



### Advisory on...

PAGE NOS.

Comparative Features of the Old and New Corporation Code

1-39

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#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Incorporators**

**BEFORE** 

**AMENDMENTS** 

Only natural persons can be incorporators



Any person, partnership, association, or corporation are now allowed to organize a corporation

Number of incorporators must be a minimum of 5 persons up to a maximum of 15 persons

Majority of incorporators must be residents of the Philippines

No more minimum number of incorporators

No more residency requirement

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Term**

**BEFORE AMENDMENTS** Corporate term is limited Perpetual corporate term to a period of 50 years, is now allowed subject to renewal **Existing corporations** have perpetual existence by default Corporations not wanting to have perpetual existence will have to notify the SEC **Extension of corporate Extension of corporate** term can be done not term can be done not earlier than 5 years prior earlier than 3 years prior to expiration of to expiration of corporate life corporate life

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### Subscribed and Paid-up Capital

Paid-up capital should not be less than P5,000

At least 25% of authorized capital stock must be subscribed and at least 25% of the total subscription must be paid-up

No minimum paid-up capital

No minimum subscribed capital stock

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Articles of Incorporation**

BEFORE

**AMENDMENTS** 

Treasurer executes an affidavit certifying that the requirements of minimum subscription and paid-up capital has been met

Affidavit of treasurer no longer required

There must be at least 5 directors or trustees

No minimum number of directors or trustees

The number of trustees must not be more than 15

No maximum number of trustees

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **By-Laws**

BEFORE AMENDMENTS

Bylaws may be adopted at the time of incorporation or within one month thereafter



The one month period
within which the
corporation should adopt
its by-laws has been
deleted

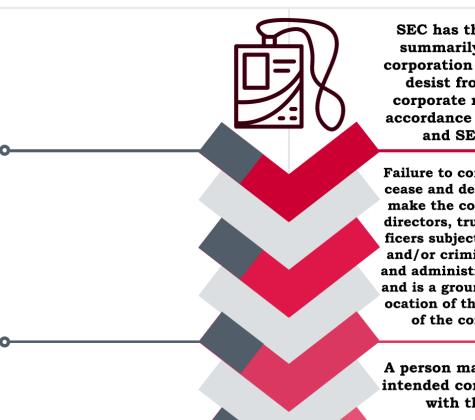
Measures for the promotion of good governance and anti-graft and corrupt practices may be included in the bylaws

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Name**

BEFORE AMENDMENTS



SEC has the power to summarily order the corporation to cease and desist from using a corporate name not in accordance with the law and SEC rules.

Failure to comply with the cease and desist order will make the corporation, its directors, trustees, and officers subject to contempt and/or criminally, civilly, and administratively liable, and is a ground for the revocation of the registration of the corporation.

A person may reserve an intended corporate name with the SEC.

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Non-Use of Corporate Charter and Continuous Inoperation

**BEFORE** 

AMENDMENTS

Non-organization within 2 years will make the corporation deemed dissolved.

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Non-organization of a corporation within 5 years will result in its certificate of incorporation being deemed revoked.

The certificate of incorporation of a corporation which commenced business but becomes inoperative for a period of at least 5 years may be suspended or revoked

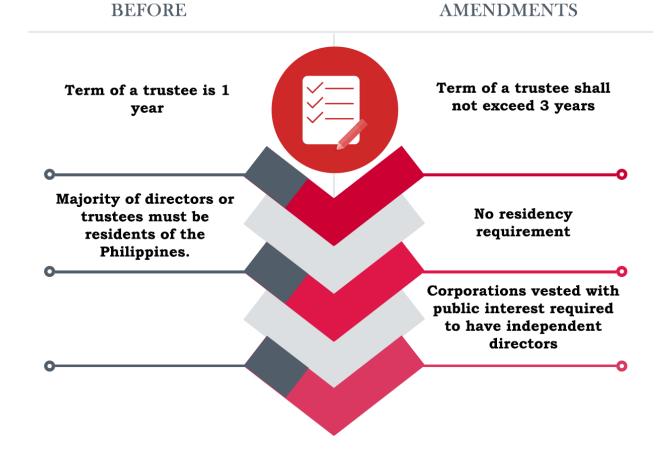
Continued inoperation for at least 5 consecutive years is a ground for a corporation to be put into delinquent status

A delinquent corporation is given 2 years to resume operations, otherwise, the SEC shall cause the revocation of its certificate of incorporation.

