

# HIGHLIGHTS OF THE REVISED CORPORATION CODE

**Coffee Morning Talk**

**Australian-New Zealand Chamber of Commerce (ANZCHAM)**

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1. Date of Effectivity/Repeal of Corporation Code:
2. Unchanged Corporate Principles and Concepts:
3. Significant Changes and Introductions:
  - (A) Ease in doing business;
  - (B) Process improvements in corporate activities;
  - (C) Corporate continuity and stability;
  - (D) Corporate Governance; Directors' and officers' accountability;
  - (E) SEC jurisdiction and authority expansion.
4. Summary

## Date of Effectivity/Repeal:

1. The Revised Corporation Code of the Philippines, Rep. Act No. 11232 (the “Revised Corp. Code” or the “Law”) became effective on February 23, 2019.
2. Repeals Batas Pambansa Blg. 68, the Corporation Code of 1980.

# Unchanged Corporate Principles and Concepts:

2. Revised Corp. Code now contains 188 sections compared to the 149 sections of the Old Corp. Code
  - ▶ Maintains:
    - ▶ definition of a corporation
    - ▶ classes of corporations - stock and non-stock
    - ▶ classification of shares
    - ▶ management structure of corporations
    - ▶ corporate powers and capacity
    - ▶ dissolution process
    - ▶ mergers and consolidations, and
    - ▶ licensing of foreign corporations.

## Significant Changes and Introductions:

3. Substantive changes in Revised Corp. Code may be classified into the following main categories:

- (A) Ease in doing business;
- (B) Process improvements in corporate activities;
- (C) Corporate continuity and stability;
- (D) Corporate Governance; Directors' and officers' accountability;
- (E) Expansion of SEC jurisdiction and authority

## (A) Contributions to Ease in Doing Business: -

### (i) Incorporation facilitated:

(a) Partnerships, associations or corporations, **singly or jointly with others** but not more than 15 may now be incorporators - **Sec. 10**; but if singly or to be a One Person Corporation (“OPC”), incorporator must be a natural person, trust or an estate - **Sec. 116**;

(b) **No more residency requirement** for incorporators/directors - **Secs. 10 and 22**

(c) **Professionals** or partnerships or associations organized for the practice of a profession - not allowed to organize as a corporation - **Sec. 10**

**(d) Changes in contents** of the Articles of Incorporation (AOI) – Secs. 13 and 14 and related sections:

- ▶ **Corporate Name** - *must be **distinguishable** from name already reserved or registered for use of another corporation, or is not protected by law; or is not contrary to existing law, rules and regulations. - Sec. 17*
  - ▶ *Requires online verification - Sec. 18*
  - ▶ *If a One Person Corporation (“OPC”), letters “OPC” must be indicated either below or at end of corporate name - Sec. 120*
- ▶ **Principal Office Address** - *now allows general reference to city or municipality and not a specific office address;*

- ▶ **Corporate Term** - *now with perpetual existence unless AOl provides otherwise - Sec. 11*
  - ▶ **For existing corporations** - automatically now have perpetual existence, unless by majority vote of stockholders, notifies SEC that it elects to retain its specific corporate term under its present AOl - Sec. 11, 2nd par.
  - ▶ **Effect of non-use of corporate charter**, failure to organize or commence business is now for a period of five (5) years (no longer for 2 years) from date of incorporation - effect - deemed revoked certificate of registration - Sec. 21
- ▶ **Incorporators** - May be partnerships, associations or corporations; may be only one (1) incorporator but still not more than 15; and no more residency requirement - Sec. 10



- ▶ **Seventh Article on Capital** - No required minimum capital stock except if required by special law - Sec.12; - see, e.g. FIA on minimum paid up capital of foreign corporations in the domestic market.
- ▶ **Eighth Article on Subscriptions** - No more required 25% minimum subscription and paid up capital stock at incorporation - previous Sec. 13 deleted - but in increase of authorized capital stock - 25% subscription and 25% paid up requirements are still imposed - Sec. 37. FIA requires paid-up for foreign corporations.

