

NOTES ON CORPORATION LAW

I. CORPORATION LAW

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.

- Based on the statutory definition, you can identify four attributes:

1. artificial being
2. created by operation of law
3. having the right of succession
4. has the powers, attributes and properties expressly authorized by law or incident to its existence.

Attribute no. 1:

1. ARTIFICIAL BEINGS

Q: Is a private corporation a person?

A: Yes.

Q: What kind?

A: Artificial

- unlike human beings, corporations do not have external manifestations.
- It has a personality separate and distinct from the people comprising it. - Generic term for members are CORPORATORS.

Eg. A,B,C and D formed corporation XYZ. A, B, C and D have a separate existence with XYZ corporation. XYZ may be taxed separately and must respect the law.

Residence and Nationality:

Residence – determined by what appears as the location of its principal office.

DOCTRINE OF PIERCING THE VEIL OF A CORPORATE ENTITY

- if a corporator takes advantage of the separate personality the the corporation becomes liable.
- Used in order for the primary corporation to escape liability.

CASE: Concept Builders v. NLRC

Facts: Concept Builders hired respondents which they later dismissed. The respondents claimed that their dismissal was illegal. Concept Builders hired new employees. A favorable ruling was given to

the respondents which became final and executory. When the sheriff went to Concept builders, a different company, HPPI, was already occupying the premises.

Issue: Whether or not the doctrine of piercing the veil may be availed of.

Held: Yes

Rationale: Concept builders was responsible in building HPPI. The property, and its officers were the same. The person, who has been attending the reportorial requirements for Concept Builders was the same person incorporating HPPI. To pierce the veil, there must be supporting evidence. The court decided that HPPI and Concept Builders are the same. They were jointly and severally liable.

Attribute no. 3: Right of succession:

- corporation exists despite the death, incapacity and incapability of one of the corporators. Unlike, partnership.

Attribute no. 4: creature of property, attributes and personality.

- necessary for the corporation to be able to accomplish its purpose.

ULTRA VIRES DOCTRINE

- alien to the purpose of the business.

DOCTRINE OF LIMITED CAPACITY

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)

Sec. 3. Classes of corporations. - Corporations formed or organized under this Code may be stock or nonstock 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.

As to whether their membership is represented by shares of stock or not:

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Q: How are corporations classified? A: Private corporations are classified into stock or non-stock corporations.

Q: What is a stock corporation?

A: It is allowed during its lifetime to distribute earnings among its incorporators.

Q: What is a non-stock corporation? A: not allowed to distribute to its members not engaged in profit making activities. Eg. Charitable, educational, religious, etc or any of its combinations.

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

- the main difference is in the dissolution.

According to as to state or country under or by whose laws they have been created:

Sec. 123. Definition and rights of foreign corporations. - For the purposes 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)

Foreign Corporations – registered in accordance with the foreign laws.

Domestic Corporations – registered in accordance with Philippine Laws.

- the difference is important in determining the capacity to do business in the Philippines. The foreign corporation needs a license.

According to status:

De Jure – substantial compliance
De facto – colorable compliance; defectively incorporated.

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.

Q: What is the doctrine of corporation by estoppel?

A: Group of persons acting as a corporation, knowing it to be without authority.

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.

On who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation.

Q: Does it create a status?

A: No.

Q: Is it a de jure corporation?

A: No.

Q: Is it a de facto?

A: No.

Q: What is the doctrine of estoppel?

A: Previous conduct, acts or representations relied upon on good faith by third persons.

Q: Whose previous conduct are we talking about?

A: Those who represented themselves as a corporation.

Q: Who may be liable?

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A: The ostensible corporation; there is no corporation to talk about.

Q: A, B, and C were sued by Mr. Mamba. A, B, and C claimed that there is no corporation, therefore, no corporate liability. This being the reality, can A, B, and C use the defense.

A: They cannot. Corporation by estoppel.

Q: Are they liable as general partners?

A: Yes. Sec. 21 expressly provides that gen. partners are liable up to the extent of their property. Sec. 21 requires active representation.

CASE: Lim Tong Lim v. CA

Facts: Lim Tong Lim, Chua and Yao were into commercial fishing. They have been doing business under the name Ocean Quest. They entered into a contract with the Philippine Fishing Gear, both by Chua and Yao. Ocean Quest breached the obligation. Philippine Fishing Gear filed a case against Lim, Yao and Chua, since there was no corporation existing. Trial court ruled in favor of PFGI. Lim appealed to the CA, stating that he was not part of the deal.