#### **ADVISORY**

# THE REVISED CORPORATION CODE

### Term and Qualifications of Members of the Board



#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Term and Qualifications of Members of the Board

BEFORE AMENDMENTS

Corporations required to have independent directors specified in the law:

- 1. Those covered by Section 17.2 of the Securities Regulation Code:
- 2. Banks, quasi-banks, non-stock savings and loans associations (NSSLAs), pawnshops, corporations engaged in money service business, preneed, trust and insurance companies, and other financial intermediaries: and
- 3. Other corporations engaged in businesses vested with public interest similar to the above.

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Term and Qualifications of Members of the Board

BEFORE AMENDMENTS

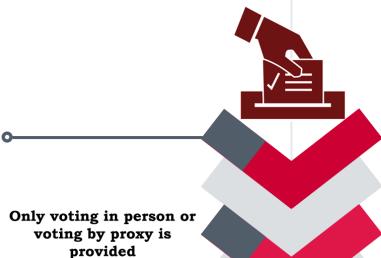
Non-holding of elections and reasons thereof are also required to be reported to SEC within 30 days When there is non-holding of elections, the report shall specify a new date which shall not be later than 60 days SEC may summarily order the holding of elections upon application of any stockholder or member if the reason for non-holding is found to be unjustifiable In case a director or trustee ceases to hold The report should be office, such fact must submitted within 7 be reported to the SEC days from vacancy immediately

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Election of Directors or Trustees**

BEFORE AMENDMENTS



Right to nominate is explicitly made subordinate to right of founder's shares

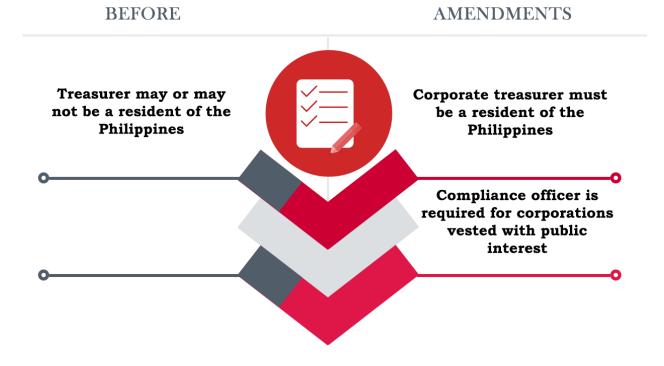
Voting through remote communications or in absentia is allowed when authorized by the bylaws or by majority of the board, or even if bylaws is silent in case of corporations vested with public interest

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#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Officers**



#### **ADVISORY**

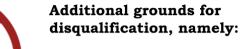
# THE REVISED CORPORATION CODE

### Disqualifications of Directors / Trustees / Officers

**BEFORE** 

**AMENDMENTS** 

A person convicted by final judgment of an offense punishable by imprisonment for a period exceeding 6 years, or a violation of this Code committed within 5 years prior to the date of his election or appointment is disqualified from being a director, trustee or officer of any corporation



- 1. Violation of SRC;
- 2. Violation of Corporation Code;
- 3. If found to be administratively liable for any offense involving fraudulent acts or by a foreign court or equivalent regulatory authority for similar acts, violations, or misconduct; and
- 4. Disqualification imposed by the Philippine Competition Commission.

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Removal and Vacancy of Directors / Trustees / Officers

BEFORE AMENDMENTS

SEC has power to motu propio or after verified SEC has no authority to remove a director complaint, and after due hearing to order the removal of a director or trustee SEC may impose sanctions on the board who with knowledge of disqualification, failed to remove such director or trustee Period within which to fill vacancies: 1. Term expiration - not later than expiration 2. Removal - same day of the meeting authorizing removal 3. Other cases - 45 days from time of vacancy 4. Emergency board – may fill up vacancies in temporary capacity to prevent grave, substantial, and irreparable losses

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### Compensation

Directors shall not participate in the determination of their own per diems or compensation

Submission of annual report on the total compensation of directors or trustees for corporations vested with public interest

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Dealings of Directors**

**BEFORE** 

**AMENDMENTS** 

The contracts by self-dealing directors apply only to said directors

Material contracts require only the approval of majority of the board, excluding the self-dealing Contracts entered into with spouse or relative within the 4th civil degree of consanguinity or affinity of its directors, trustees, or officers are voidable unless certain conditions are present

Material contracts of corporations vested with public interest must be approved by at least 2/3 of the entire membership of the board with at least majority of independent directors voting in favor of the contract