- ▶ **Directors/Trustees** - *No more minimum number of five (5) and no more residency requirement - Sec. 22*
- ▶ **Arbitration Agreement** - *may be provided and it governs dispute resolution between the corporation, its stockholders or members arising out of implementation of AOI or by-laws, or from intra-corporate relations;*
  - *criminal offenses and interests of third parties are **not** arbitrable;*
  - *binding on corporation, its directors, trustees, officers, executives and managers; - Sec. 181*

- ▶ **No need for Treasurer's Affidavit** *because in Article Ninth of AOI, the Treasurer is named and he is a signatory to the AOI thereby certifying the information in the seventh and eighth clauses of the AOI - Sec. 14.*
  - ▶ Treasurer must be a resident - Sec. 40
- ▶ **Tenth Article** - *contains undertaking to change the name of the corporation and need not be in a separate affidavit.*
- ▶ **Electronic filing** - *in accordance with SEC rules - Sec. 13*
- ▶ **Deleted** requirement for “favorable recommendation of appropriate government agency” for incorporation or amendment for *public utilities, educational institution and other corporations governed by special law.*

**(d) Adoption of By-laws** - no longer required to be done within one (1) month from incorporation, may still be adopted and filed prior to incorporation (along with AOI) - **Sec. 45**

- ▶ By-laws may provide for modes by which stockholder, member, director, or trustee may attend meetings and cast votes - in person; by proxy; by remote communication or *in absentia* - **Sec. 46**
- ▶ May provide for arbitration agreement - **Sec. 46**

(ii) **Introduction of OPC as a type of corporation** - Secs. 115 to 132 - corporation with a single stockholder; stock corporation; cannot be a non-stock corporation;

▶ **Who may form** - *only natural persons, trust, or an estate;*

- *banks; quasi-banks, preneed, trust, insurance, public and publicly-listed companies, and non-chartered GOCCs may **NOT** incorporate OPC;*

- *professionals wanting to exercise profession cannot form OPC;*  
- *foreigners and non-residents may form OPC.*

▶ **How much capital** - *no minimum authorized capital stock except as required by special law; foreigners need to comply with FIA requirement of US\$200,000 for domestic market enterprise.*

▶ **What should be filed** - *AOI; no need for By-laws; name should indicate “OPC” either below or at the end of the corporate name.*

▶ **Who constitute the OPC -**

- ▶ *single stockholder shall be sole director and president of OPC;*
- ▶ *within 15 days from issuance of certificate of incorporation, OPC shall appoint a treasurer, corporate secretary, and other officers as necessary, and SEC is notified of appointments within 5 days;*
- ▶ *single stockholder cannot be corporate secretary;*

- ▶ **Single stockholder can be treasurer** - posts bond in SEC required amount, with written undertaking to faithfully administer OPC's funds, and to invest and disburse same according to AOI; bond is renewed every 2 years or as often required by SEC;
- ▶ **nominee and alternate nominee stockholders are required to be designated** - takes place of single stockholder as director and manages corporation's affairs on death of single stockholder.
- ▶ **Corporate secretary** has special functions to maintain minutes and notify in case of death of single stockholder.

- ▶ **Reports to be filed by OPC** - AFS; disclosure of self-dealings and related party transactions; others required; failure to file for 3 consecutive times or intermittently within a period of 5 years will result in delinquent status.
- ▶ **Liability of OPC** - Sole shareholder has burden of proving OPC was adequately financed; and that property of OPC is independent of stockholder's personal property - otherwise, sole shareholder is jointly and severally liable for debts and other liabilities of OPC. **Principle of piercing the veil of corporate fiction applies.**
- ▶ **Conversion from an Ordinary Corporation to an OPC** - when a single stockholder acquires all stocks of an ordinary stock corporation, he may apply for conversion into OPC; thus, a certificate of filing of amended articles of incorporation is issued by SEC to reflect conversion.



- ▶ **Conversion from an OPC to an Ordinary Stock Corporation** - may also be applied for and granted through an amendment of AOI.
- ▶ **Effect of death of single shareholder** - nominee or alternate nominee transfers shares to duly designated legal heir or estate within 7 days from receipt of either an Affidavit of heirship or self-adjudication executed by sole heir; then heirs notify SEC of decision to either wind up and dissolve OPC or to convert into an ordinary stock corporation.