Issue: Whether or not Lim is liable

Held: Yes

Rationale: He benefited by the use of the fishnets. Lim Tong Lim was one of those who strongly opposed against the writ of attachment. It showed that he benefited. He is likewise liable due to corporation by estoppel.

As to their relation to another corporation:

Q: Give us the concept of holding or parent corporation and subsidiary: A: Holding – has management over the subsidiary. Subsidiary – controlled by the parent corporation.

As to whether they are open to the public or not:

Q: What about open and close?

A: Open – those formed to openly accept outsiders or stockholders or investors. Close – those whose shares of stock are held by limited number of persons like the family or other closely-knit group.

basic requirement is to submit with the SEC the Article of Incorporation (AI)

Sec. 14. Contents of the 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 nonstock 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;*
- 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 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.*

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Names of Corporation, they are imbued with public interest.

Q: What do you mean by deceptively and confusingly similar?

A: The name is closely similar that creates confusion or deception with the public.

CASE: Ang Mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan sa Bansang Pilipinas (IDKJ-HSK) v. Iglesia ng Dios kay Cristo Jesus, Haligi at Sungay ng Katotohanan (IDCJ-HSK)

Facts: IDCJ-HSK is a non stock corporation registered in 1936. Sometime in 1976, Eli Soriano disassociated, together with others, from the corporation. He started a new corporation called IDKJ-HSK. IDCJ filed a complaint with the SEC, to compel IDKJ to change its name. During the pendency of the case, Soriano filed a petition to change its name to Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus, Haligi at Saligan ng Katotohanan. IDCJ filed another complaint with the SEC, because the name is confusingly similar to theirs. Soriano filed a motion to dismiss which was denied. SEC ruled in favor of IDCJ.

Issue: 1. Whether or not the name is confusingly similar.

2. Whether or not HSK is a generic word.

Held: 1. Yes 2. No

Rationale:

1. Under the reasonable care and observation test, it is similar.
2. A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.

CASE: Lyceum of the Philippines v. CA

Facts: Lyceum of the Philippines filed a case against Lyceum of Baguio by using the word Lyceum and all other schools using it. Lyceum of Baguio claimed that Lyceum is a generic term for school.

Issue: Whether or not the action may prosper.

Held: No

Rationale: The SC ruled that it did not achieve exclusive use. Lyceum of Baguio

has been using the name, 17 years before Lyceum of the Philippines was registered.

Purpose of the Corporation

Q: What is the importance of the purpose of the corporation?

A: It states the objective of the corporation, *and* for the stockholder, it tells him of the risk of his investment. For the board, to know their authority to act. And for other people, to know the general authority of the management.

Q: How many purposes do we have?

A: Two. Primary and secondary.

Q: What is the limitation of the secondary purpose?

A: it must not be contrary to law and must not deviate from the primary purpose. It must be in line with the primary purpose.

Q: How long may a corporation exist?

A: 50 years.

Q: May they extend?

A: Yes but not for more than 50 years at any single instance.

note of the time when to file for extension. It is within 5 years of the expiration of the term. You cannot file before or after that period.

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 incorporation 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.

Q: Who are incorporators? A: all persons who who compose the corporation at any given time.

Q: Who are incorporators?

A: It is applied only to those mentioned in the articles of incorporation as originally

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forming the corporation and signatories of the AI.

Q: What are the qualifications of an incorporator?

A: 1. Natural person; 2. not less than 5 but not more than 15; 3. legal age; 4. majority are residents of the Philippines; 5. Each must own or subscribe to at least one share.

Q: What do you call the capitalization requirement in non stock corporations?

A: contribution

Q: What are authorized capital stocks?

A: It is the amount fixed in the articles of incorporation to be subscribed and paid by the stockholders.

Q: What is the trust fund doctrine?

A: the payment of debts of the corporation which the creditors have the right to look up to satisfy their credits and which the corporation may dissipate.

Q: What is the difference between common and preferred shares?

A: Preferred shares have preferences like:
a. distribution of dividends. B. distribution of assets.

- there is nothing that prohibits the corporation from giving additional preferences.
- Redeemable shares may also be preferred shares.
- Sec. 6 – only preferred or redeemable shares may be deprived of voting rights.
- Sec. 7 – founders shares may be accorded the exclusive voting powers for a period of 5 years.

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 the 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 in 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;