Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

FAIRWAYS & BLUEWATER RESORT GOLF AND COUNTRY CLUB, INC.,
Appellant,

- versus - **SEC En Banc Case No. 03-17-424**

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT,
Appellee.
x----------x

DECISION

This resolves the Memorandum on Appeal filed on 23 March 2017 by Appellant **FAIRWAYS & BLUEWATER RESORT GOLF AND COUNTRY CLUB, INC. (FAIRWAYS),** praying that the En Banc reverse the Letter-Orders of the Commission's **CORPORATE GOVERNANCE AND FINANCE DEPARTMENT (CGFD)** dated 1 August 2016 and 19 December 2016, where the CGFD disregarded a provision in FAIRWAYS' articles of incorporation as being contrary to the Corporation Code, specifically as to voting rights in a **stock** corporation.

At the heart of the controversy is whether a golf/country club should be regulated as a **stock corporation** or as a **non-stock corporation**.

RELEVANT FACTS

On **26 March 1996**, FAIRWAYS was registered with the Commission[1] as a "non-profit stock corporation," viz.

ARTICLES OF INCORPORATION
OF
FAIRWAYS & BLUEWATER RESORT
GOLF AND COUNTRY CLUB, INC.

[1] SEC Reg. No. AS096-003418.

> KNOW ALL MEN BY THESE PRESENTS:
>
> THAT WE, who are of legal age, and a majority of whom are residents of the Philippines, have this day voluntarily associated ourselves together for the purpose of forming a **non-profit stock corporation** under the laws of the Republic of the Philippines. (Emphasis supplied)

The primary purpose of FAIRWAYS is:

> To promote the social, recreational and athletic activities on a non-profit basis among its members, the main objective of which will be the construction and maintenance of a vacation resort, golf course, and lodging facilities.

The Articles of Incorporation of FAIRWAYS specifically provide for capital stock divided into shares, viz.

> SEVENTH – That the total **authorized capital stock** of the Corporation shall consist of TWENTY-FIVE THOUSAND NINE HUNDRED TWENTY (25,920) no par value common shares, **divided into:**
>
> Class "A-1" Common Shares 232
> Class "A-2" Common Shares 429
> Class "A-3" Common Shares 268; *including Five Founders' Shares
>
> Class "B-1" Common Shares 547;
> Class "B-2" Common Shares 596;
> Class "B-3" Common Shares 286;
>
> Class "C-1" Common Shares 1302;
> Class "C-2" Common Shares 956;
> Class "C-3" Common Shares 384;
>
> Class "D" Common Shares 20,920.
>
> (Emphasis supplied)

However, the Articles of Incorporation of FAIRWAYS also specifically provide that no dividends shall be distributed to its members, viz.

> That the ownership of the foregoing shares of stock of the Club is subject to the following restrictive conditions:
>
> xxx xxx xxx

> 4. xxx No profit shall inure to the benefit of any member. Hence, **no dividend shall at any time be declared and/or paid.** Members shall be entitled only to a pro-rata share of the assets of the Corporation at the time of its dissolution or liquidation. (Emphasis supplied).

Originally, the Articles of Incorporation contained a **provision restricting the voting rights to the holders of the five (5) Founders' Shares** "for a period of five (5) years from and after the formal turnover of the project by the developer to [FAIRWAYS]," viz.

> 1. Except for the Five (5) Founders' Shares, voting rights of all the other classes of the shares are suspended. **The Founders' Shares shall have the exclusive right to vote and be voted for in the election of directors for a period of five (5) years** for a period of five (5) years from and after the formal turnover of the project by the developer to the Corporation. xxx (Emphasis supplied)

As amended on **31 May 2013**, the Articles of Incorporation contains a **provision restricting the voting rights to the holders of the five (5) Founders' Shares** "for a period of five (5) years after the date of approval of the [Commission] of this Amended Articles of Incorporation," viz.

> 7. Except for the Five (5) Founders' Shares, voting rights of all the other classes of the shares are suspended. **The Founders' Shares shall have the exclusive right to vote and be voted for in the election of directors for a period of five (5) years <u>from the date of approval by the Securities and Exchange Commission of this Amended Articles of Incorporation.</u>** xxx (Emphasis supplied)

On **15 June 2016**, FAIRWAYS filed with the CGFD, as the department in charge of golf/country clubs, its Preliminary Information Statement (PIS) for the 2016 Annual Meeting of Members Entitled to Vote.

On **17 June 2016**, the CGFD sent a letter stating that FAIRWAYS' PIS was not fully compliant with the Implementing Rules and Regulations of the Securities Regulation Code. The provision in FAIRWAYS' Amended Articles of Incorporation, granting exclusive voting rights of Founders' Shares "for a period of five (5) years from the date of approval by the Securities and Exchange Commission of this Amended Articles of Incorporation," was cited as a violation of **Section**

7 of the Corporation Code,[2] *i.e.* the period is beyond 5 years from incorporation,[3] viz.

> **Section 7. Founders' shares.** – Founders' shares classified as such in the articles of incorporation may be given certain rights and privileges not enjoyed by the owners of other stocks, provided that **where the exclusive right to vote and be voted for in the election of directors is granted, it must be for a limited period not to exceed five (5) years** subject to the approval of the Securities and Exchange Commission. **The five-year period shall commence from the date of the aforesaid approval** by the Securities and Exchange Commission. (Emphasis supplied)

Maintaining that the Founders' Shares no longer have exclusive voting rights, the CGFD directed FAIRWAYS to revise its Information Statement to indicate that all outstanding shares are entitled to vote. Notices of the Annual Meeting would then be sent to all the shareholders listed by FAIRWAYS.