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Powers and Actions**

**BEFORE** 

**AMENDMENTS** 

Only natural persons can enter into a contract of partnership

Corporations can now enter into partnerships

All corporations cannot make political donations

The former Corporation Code did not anticipate the possibility of electronic filing/notice Domestic corporations can now make political donations

Notices for actions requiring stockholder approval may be served electronically in accordance with the bylaws or the SEC rules

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Regular and Special Meetings of Stockholders or Members

**BEFORE** 

**AMENDMENTS** 

If the by-laws is silent as to the date of the annual stockholders' meeting, it shall be on any day of April of every year

Notices to stockholders for regular meetings must be at least 2 weeks prior, unless otherwise provided in the bylaws If the by-laws is silent as to the date of the annual stockholders' meeting, it shall be on any date after April 15 of every year

Notices for regular stockholders' meetings should be sent 21 days prior, unless a different period is required in the bylaws, law, or regulation

Each notice of meeting shall be accompanied by the agenda for the meeting, a proxy form, the requirements for voting through remote communication or in absentia, and the procedure for nomination and voting

Written notices may be sent electronically, subject to the rules of the SEC

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Regular and Special Meetings of Stockholders or Members

BEFORE AMENDMENTS

The stock and transfer book or membership book shall be closed at least 20 days for regular meetings and 7 days for special meetings before the scheduled date of the meeting, unless otherwise provided in the bylaws

Notice for postponement
of meetings shall be sent
to stockholders or
members of record at
least 2 weeks prior to the
meeting, unless
otherwise provided by
the bylaws, law or
regulation

The right to vote may be exercised through remote communication or in absentia, when provided in the by-laws

General waivers of notice in the articles of incorporation or the bylaws are not allowed

Notice of any meeting may be waived expressly

or impliedly

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Regular and Special Meetings of Stockholders or Members

**BEFORE** 

**AMENDMENTS** 

There are
documents/reports that
are supposed to be
presented to the
stockholders before the
proposed meeting

The most recent minutes of meetings must be reported to the SEC

All proceedings and any business transacted at any meeting, 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

Metro Manila is considered as a city or municipality In case the meeting is improperly held or called, the proceeding is valid only if none of the stockholders or members expressly states at the beginning of the meeting that the purpose of their attendance is to object because the meeting is not lawfully called or convened

Metro Manila, Metro
Cebu, Metro Davao, and
other Metropolitan areas
shall be considered a city
or municipality

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Regular and Special Meetings of Directors or Trustees

**BEFORE** 

**AMENDMENTS** 

Notice of regular meetings must be sent at least 1 day prior to the meeting



Notice of regular meetings must be sent at least 2 days prior to the meeting

The president shall preside at all meetings of the board or the stockholders or members, unless otherwise provided in the by-laws Remote communication such as video conferencing, teleconferencing, or other alternative modes of communication are allowed

The chairman or in his absence, the president, shall preside at all meetings, unless otherwise provided in the by-laws

A stockholder or member may vote through remote communication or in absentia when authorized in the bylaws or by a majority of the board of directors, provided, that the votes are received before the corporation finishes the tally of votes

#### **ADVISORY**

# THE REVISED CORPORATION CODE

### Regular and Special Meetings of Directors or Trustees

**BEFORE** 

**AMENDMENTS** 

The corporation shall establish the appropriate requirements and procedures for voting through remote communication and in absentia

Proxies shall be filed before the scheduled meeting Proxies shall be submitted within a reasonable time before the scheduled meeting

Voting trust agreements cannot be entered into to circumvent laws against monopolies or illegal combinations in restraint of trade or for purposes of fraud

Additional limitation pertaining to violation of nationality and capital requirements

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Shares of Stocks**

**BEFORE** 

**AMENDMENTS** 

Provides for 6 acceptable forms of consideration in exchange for stocks in a corporation



Additional forms of consideration:

1.shares of stock in another corporation; and

2. other generally accepted form of consideration

SEC may require corporations whose securities are traded in trading markets and which can reasonably demonstrate their capability to do so to issue their securities or shares of stocks in uncertificated or scripless form in accordance with the rules of the SEC

Notice of sale shall be sent to delinquent stockholders either personally or by registered mail

Notice of delinquency sale may be sent through other means provided in the by-laws

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Corporate Books and Records**

**BEFORE** 

**AMENDMENTS** 

If the paid-up capital is less than P50,000, the financial statements may be certified by the treasurer or any responsible officer

Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees



Additional records must be keep and carefully preserved at its principal office records including, but not limited to:

- 1. Articles of Incorporation and By-Laws (including any amendments);
- 2. Current ownership structure and voting rights, including list of stockholders/members, group structures, intra-group relations, ownership data, and beneficial ownership; officers:

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Books and Records**

BEFORE

**AMENDMENTS** 



- board of directors or members and stockholders or members;
- 5. Latest reportorial requirements submitted to the Commission; and
- 6. For stock corporations, the Stock and transfer book (which may also be kept in the office of the stock transfer agent).



