

The nature and forms of commercial organization

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CHAPTER 5 The Nature and forms of Commercial Organizations

Commercial organizations may be classified into three (3) general classifications: 1.

Private individual ownership 2. Public or government ownership 3. Mixed or

both government and private ownership 1. Private Individuals Ownership Any

form of business ownership may be organized and would have certain

advantages and disadvantages which the business organizer must have to

evaluate. According to Martinez, Abasolo, and Carlos, the following are the

questions to be considered in deciding the form of business: 1.

Is it simple or difficult to form? 2. Is capital easy to raise? 3. What are the risks

and the liabilities of the owners? 4. Who holds the authority

and responsibility for the management and administration of the business? 5.

What stability does the form offer? 6. Is it flexible? 7. What the legal status of

this form is as applied to the particular business in mind? 8. What is the

extent of government control? 9. What is the tax advantage of this form of

organization? 10. Is the business environment favorable?

Private commercial organizations or business enterprises may take the

following forms of ownership: * Individual or Sole Proprietorship It is a

business owned by one person. This form of ownership is small, requires but

little amount of capital, and is readily established under the control of one

person. It refers to an individual who owns, manages, assumes all the risks,

and derives all the products or profits from a business. Advantages of Sole

Proprietorship * Easiest to establish. * Easiest to terminate. * Small amount

of capital is required in starting a business. Presence of personal element in

managing the business. * Freedom and immediate action and control in

operating the business. * Ownership of all profits. * Tax savings. * Minimum

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legal requirements. * High credit standing. * Business secrecy. Disadvantages of Sole Proprietorship * Limited amount of capital. * Lack of continuity. * Limited judgment and wisdom. * Unlimited liability. * Difficulty of management. * Limitation in business size. * Limited opportunities of employees for promotion. * Difficulties in managing the day-to-day business operations. Creating a Sole Proprietorship

No special legal procedures, permits, or licenses are required. A sole proprietorship is not limited in size by either the amount of inputs which can be used or the amount of products produced. The business can be any number of employees, additional management may be hired, and property may even be co-owned with others. Income Taxes The owner of this business pays income taxes on any business profit at the tax rates in effect for individual or joint returns. Business profits and capital gains are added to other taxable income earned to determine the individual total taxable income. Partnership A partnership is a form of business in which two or more people operate for the common goal of making profit. Each partner has total and unlimited personal liability of the debts incurred by the partnership. It is a voluntary association of two (2) or more persons to carry on, as co-owners of a business for profit. Basic Characteristics of Partnership 1. Profit and Loss: The sharing of the business profit and loss. 2. Property or Assets: Shared control of property. 3. Management: Shared management of the business. General legal agreement of partners: 1.

Each person involved participates in management decisions. 2. Assets are owned jointly. 3. Sharing of profits and loss. 4. The parties (business) operate under one name. 5. The parties have joint bank account for doing business

transactions. 6. The parties keep a single set of business records. Types of Partnership 1. Ordinary or General Partnership 2. Limited Partnership

Creating a Partnership Partnership can be created oral or written agreement. Oral agreement tends to have more problems than written partnership agreements. The written agreement should cover at least the following points:

1. Management. Who is responsible for which management decisions and how will they be made?
2. Property ownership and Contribution. It is the list the property each partner will contribute to the partnership and describe how it will be owned. Property may be owned by a partnership, or the partners may retain ownership of their individual property and rent it to the partnership. When the partnership itself owns property, any partner may sell or dispose of any asset without the consent and permission of the other partners.
3. Share of Profits and Losses.

The method for calculating profits and losses and the share going to each partner should be carefully describe, particularly if there is an unequal division. Profits are generally divided in proportion to the value of the assets, labor and management contributed to the business.

4. Records. Records are important for the division of profits and for maintaining an inventory of assets and their ownership.
5. Taxation. The agreement should contain a detailed account of the tax basis of property owned and controlled by the partnership and copies of the partnership information tax returns.
6. Termination.

The agreement should contain the date the partnership will be terminated if one is known or can determined. A partnership can be terminated in a number of ways:

- * It may specify a termination date
- * If no duration is fixed

by the agreement any partner may terminate the partnership at will. * If not, a partnership will terminate upon the incapacitation or death of a partner, bankruptcy, or by mutual agreement between the partners. * Termination upon the death of a partner can be prevented by placing provisions in the written agreement that allow the deceased partner's share to pass to the estate and hence to the legal heirs. . Dissolution. The termination of the partnership on either a voluntary or involuntary basis requires a division of partnership assets. The method for making this division should be described to prevent disagreements and unfair division. Terminating a Partnership 1. Agreement. Between the partners or by operation of law. Usually termination under agreement comes to an end when the duration term or business is finished. 2. At Will. If no duration is fixed by the agreement, any partner may terminate the partnership at will. 3. Operation of Law.