**(B) Process improvements in corporate activities -**

**(i) Stockholders/Members Regular/Special Meetings** - *Written notice may be sent by means of communications provided by bylaws, by electronic mail or other SEC allowed manner - Sec. 49 - at least 21 days (instead of 2 weeks)*

Notice of meeting is now required to be accompanied by:

(a) Agenda; (b) Proxy form; (c) requirements and procedures for attendance, participation, and voting by remote communication or *in absentia*; (d) requirements and procedure for nomination and election - Sec. 50

**(ii) Voting of Stockholders/Members** - *remote communication or in absentia allowed in election of directors, deemed present for purposes of quorum. Right is recognized in corporations vested with public interest, even if provision is absent in by-laws. - Sec. 23.*

(iii) **Directors/Trustees Meetings** - *Notice of meetings must be sent at least two (2) days prior to the scheduled meeting - no longer one (1) day*

- *Directors or trustees can participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication.*

- *Directors or trustees cannot attend or vote by proxy at board meetings. - Sec. 52*

(iv) **Electronic Filing** of AOI and applications for amendments  
- Sec. 13

## **(C) Corporate continuity and stability -**

**(i) Perpetual Existence** - unless AOI provides otherwise, or for existing corporations, unless majority of stockholders elect to retain specific corporate term provided in AOI and advises SEC - **Sec. 11** - previously 50 years.

**(ii) Revival of Corporate Term** - corporation with expired term. Upon approval by SEC, the corporation shall be deemed revived and a certificate of revival of existence shall be issued - **Sec. 11**

**(iii) Election of Replacement Directors/Trustees** -vacancy due to term expiration, election should be **ON** the day of such expiration; when vacancy due to removal, election held **ON** same day as removal; but in both cases, no later than 45 days from vacancy; term of replacement director or trustee is only for unexpired term - **Sec. 28**

- ▶ **Election of an emergency director/emergency board** - now allowed when no quorum in BOD due to resignation, death or disqualification and emergency action is required to prevent grave, substantial, and irreparable loss or damage to corporation. Serves only to address emergency and ceases when replacement director is elected. SEC must be notified - Sec. 28
- ▶ ***Corporations are empowered*** to enter into partnerships, joint venture or any commercial agreements - Sec. 35(h) - **expands rule in jurisprudence that corporations can enter into JV only and not partnerships.**

(D) Corporate Governance - introduced as a new concept and recurring theme; also strengthens minority protection; Directors' and officers' accountability;

- ▶ **term “corporate governance”** - not defined in Revised Corp. Code, but used significantly and new provisions re good governance and protection of minority stockholders.
- ▶ **Directed at corporations vested with public interest** such as listed companies, banks, quasi-banks, pawnshops, money service business, preneed, trust and insurance companies, and other financial intermediaries.
- ▶ **SEC Memorandum Circular No. 9, s. 2014** - defined corporate governance as: “framework of rules, systems and processes in corporation that **governs performance** of Board of Directors and management **of their respective duties and responsibilities** to stockholders and other stakeholders which include, among others, customers, employees, suppliers, financiers, government and community in which it operates.”

- ▶ (i) **SEC Mandate** - promote corporate governance and protection of minority investors through, among others, issuance of rules and regulations consistent with international best practices - Sec. 179
- ▶ (ii) **Independent Directors** - required for corporations vested with public interest - Sec. 22
- ▶ (iii) **Duties of Directors** - shall perform their duties as prescribed by law, rules of good corporate governance, and by-laws of corporation - Sec. 23
- ▶ (iv) **Voting by shareholders** through remote communication or in absentia - is now allowed - Sec. 23 and Sec. 49 - protects minority

**(v) Compliance officer** - required for corporations vested with public interest - Sec. 24

**(vi) Adds grounds for disqualification of Directors/Trustees/Officers -**

(a) for violating “The Securities Regulation Code”;

(b) found administratively liable for any offense involving fraud acts; and

(c) by foreign court or equivalent foreign regulatory authority for similar acts, violations or misconduct resulting in conviction by final judgment. Sec. 26



**(vii) The provision on self-dealing Directors** - expanded to cover contracts of corporation with spouses and relatives within 4<sup>th</sup> civil degree of consanguinity or affinity of director or officer - Sec. 31; A director who has potential interest in any related party transaction must recuse from voting on the approval of the related party transaction - Sec. 52

