stock to be held by more than such number of persons, the person to whom such stock is issued or transferred is conclusively presumed to have notice of this fact.

3. If a stock certificate of any close corporation conspicuously shows a restriction on transfer of stock of the corporation, the transferee of the stock is conclusively presumed to have notice of the fact that he has acquired stock in violation of the restriction, if such acquisition violates the restriction.

4. Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (i) that he is a person not eligible to be a holder of stock of the corporation, or (ii) that transfer of stock to him would cause the stock of the corporation to be held by more than the number of persons permitted by its articles of incorporation to hold stock of the corporation, or (iii) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation may, at its option, refuse to register the transfer of the stock in the name of the transferee.

5. The provisions of subsection (4) shall not be applicable if the transfer of stock, even though otherwise contrary to subsections (1), (2) or (3), has been consented to by all the stockholders of the close corporation, or if the close corporation has amended its articles of incorporation in accordance with this Title.

6. The term "transfer," as used in this section, is not limited to a transfer for value.

7. The provisions of this section do not in any way impair any right of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty, express or implied.

SEC. 100. *Agreements by stockholders.*—

1. Agreements by and among stockholders executed be-

fore the formation and organization of a close corporation, signed by all stockholders, shall survive the incorporation of such corporation and shall continue to be valid and binding between and among such stockholders, if such be their intent, to the extent such agreements are not inconsistent with the articles of incorporation, irrespective of whether the provisions of such agreements are contained, except those required by this Title to be embodied, in said articles of incorporation.

2. An agreement between two or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

3. No provision in any written agreement signed by the stockholders, relating to any phase of the corporate affairs, shall be invalidated as between the parties on the ground that its effect is to make them partners among themselves.

4. A written agreement among some or all of the stockholders in a close corporation shall not be invalidated on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors: *Provided*, That such agreement shall impose on the stockholders who are parties thereto the liabilities for managerial acts imposed by this Code on directors.

5. To the extent that the stockholders are actively engaged in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance.

SEC. 101. *When board meeting is unnecessary or improperly held.*—Unless the by-laws provide otherwise, any action by, the directors of a close corporation without a meeting shall nevertheless be deemed valid if:

1. Before or after such action is taken, written consent thereto is signed by all the directors; or

2. All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing;

or

3. The directors are accustomed to take informal action with the express or implied acquiescence of all the stockholders; or

4. All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing.

If a directors' meeting is held without proper call or notice, an action taken therein within corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof.

SEC. 102. *Pre-emptive right in close corporations.*—The pre-emption right of stockholders in close corporation shall extend to all stock to be issued, including reissuance of treasury shares, whether for money or for property or personal services, or in payment of corporate debts, unless the articles of incorporation provide otherwise.

SEC. 103. *Amendment of articles of incorporation.*—Any amendment to the articles of incorporation which seeks to delete or remove any provision required by this Title to be contained in the articles of incorporation or to reduce a quorum or voting requirement stated in said articles of incorporation shall not be valid or effective unless approved by the affirmative vote of at least two-thirds (2/3) of the outstanding capital stock, whether with or without voting rights, or of such greater proportion of shares as may be specifically provided in the articles of incorporation for amending, deleting or removing any of the aforesaid provisions, at a meeting duly called for the purpose.

SEC. 104. *Deadlocks.*—Notwithstanding any contrary provision in the articles of incorporation or by-laws or agreement of stockholders of a close corporation, if the directors or stockholders are so divided respecting the management of the corporation's business and affairs that the votes required for any corporate action cannot be obtained, with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally, the Securities and Exchange Commission, upon written petition by any stockholder, shall have the power to arbitrate the dispute.

In the exercise of such power, the Commission shall have authority to make such order as it deems appropriate, including an order: (1) cancelling or altering any provision contained in the articles of incorporation, by-laws, or any stockholders' agreement; (2) cancelling, altering or enjoining any resolution or other act of the corporation or its board of directors, stockholders, or officers; (3) directing or prohibiting any act of the corporation or its board of directors, stockholders, officers, or other persons party to the action; (4) requiring the purchase at their fair value of shares of any stockholder, either by the corporation regardless of the availability of unrestricted retained earnings in its books, or by the other stockholders; (5) appointing a provisional director; (6) dissolving the corporation, or (7) granting such other relief as the circumstances may warrant.