Dissolution by operation of law occurs in the event of death, bankruptcy, or incapacity of any partner. Advantages of Partnership * It could be as easily established as the sole proprietorship. * It has definite legal status. * There are more persons to manage the business and to solve its problems. * There is larger amount of capital. * Retention of valuable employees is ensured. * The combine abilities, skills, and resources of partners are great source of strength. Disadvantages of Partnership * Unlimited liability of the partners; * Managerial difficulties; Inevitable disagreement among partners may endanger the business firm; * Limitation in size; * Frozen investment; * Lack of continuity; and, * Easy dissolution. Advantages of Limited Partnership * There is a single direction of management; hence there is unity and immediate action taken upon. * The limited liability of limited partners, shall

serve as good enticement of inventors resulting in larger amount of capital to expand business operations. Disadvantages of Limited Partnership * The unlimited powers entrusted to general partners maybe abused.

The limited partners cannot interfere in the administration of the business firm even if there is mismanagement. Only when fraud exists or when there are clear violations of the firm agreement, can the limited partners seek for remedial or legal action. * There is a great possibility of connivance among the general partners to commit fraud against the creditors and the limited partners. * Corporations A corporation is an artificial being created by operation of law, having the rights of succession and the powers, attributes, and properties expressly, authorized by law or incident to its existence.

Different Classification of Corporations 1. Public or Private * Public Corporations are those formed or organized for the government of a portion of the state. The objective of a public corporation is the general good or welfare. * Private Corporations are those formed for some private purpose, benefit, aim or objective, or profit. 2. Division of Private Corporations: * Stock Corporations are those who capital stocks are divided into shares and a shareholder is issued a certificate of stock which would entitle him to certain portion of the projects or dividends. Non-stock Corporations are those that do not issue shares of stock to members such as religious, civil, or charitable organizations. Other kinds of corporations may be grouped into: 1. Quasi Corporations. There are business firm that are not absolutely corporations but are considered as if they are corporations. Public boards created by laws may fall under this classification. 2. Quasi-public Corporations. This one is

engaged in rendering basic services of such public importance as to entitle it to certain privilege like eminent domain or use of public property. 3.

Government-owned or controlled Corporations. Are those established by government or corporations of whom the government is the majority stockholder. 4. Dejure and de facto Corporations. * De facto corporation is used to designate associations exercising corporate powers under color of a more or less legal organization. * Dejure Corporation is one created in strict or substantial conformity with the statutory requirements for incorporation; and whose right to exist as a corporation cannot be successfully attack even in a direct proceeding for that purpose by state. . Domestic and Foreign Corporations. * Domestic Corporation is one incorporated under Philippine laws. * Foreign Corporation is one established, organized, or existing under any laws other than those in the Philippine territory. 6. Corporation aggregate and corporation sole. * Corporation aggregate is one composed of more than one member or corporator. * Corporation sole consists of one member or corporator and his successors. 7. Eleemosynary and civil corporations. * Eleemosynary Corporation is one established for charitable purposes. Civil Corporation is a corporation that is not ecclesiastical and eleemosynary whether public or private. 8. Ecclesiastical and lay corporations * Ecclesiastical Corporation is a religious organization. * Lay Corporation is established for a purpose other than religion. Compositions of a Corporation 1. Corporators. These are the stockholders or members and/or both, of the corporation. 2. Incorporators. These are the stockholders or members, and/or both, stated in the articles of incorporation as found in members of the corporation. . Members. These are the corporators of a

corporation which has no capital stock. 4. Stockholders or Shareholders. These are the owners of shares of a corporation which have a capital stock and whose names appear in the books of corporation as the holders of a share or shares of stock of the corporation. Classes of Capital Stock 1. The Common Stock. According to Philippine laws governing the establishment of the corporation, the right of ownership and active control and participation is vested in the owners of the common stock.

The common stock carries with it the power and right of voting, through which the holders have great residual ownership or power over the corporation. Common stock is the ordinary stocks representing the basic ownership. The ownership interest is divided into shares which may or may not have a par value. The par value is the amount printed on the stock certificate. 2. The Preferred Stock. The owners of preferred stock are granted special protection or advantages over the common stockholders. It carries preference as to priority in the granting of dividends over the common stock or as to capital in case of dissolution.