**(viii) Foreign corporations CANNOT give political donations** - Sec. 35 (i)

**(xix) Approval of the Philippine Competition Commission** for sale or disposition of corporate assets - Sec. 39; increase or decrease in capital or incurring or increasing any bonded indebtedness - Sec. 37; or merger or consolidation, of corporations - Sec. 78

**(x) Expanded Information for stockholders** at regular meetings- Sec. 49

**(xi) Chairman presides over meetings**, unless bylaws provide otherwise - Sec. 53 - previously, President was recognized by old Corp. Code as presiding officer.

**(xii) Reportorial Requirements** - Annual Submission - now specifically stated - Sec. 177

- ▶ (aa) Audited Financial Statements
- ▶ (bb) General Information Sheet - new form use is suspended until June 30, 2019

**(xiii) Right of Inspection Expanded** - Sec. 73 - (a) AOI, By-laws and amendments; (b) Current ownership structure and voting rights, including lists of stockholders or members, group structures, intra-group relations, ownership data, and beneficial ownership; (c) Names/Addresses of directors or trustees/executive officers; (d) Record of all business transactions; (e) A record of board and stockholders resolutions; (f) Copies of latest reportorial requirements submitted to SEC; and (g) Minutes of all meetings of stockholders or members, or of BOD or trustees - with more details required.

Right of Inspection is NOT open to non-stockholder or non-member, or competitor, director, officer, controlling stockholder or otherwise represents interests of competitor.

- ▶ **(xiv) Identifies and penalizes new offenses/ increases penalties but deletes penalty of imprisonment -**
  - ▶ (aa) Unauthorized use of corporate name - Sec. 159
  - ▶ (bb) Violation of disqualification provision - Sec. 160
  - ▶ (cc) Violation of duty to maintain records - Sec. 161
  - ▶ (dd) Willful certification of Incomplete, inaccurate, false or misleading statements or reports - Sec. 161
  - ▶ (ee) Collusion of an independent auditor - Sec. 163
  - ▶ (ff) Obtaining corporate registration through fraud - Sec. 164
  - ▶ (gg) Fraudulent conduct of business - Sec. 165
  - ▶ (hh) Acting as intermediaries for graft and corrupt practices - Sec. 166
  - ▶ (ii) Engaging intermediaries for graft and corrupt practices - Sec. 167
  - ▶ (jj) Tolerating graft and corrupt practices- Sec. 168

**(xv) Retaliation against whistleblowers** - Sec. 169 - *persons who provide truthful information relating to the commission or possible commission of any offense or violation of the Revised Corp. Code* - a person who retaliates against a whistleblower by interfering with his livelihood, etc. may be penalized with fine from P100,000 to P1,000,000 - Sec. 169

**(xvi) The deposit for issuance of license to a foreign corporation is increased** to P 500,000 and in subsequent fiscal years, 2% of the amount by which the licensee's gross income for that fiscal year exceeds P 10 Million - Sec. 143 - from P100,000 and P5 Million

- ▶ (E) SEC jurisdiction and authority expansion -
  - ▶ (i) Visitorial powers over all corporations
  - ▶ (ii) Authority over certain intra-corporate disputes:
    - ▶ (aa) Summary order to hold election of directors if election is not held unjustifiably.- Sec. 25
    - ▶ (bb) Removal of a director elected despite a disqualification - Sec. 27
    - ▶ (cc) Disputes pertaining to denial of right of inspection or reproduction of corporate records - Sec. 73
    - ▶ (dd) Motu proprio or upon verified complaint, dissolution of corporation on grounds provided in Section 138 of Revised Corp. Code.
    - ▶ (ee) Alleged violation of Revised Corporation Code, or of its rule, regulation or order - Sec. 154 - subpoena powers - Sec. 155; and contempt powers - Sec. 157 issuance of a permanent cease and desist order, suspension or revocation of the certificate of incorporation; and dissolution of the corporation and forfeiture of its assets - for violations of Revised Corp. Code, rules or regulations, or any of SEC's orders - Sec. 159

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Thank you.