A provisional director shall be an impartial person who is neither a stockholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the Commission. A provisional director is not a receiver of the corporation and does not have the title and powers of a custodian or receiver. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until such time as he shall be removed by order of the Commission or by all the stockholders. His compensation shall be determined by agreement between him and the corporation subject to approval of the Commission, which may fix his compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

SEC. 105. *Withdrawal of stockholder or dissolution of corporation.*—In addition and without prejudice to the other rights and remedies available to a stockholder under this Title, any stockholder of a close corporation may, for any reason, compel the said corporation to purchase his shares at their fair value, which shall not be less than their par or issued value, when the corporation has sufficient assets in its books to cover its debts and liabilities exclusive of capital stock: *Provided*, That any stockholder of a close corporation may, by written petition to the Securities and Exchange Commission, compel

the dissolution of such corporation whenever any of the acts of the directors, officers or those in control of the corporation is illegal, or fraudulent, or dishonest, or oppressive or unfairly prejudicial to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted.

TITLE XIII—SPECIAL CORPORATIONS

CHAPTER I—EDUCATIONAL CORPORATIONS

SEC. 106. *Incorporation.*—Educational corporations shall be governed by special laws and by the general provisions of this Code. (n)

SEC. 107. *Pre-requisites to incorporation.*—Except upon favorable recommendation of the Secretary of Education and Culture,* the Securities and Exchange Commission shall not accept or approve the articles of incorporation and by-laws of any educational institution. (168a)

SEC. 108. *Board of trustees.*—Trustees of educational institutions organized as non-stock corporations shall not be less than five (5) nor more than fifteen (15): *Provided, however,* That the number of trustees shall be in multiples of five (5).

Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years. A majority of the trustees shall constitute a quorum for the transaction of business. The powers and authority of trustees shall be defined in the by-laws.

For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations. (169a)

* Now Secretary of Education, Culture and Sports.

CHAPTER II—RELIGIOUS CORPORATIONS

SEC. 109. *Classes of religious corporations.*—Religious corporations may be incorporated by one or more persons. Such corporations may be classified into corporations sole and religious societies.

Religious corporations shall be governed by this Chapter and by the general provisions on non-stock corporations insofar as they may be applicable. (n)

SEC. 110. *Corporation Sole.*—For the purpose of administering and managing, as trustee, the affairs, property and temporalities of any religious denomination, sect or church, a corporation sole may be formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder or such religious denomination, sect or church. (154a)

SEC. 111. *Articles of incorporation.*—In order to become a corporation sole, the chief archbishop, bishop, priest, minister, rabbi or presiding elder of any religious denomination, sect or church must file with the Securities and Exchange Commission articles of incorporation setting forth the following:

1. That he is the chief archbishop, bishop, priest, minister, rabbi or presiding elder of his religious denomination, sect, or church and that he desires to become a corporation sole;
2. That the rules, regulations and disciplines of his religious denomination, sect or church are not inconsistent with his becoming a corporation sole and do not forbid it;
3. That as such chief archbishop, bishop, priest, minister, rabbi or presiding elder, he is charged with the administration of the temporalities and the management of the affairs, estate and properties of his religious denomination, sect, or church within his territorial jurisdiction, describing such territorial jurisdiction;
4. The manner in which any vacancy occurring in the office of chief archbishop, bishop, priest, minister, rabbi or presiding elder is required to be filled, according to the rules, regulations or discipline of the religious denomination, sect or church to which he belongs; and
5. The place where the principal office of the corporation sole is to be established and located, which place must be within the Philippines.

The articles of incorporation may include any other provision not contrary to law for the regulation of the affairs of the corporation. (n)

SEC. 112. *Submission of articles of incorporation.*—The articles of incorporation must be verified, before filing, by affidavit or affirmation of the chief archbishop, bishop, priest, minister, rabbi or presiding elder, as the case may be, and accompanied by a copy of the commission, certificate of election or letter of appointment of such chief archbishop, bishop, priest, minister, rabbi or presiding elder, duly certified to be correct by any notary public.

