

WHAT YOU NEED TO KNOW

THE REVISED CORPORATION CODE (RA 11232)

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The Corporation Code of the Philippines (Batas Pambansa Blg. 68) has remained virtually unchanged since 1980, even with advancements in technology and numerous changes in doing business in the Philippines. Hence, the enactment of Republic Act No. 11232 in February 2019 proves to be a welcome change, updating the Code to fit the current business landscape.

Although it will still be best to seek legal counsel to ensure proper corporate compliance, the following FAQs have been prepared to highlight some of the notable changes in the law, mainly as a guide for students or for those who are curious about how the new law will affect their businesses:

ADAPTING TO TECHNOLOGICAL CHANGES

How should notices for regular stockholders' meetings be sent?

Notices may be sent to all stockholders or members through email or such other manner as the Securities and Exchange Commission (SEC) shall allow under guidelines it would prescribe. (Section 49 of the Revised Code)

What are the means in which the corporation can communicate with stockholders (regarding meetings and other matters)?

The bylaws can now specify the preferred method of communication through which meetings would be sent. These include e-mails and other technological means. (Sections 37, 39 and 50 of the Revised Code)

How shall the members of the Board of Directors or Trustees participate in meetings?

Videoconferencing, teleconferencing or other alternative modes of remote communication are now allowed as mediums of participation. (Section 52 of the Revised Code)

Through what means may the members of the Board of Directors and stockholders vote during meetings?

If indicated in the bylaws of the corporation and upon issuance of guidelines by the SEC, stockholders or members may also be allowed to vote during stockholders' meetings through remote communication or in absentia. (Section 49 of the Revised Code)

How shall the SEC receive registrations and monitor corporations?

The SEC is now mandated to implement an electronic filing and monitoring system. (Section 180 of the Revised Code)

INCORPORATION AND ORGANIZATION

These changes tend to favor small and medium enterprises who wish to function as a Corporation within the Philippines.

What is the minimum number of incorporators?

There is no longer a minimum number of incorporators. In fact, the Revised Code even allows a one-person corporation, provided the required capital has been put in place. (Section 10 of the Revised Code)

What is the minimum capital stock requirement?

For stock corporations, there is no longer a minimum capital stock requirement, except under special laws. (Sec. 12 of the Revised Code)

These changes allow for a streamlined strategy of handling or preventing corporate issues.

Are there any changes in dispute resolution among or within corporations?

Yes. Arbitration agreements may now be provided in articles of incorporation or bylaws, hence removing the need for the courts and allowing for arbitration proceedings to govern disputes between the corporation, its stockholders or members that arise from the implementation of articles of incorporation or bylaws, or from intra-corporate relations. (Sec. 181 of the Revised Code)

Are there any additional requirements for corporations vested with public interest?

Yes. The SEC now imposes additional safeguards for corporations vested with public interest, as defined in Section 22 of the Revised Code. There is now imposed a requirement of a compliance officer upon organization, (Section 24 of the Revised Code), submission of additional annual reports, among others. (Section 177 of the Revised Code)

LIFESPAN OF A CORPORATION

Does a corporation still have a life of fifty years?

No. Corporations shall now have perpetual existence, unless its articles of incorporation provide otherwise. This rule applies to existing corporations, unless stockholders vote to retain the original term in the manner provided in Section 11 of the Revised Code.

How could a corporation whose term has expired revive its existence?

An application with the SEC should be filed by the corporation whose term has expired. Once approved, the corporation shall enjoy perpetual existence, unless otherwise provided. (Section 11 of the Revised Code)

When shall a corporation commence corporation operations?

Corporations now have five (5) years from incorporation to commence corporate operations. (Section 21 of the Revised Code)

What will happen when a corporation fails to commence business within five (5) years from incorporation?

The SEC now has the power to be place corporations under delinquent status if it becomes inoperative for a period of at least five (5) years. These corporations are given two (2) years from delinquency to resume operations, otherwise, the certificate of incorporation may be revoked. (Section 21 of the Revised Code)

This landmark legislation is slated to remove the barriers hindering the entry of both small and large enterprises and simplifying corporate governance standards for a more streamlined business environment.¹ It is hoped that this much needed update in the Corporation Code would attract investors and would foster an ideal atmosphere for the Filipino entrepreneurial sprit to thrive.

¹ http://www.senate.gov.ph/press_release/2018/1127_drilon1.asp, last accessed on 01 March 2019.