#### **ADVISORY**

## THE REVISED CORPORATION CODE

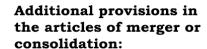
#### Merger and Consolidation

**BEFORE** 

AMENDMENTS

The articles of merger must include the:

- 1. Plan of merger or consolidation;
- 2. The number of shares outstanding or number of members; and
- 3. The number of shares or members voting for or against the plan



- 1. The carrying amounts and fair values of the assets and liabilities of the respective companies as of the agreed cut-off date;
- 2. The method to be used in the merger or consolidation of accounts of the companies;
- 3. The provisional or pro-forma values, as merged or consolidated, using the accounting method; and
- 4. Such other information as may be prescribed by the Commission

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Non-Stock Corporation**

**BEFORE** 

**AMENDMENTS** 

The term of office of 1/3 of the board of trustees shall expire every year

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

corporation

The staggering of terms of trustees has been removed

Even a non-member may be elected as a trustee in case of nonstock corporations vested with public interest

The corporation shall keep a list of its members and their proxies which shall be updated to reflect the members and proxies of record 20 days prior to any scheduled election

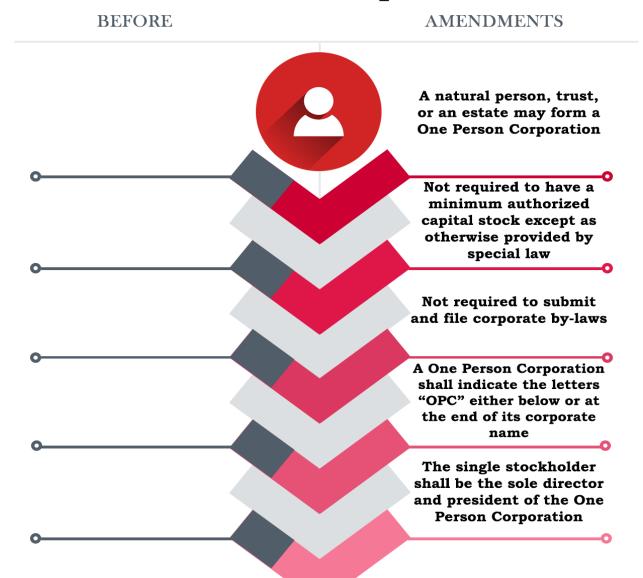
The pre-requisite of favorable recommendation for educational institutions has been removed

Favorable recommendation of the DepEd or the CHED is a pre-requisite for incorporation for educational institutions

#### **ADVISORY**

## THE REVISED CORPORATION CODE

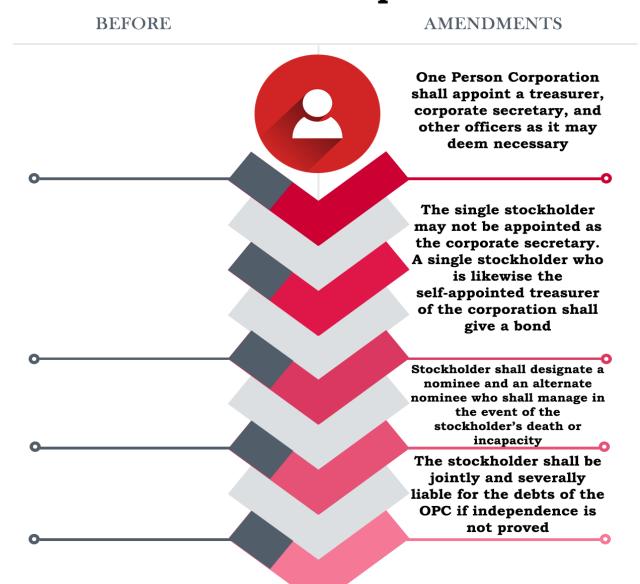
#### **One Person Corporation**



#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **One Person Corporation**



#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **One Person Corporation**

BEFORE AMENDMENTS



#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Dissolution (where no creditors are affected)

**BEFORE** 

**AMENDMENTS** 

Affirmative vote of at least 2/3 of the outstanding capital stock or the members is required

Notice for the vote shall be published for 3 consecutive weeks in a newspaper in the locality or of general circulation in the Philippines



Only requires the affirmative vote of at least majority of the outstanding capital stock or members

Notice is required to be published in a newspaper only once

No application for dissolution of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAs, pawnshops, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency

#### **ADVISORY**

#### THE REVISED **CORPORATION CODE**

#### **Dissolution** (where creditors are affected)

**BEFORE** 

**AMENDMENTS** 



The verified petition for dissolution must contain the following:

- 1. the reason for the dissolution:
- 2. the form, manner, and time when the notices were given; and
- 3. the date, place, and time of the meeting in which the vote was made.