From and after the filing with the Securities and Exchange Commission of the said articles of incorporation, verified by affidavit or affirmation, and accompanied by the documents mentioned in the preceding paragraph, such chief archbishop, bishop, priest, minister, rabbi or presiding elder, as the case may be, shall become a corporation sole, and all temporalities, estate and properties of the religious denomination, sect or church theretofore administered or managed by him as such chief archbishop, bishop, priest, minister, rabbi or presiding elder shall be held in trust by him as a corporation sole, for the use, purpose, behalf and sole benefit of his religious denomination, sect or church, including hospitals, schools, colleges, orphan asylums, parsonages and cemeteries thereof. (n)

SEC. 113. *Acquisition and alienation of property.*—Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such purposes. Such corporation may mortgage or sell real property held by it upon obtaining an order for that purpose from the Regional Trial Court of the province where the property is situated; but before the order is issued, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication or otherwise in such manner and for such time as said court may have directed, and that it is to the interest of the corporation that leave to mortgage or sell should be granted. The application for leave to mortgage or sell must be made by petition, duly verified, by the chief archbishop, bishop, priest, minister, rabbi or presiding elder acting as corporation sole, and may be op-

posed by any member of the religious denomination, sect or church represented by the corporation sole: *Provided*, That in cases where the rules, regulations and discipline of the religious denomination, sect or church religious society or order concerned represented by such corporation sole regulate the method of acquiring, holding, selling and mortgaging real estate and personal property, such rules, regulations and discipline shall control, and the intervention of the courts shall not be necessary. (159a)

SEC. 114. *Filling of vacancies.*—The successors in office of any chief archbishop, bishop, priest, minister, rabbi or presiding elder in a corporation sole shall become the corporation sole on their accession to office; and shall be permitted to transact business as such on the filing with the Securities and Exchange Commission of a copy of their commission, certificate of election, or letters of appointment duly certified by any notary public.

During any vacancy in the office of chief archbishop, bishop, priest, minister, rabbi or presiding elder of any religious denomination, sect, or church incorporated as a corporation sole, the person or persons authorized and empowered by the rules, regulations or discipline of the religious denomination, sect or church represented by the corporation sole to administer the temporalities and manage the affairs, estate and properties of the corporation sole during the vacancy shall exercise all the powers and authority of the corporation sole during such vacancy. (158a)

SEC. 115. *Dissolution.*—A corporation sole may be dissolved and its affairs settled voluntarily by submitting to the Securities and Exchange Commission a verified declaration of dissolution.

The declaration of dissolution shall set forth:

1. The name of the corporation;
2. The reason for dissolution and winding up;
3. The authorization for the dissolution of the corporation by the particular religious denomination, sect or church;
4. The names and addresses of the persons who are to supervise the winding up of the affairs of the corporation.

Upon approval of such declaration of dissolution by the Securities and Exchange Commission, the corporation shall cease

to carry on its operations except for the purpose of winding up its affairs. (n)

SEC. 116. *Religious societies.*—Any religious society or religious order, or any diocese, synod, or district organization of any religious denomination, sect, or church, unless forbidden by the constitution, rules, regulations, or discipline of the religious denomination, sect or church of which it is a part, or by competent authority, may, upon written consent and/or by an affirmative vote at a meeting called for the purpose of two-thirds (2/3) of its membership, incorporate for the administration of its temporalities or for the management of its affairs, properties and estate by filing with the Securities and Exchange Commission, articles of incorporation verified by the affidavit of the presiding elder, secretary, or clerk or other member of such religious society or religious order, or diocese, synod, or district organization of the religious denomination, sect, or church, setting forth the following:

1. That the religious society or religious order, or diocese, synod, or district organization is a religious organization of some religious denomination, sect, or church;
2. That two-thirds (2/3) of its membership have given their written consent or have voted to incorporate at a duly convened meeting of the body;
3. That the incorporation of the religious society or religious order, or diocese, synod, or district organization desiring to incorporate is not forbidden by competent authority or by the constitution, rules, regulations or discipline of the religious denomination, sect, or church of which it forms a part;
4. That the religious society or religious order, or diocese, synod, or district organization desires to incorporate for the administration of its affairs, properties and estate;
5. The place where the principal office of the corporation is to be established and located, which place must be within the Philippines; and
6. The names, nationalities, and residences of the trustees elected by the religious society or religious order, or the diocese, synod or district organization to serve for the first year or such other period as may be prescribed by the laws of the religious society or religious order, or of the diocese, synod, or district organization, the board of trustees to be not less than

five (5) nor more than fifteen (15). (160a)