Upon dissolution of the corporation, for instance, the preferred stock has priority in the distribution of the assets. There are several classifications of preferred stock: * Preferred as to dividends. * Preferred as to assets. * Preferred as to both dividends and assets. * Cumulative preferred. * Callable. * Convertible. Advantages of Corporation * Limited liability of stockholders. * Large amount of capital. * Flexible ownership. * Length of life. * Efficiency of management. * Ease of expansion. * Legal entity. Disadvantages of Corporation * Taxation. Organizational expense. * Government restrictions and reports. * Lack of personal interest. * Lack of secrecy. * Charter

restrictions. The Corporate Combination and Merger The Merger. Merger means the union effected by the absorbing of one or more existing corporations by another which survives and continues the combined firm. In other words, merger takes place when the control of several corporations is vested in a single corporation, in which case stocks of the controlling corporation may be issued in place of the stocks of the other corporations.

There is no new business firm. The absorbing corporation remains the same single although larger corporation. In consolidation, the consolidating corporations are dissolved, their properties and businesses transferred to a single company. Merger and consolidations may be adopted as a strategy by several companies in a given industry when they strongly agree that it is more economical and working together rather than competing with one another. * Cooperatives The word cooperative is derived from the French word “cooperari”. The word “co” means “with”.

Combined with “operari” (to work, from operate, work), it delineates the concept of “working together”. The social concept shows a process of working together and thinking together to achieve and enjoy the best of life. Cooperative is the dynamic form of business enterprise that embodies the philosophy of corporation. It signifies the voluntary assent of people to form themselves into a group for the promotion of their common needs by mutual action, democratic control and sharing of economic benefits of the basis of patronage by members.

Republic Act No. 6938, An Act to Ordain A Cooperative Code of the Philippines, defines cooperatives as “a duly registered association of persons, with a common bond of interest, who have voluntarily joined
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together to achieve a lawful common social or economical end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles. " Principles of Cooperatives 1. Open and Voluntary Membership.

Membership in a cooperative shall be voluntary and available to all individuals regardless of their social, political, racial, or religious background or beliefs. 2. Democratic Control. Cooperatives are democratic organizations. Their affairs shall be administered by the persons elected or appointed in a manner agreed upon by the members. Members of primary cooperatives shall have equal voting rights on a one-member-one-vote principle: Provided however, that in the case of secondary and tertiary cooperatives, the provisions of Article 37 shall apply (Voting System): * Each member of a primary cooperative shall have only one vote.

A secondary or tertiary cooperative shall have voting rights as delegate of members-cooperatives, but such cooperatives shall have only five votes. The votes cast by the delegates shall deem as votes cast by the members thereof. * No voting agreement or other device to evade the one-member-one-vote provisions, except as provided under subsection hereof, shall be valid. * No member of a primary cooperative shall be permitted to vote by proxy unless provided for specifically in the by-laws of the cooperative. However, the by-laws of a cooperative other than a primary may provide for voting by proxy.

Voting by proxy means allowing a delegate of a cooperative to represent or vote in behalf of another delegate of the same cooperative. 3. Limited

Interest on Capital. Share capital shall receive a strictly limited rate of interest. 4. Division of Net Surplus. Net surplus arising out of the operations of a cooperative belongs to its members and shall be equitably distributed for cooperative development, common services, indivisible reserve fund, and for limited interest on capital and/or patronage refund in the manner provided in this Code and in the articles of cooperation and by-laws. .

Cooperative Education. All cooperatives shall make provision for the education of their members, officers, and employees and of the general public based on the principles of cooperation. 6. Cooperation among Cooperatives. All cooperatives, in order to best serve the interest of their members and communities, shall actively cooperate with other cooperatives at the local, national and international levels. Types and Categories of Cooperatives (R. A. No. 6938) 1. Types of Cooperatives. Cooperatives may fall under any of the following types: . Credit Cooperative - is one which promotes thrift among its members and create funds in order to grant loans for productive and provident purposes. b. Consumers Cooperative - is one whose primary purposes are to procure and distribute commodities on members and non-members. c. Producers Cooperative - is one that undertakes joint production whether agricultural, or industrial. d. Marketing Cooperative - is one which engages in the supply of the production inputs to members and markets their products. e.

Service Cooperative - is one which engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, and other services. f. Multi-Purpose Cooperative - is one which combines two or more of the business activities of these different

types of cooperatives. 2. Categories of Cooperatives. Cooperatives shall be categorized according to membership and territorial consideration as follows:

1) In terms of membership, cooperative shall be categorized into: a.

Primary: The members of which are natural persons. b. Secondary: The members of which are primary. c. Tertiary: The members of which are secondaries upward to one or more apex organizations. Those cooperatives, the members of which are cooperatives shall be known as federations or unions as the case may be. 2) In terms of territory, cooperatives shall be categorized according to areas of operations which may or may not coincident with the political subdivisions of the country.