The corporation shall likewise submit to the SEC a copy of the resolution authorizing the dissolution, certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation and a list of all its creditors.

Dissolution shall take effect only upon the issuance by the SEC of a certificate of dissolution

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Involuntary Dissolution**

BEFORE

AMENDMENTS

5 grounds for involuntary dissolution:

1. Non-use of corporate

- charter as provided ounder Section 21 of this Code;

  2. Continuous
- inoperation of a corporation as provided under Section 21 of this Code;
- 3. Upon receipt of a lawful court order dissolving the corporation;
- 4. Upon finding by final judgment that the corporation procured its incorporation through fraud;

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Involuntary Dissolution**

BEFORE AMENDMENTS



- 5. Upon finding by final judgment that the corporation:
- (a) Was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices;
- (b) Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew of the same; and
- (c) Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

#### **ADVISORY**

# THE REVISED CORPORATION CODE

#### **Corporate Liquidation**

Explicitly excluded banks which are subject to the provisions of R.A. 7653 or The New Central Bank Act

Assets which are distributable to creditors or stockholders that are unknown or cannot be found shall be escheated in favor of the city or municipality where the asset may be found

**BEFORE** 

The assets shall be escheated in favor of the national government

**AMENDMENTS** 

#### **ADVISORY**

# THE REVISED CORPORATION CODE

### License to do Business in the Philippines

**BEFORE** 

**AMENDMENTS** 

An initial deposit of P100,000 is required for a foreign corporation to be given a license to transact business in the Philippines

Additional deposit may be required in the amount of 2% of the gross income of the corporation in excess of P5 Million



The amount of initial deposit increased to P500,000

Additional deposit is 2% of gross income in excess of P10 Million

The composition of gross income and allowable deductions therefrom shall be in accordance with the rules of the SEC

#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### **Resident Agent**

BEFORE AMENDMENTS



Domestic corporations who will act as a resident agent must be of sound financial standing and must show proof that it is in good standing as certified by the SEC.

#### **ADVISORY**

## THE REVISED CORPORATION CODE

### Investigation, Offenses, and Penalties

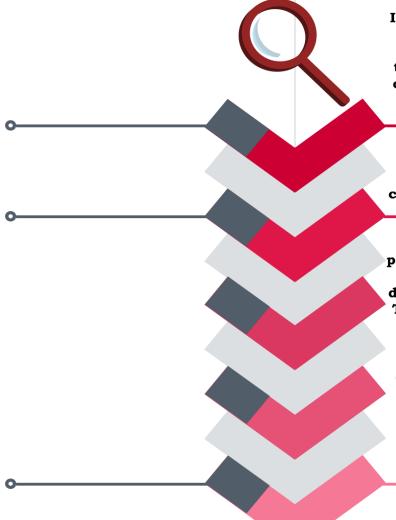
BEFORE

**AMENDMENTS** 

A new chapter on
Investigations, Offenses,
and Penalties was
created, consolidating
the scope of the powers
of the SEC over persons
and violations of the
Code

SEC has the power to issue subpoenas, cease and desist orders, and cite persons in contempt

Penalties for the violation of the provisions of the RCC are made separate and distinct from each other. The offenses range from failure to keep books, refusal to allow inspection, retaliation against whistleblowers, fraudulent conduct of business, tolerating or engaging in graft and corrupt practices, and aiding and abetting violations of the Code



#### **ADVISORY**

## THE REVISED CORPORATION CODE

#### Powers, Functions, and Jurisdiction of the SEC

BEFORE AMENDMENTS

SEC now has visitorial powers over all Securities and corporations which Exchange Commission includes the power to inspect books, enforce compliance, and impose sanctions under the Code Refusal or obstruction on the SEC's exercise of visitorial powers is a ground for revocation of the corporation's certificate of incorporation No court below the Court of Appeals shall have jurisdiction to issue a restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy that directly or indirectly interferes with the exercise of the powers, duties and responsibilities of the Commission that falls exclusively within its jurisdiction