Constitutional Provisions on Religious Corporations.—Art. XV, Sec. 8(1) All educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development, x x x (7) Educational institution, other than those established by religious orders, mission boards, and charitable organizations, shall be owned solely by citizens of the Philippines, or corporations or associations sixty per centum of the capital of which is owned by such citizens. The control and administration of educational institutions shall be vested in citizens of the Philippines. No educational institution shall be established exclusively for aliens, and no group of aliens shall comprise more than one-third (1/3) of any school. The provisions of this sub-section shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents. x x x Sec. 15. The separation of church and state shall be inviolable. Sec. 16. The State may not be sued without its consent.

TITLE XIV—DISSOLUTION

SEC. 117. *Methods of dissolution.*—A corporation formed or organized under the provisions of this Code may be dissolved voluntarily or involuntarily. (n)

SEC. 118. *Voluntary dissolution where no creditors are affected.*—In case dissolution of a corporation does not prejudice the rights of any creditor having a claim against such corporation, then such dissolution may be effected by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members at a meeting to be held on the call of the directors or trustees after publishing the notice of the time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, and after sending such notice to each stockholder or member either by registered mail or personal delivery at least thirty (30) days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities

and Exchange Commission shall thereupon issue the certificate of dissolution. (62a)

SEC. 119. *Voluntary dissolution where creditors are affected.*—Where the dissolution of a corporation may prejudice the rights of any creditor, a petition for dissolution of a corporation shall be filed with the Securities and Exchange Commission. The petition shall be signed by a majority of its board of directors or trustees or other officers having the management of its affairs, verified by its president or secretary or one of its directors or trustees and shall set forth all claims and demands against it, and that its dissolution was resolved upon by the affirmative vote of 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, at a meeting of its stockholders or members called for that purpose.

If the petition is sufficient in form and substance, the Commission, by an order reciting the purpose of the petition, shall fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) days nor more than sixty (60) days after the entry of the order. Before such date, a copy of the order shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation published in the municipality or city where the principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

Upon five (5) days notice, given after the date on which the right to file objections as fixed in the order has expired, the Commission shall proceed to hear the petition and try any issue made by the objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation. (Rule 104, R-Ca)

SEC. 120. *Dissolution by shortening corporate term.*—A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the

provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation or the expiration of the shortened term, as the case may be, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation. (n)

SEC. 121. *Involuntary dissolution.*—A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations. (n)

SEC. 122. *Corporate liquidation.*—Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities. (77a, 89a, 16a)

TITLE XV—FOREIGN CORPORATIONS

SEC. 123. *Definition and rights of foreign corporations.*—

For the purpose 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. (n)

SEC. 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 theretofore issued to it, shall continue to have such authority under the terms and conditions of its license, subject to the provisions of this Code and other special laws. (n)

SEC. 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 shall specifically set forth the following, unless already stated in its articles of incorporation:

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 of the corporation which it 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; and

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. (68a)

SEC. 126. Issuance of a license.¹—Where 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 its 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 licensee, except a 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. 5186,² 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, in the actual market value of at least one hundred thousand (P100,000.00) 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 making application therefor and proving 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. (n)

SEC. 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. (n)

SEC. 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:

¹ See Guidelines for the investment requirement of foreign corporations, post.

² This Act is repealed by PD No. 1789 and Executive Order No. 226 (s. 1987) repeals BP 44, 391, PD 218, 1419, 1623, 1789, 2032, EO 815 and 1045.

"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, it must, 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 a 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. (72a and n)

SEC. 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, save and except such only as provide for 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. (73a)

SEC. 130. *Amendments to articles of incorporation or by-laws of foreign corporations.*—Whenever the articles of incorporation or the by-laws of a foreign corporation authorized to transact business in the Philippines are amended, such foreign corporation shall, within sixty (60) days after such 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. (n)

SEC. 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. (n)

SEC. 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 such 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. (n)

SEC. 133. *Doing business without license.*—No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to main-

tain 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. (69a)

SEC. 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; or
9. Any other ground as would render it unfit to transact business in the Philippines. (n)

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. (n)

SEC. 136. *Withdrawal of foreign corporation.*—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; and
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.

TITLE XVI—MISCELLANEOUS PROVISIONS

SEC. 137. *Outstanding capital stock defined.*—The term "outstanding capital stock" as used in this Code, means the total shares of stock issued to subscribers or stockholders, whether or not fully or partially paid (as long as there is a binding subscription agreement), except treasury shares. (n)

SEC. 138. *Designation of governing boards.*—The provisions of specific provisions of this Code to the contrary notwithstanding, non-stock or special corporations may, through their articles of incorporation or their by-laws, designate their governing boards by any name other than as board of trustees. (n)

SEC. 139. *Incorporation and other fees.*—The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission. (n)

SEC. 140. *Stock ownership in certain corporation.*—

Pursuant to the duties specified by Article XVI³ or the Constitution, the National Economic and Development Authority shall, from time to time, make a determination of whether the corporate vehicle has been used by any corporation or by business or industry to frustrate the provisions thereof or of applicable laws, and shall submit to the Batasang Pambansa (now, Congress), whenever deemed necessary, a report of its findings, including recommendations for their prevention or correction.

Maximum limits may be set by the Batasang Pambansa for stockholdings in corporations declared by it to be vested with a public interest pursuant to the provisions of this section, belonging to individuals or groups of individuals related to each other by consanguinity or affinity or by close business interests, or whenever it is necessary to achieve national objectives, prevent illegal monopolies or combinations in restraint of trade, or to implement national economic policies declared in laws, rules and regulations designed to promote the general welfare and foster economic development.

In recommending to the Batasang Pambansa corporations, businesses or industries to be declared vested with a public interest and in formulating proposals for limitations on stock ownership, the National Economic and Development Authority shall consider, the type and nature of the industry, the size of the enterprise, the economies of scale, the geographic location, the extent of Filipino ownership, the labor intensity of the activity, the export potential, as well as other factors which are germane to the rationalization and promotion of business and industry.

SEC. 141. *Annual report of corporations.*—Every corporation domestic or foreign, lawfully doing business in the Philippines, shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant⁴ in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report

³ Now Art. XII, 1987 Constitution.

⁴ See SEC Circulars Nos. 7 and 4, post.

shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)

SEC. 142. *Confidential nature of examination results.*—All interrogatories propounded by the Securities and Exchange Commission and the answers thereto, as well as the results of any examination made by the Commission or by any other official authorized by law to make an examination of the operations, books and records of any corporation, shall be kept strictly confidential, except insofar as the law may require the same to be made public or where such interrogatories, answers or results are necessary to be presented as evidence before any court. (n)

SEC. 143. *Rule-making power of the Securities and Exchange Commission.*—The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

SEC. 144. *Violations of the Code.*—Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided*, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190 1/2a)

SEC. 145. *Amendment or repeal.*—No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent

dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof. (n)

SEC. 146. *Repealing clause.*—Except as expressly provided by this Code, all laws or parts thereof inconsistent with any provision of this Code shall be deemed repealed.⁵ (n)

SEC. 147. *Separability of provisions.*—Should any provision of this Code or any part thereof be declared invalid or unconstitutional, the other provisions, so far as they are separable, shall remain in force. (n)

SEC. 148. *Applicability to existing corporations.*—All corporations lawfully existing and doing business in the Philippines on the date of the effectivity of this Code and heretofore authorized, licensed or registered by the Securities and Exchange Commission, shall be deemed to have been authorized, licensed or registered under the provisions of this Code, subject to the terms and conditions of its license, and shall be governed by the provisions hereof: *Provided*, That where any such corporation is affected by the new requirements of this Code, said corporation shall, unless otherwise herein provided, be given, a period of not more than two (2) years from the effectivity of this Code within which to comply with the same. (n)

SEC. 149. *Effectivity.*—This Code shall take effect immediately upon its approval.

Approved, May 1, 1980.

⁵ See Explanatory Note to Cabinet Bill No. 3, post.