On **28 June 2016**, FAIRWAYS filed with the CGFD its Definitive Information Statement (DIS) for the 2016 Annual Meeting of Members Entitled to Vote, without complying with the CGFD's directive. It argued that the Commission duly-approved the 2013 amendments and thus the reckoning point of the 5 years is the approval of the amended, and not the original, articles of incorporation.

The CGFD informed FAIRWAYS that it would not issue clearance unless FAIRWAYS complies.

On **13 July 2016**, FAIRWAYS re-submitted its DIS, while reiterating its reasons for not complying with the CGFD's directive. It maintained that it has capital stock but does not distribute dividends, thus it should be treated as a **non-stock** corporation. The distinction is relevant because the Corporation Code has a separate, more liberal

---

[2] Reenacted as **Section 7 of the Revised Corporation Code**, viz.
SEC. 7. Founders' Shares. – Founders' shares may be given certain rights and privileges not enjoyed by the owners of other stocks. Where the exclusive right to vote and be voted for in the election of directors is granted, it must be for a limited period not to exceed five (5) years from the date of incorporation. Provided, That such exclusive right shall not be allowed if its exercise will violate Commonwealth Act No. 108, otherwise known as the Anti-Dummy Law, Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991, and other pertinent laws.

[3] Even prior to the 2013 Amended Articles of Incorporation, the exclusive voting rights of the Founders' Shares were **extended beyond 5 years from its incorporation** by the provision in the original Articles of Incorporation granting exclusive rights "for a period of five (5) years from and after the formal turnover of the project by the developer to [FAIRWAYS]."

provision for restriction of voting rights in a non-stock corporation, Section 89,[4] viz.

> **Section 89. Right to Vote.** – The right of the members of any class or classes to vote **may be limited, broadened or denied to the extent specified in the articles of incorporation** or the by-laws. Unless so limited, broadened or defined, each member, regardless of class, shall be entitled to vote. (Emphasis supplied)

On **1 August 2016**, the CGFD sent a letter, essentially stating that FAIRWAYS is a stock corporation. (See citation below)

On **25 November 2016**, FAIRWAYS filed a request for reconsideration.

On **19 December 2016**, the CGFD denied the request for reconsideration of FAIRWAYS.

On **23 March 2017**, FAIRWAYS filed its **Memorandum on Appeal**, praying that the En Banc reverse the CGFD and validate the provision in its articles of incorporation which grants exclusive voting rights to the Founders' Shares, beyond 5 years from incorporation, because: **(1)** the CGFD committed an error of law when it considered FAIRWAYS as a stock corporation; and **(2)** the CGFD committed an error of law when it applied Section 7 of the Corporation Code to FAIRWAYS, instead of Section 89.

FAIRWAYS cited the Supreme Court cases of **Collector of Internal Revenue v. Club Filipino, G.R. No. L-12719, 31 May 1962** (Club Filipino case) and **Republic of the Philippines v. City of Paranaque, G.R. No. 191109, 18 July 2012** (City of Paranaque case), as legal basis that, ***in order to be considered a stock corporation, an entity must not just have capital stock, but must also distribute dividends.***

Moreover, FAIRWAYS argued that the provision on Founders' Shares is valid because **Section 89 of the Corporation Code** allows a non-stock, non-profit corporation to limit, broaden, or deny voting rights of its members.

On **6 April 2017**, the CGFD filed its Comment on the Appeal Memorandum, citing verbatim its arguments in its Letter dated 1 August 2016, viz.

---

[4] Reenacted as Paragraph 1 of **Section 88 of the Revised Corporation Code**, viz.
SEC. 88. Right to Vote. – The right of the members of any class or classes to vote may be limited, broadened, or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, broadened, or denied, each member, regardless of class, shall be entitled to one vote.

> **First**, its AAOI readily shows that it is a stock corporation, among others:
>
> xxx xxx xxx
>
> b. The Seventh Article provides an authorized capital stock of the corporation consisting of Twenty-Five Thousand Nine Hundred Twenty (25,920) no par value common shares xxx
>
> xxx xxx xxx
>
> **Second**, despite the fact that its AAOI states that it is a non-profit stock corporation, and as such does not distribute dividends xxx it remains to be a stock corporation. xxx
>
> xxx xxx xxx
>
> Indeed, when the Club was formed as a corporation in 1996, it organized itself as a stock corporation and was registered as such pursuant to the Corporation Code, which is supported by a Certificate of Incorporation issued by the SEC.
>
> **Third**, after being registered as a stock corporation for more than twenty (20) years, the Club cannot just lightly declare that it is a non-stock corporation when the records on file with the Commission, and its representation to the public, especially to its stockholders, all lead to the fact that it is a stock corporation. xxx

The CGFD argued Section 7 of the Corporation Code, applicable to all stock corporations including FAIRWAYS, mandates that the exclusive voting right granted to Founders' Shares can only extend up to 5 years from incorporation, viz.

> There should be no issue as to which provision is provision is applicable in the instant case, since being a stock corporation, appellant is clearly governed by Section 7 of the Corporation Code.
>
> As clearly pointed out by the Department in its Letter dated 1 August 2016, "xxx the exclusive right of the holders of the Founders' Shares ended on 26 March 2001, or 5 years after the SEC approved its registration as a stock corporation."[5]

---

[5] Page 14 of CGFD's **Comment.**

DISCUSSION

The only genuine issue here is whether or not FAIRWAYS, which was self-described and incorporated as a "**stock** non-profit" may be considered as a **non-stock** corporation. If so, the more liberal provisions of Section 89 will apply.

The Corporation Code expressly provides that corporations are either stock or non-stock, and **non-stock corporations are those excluded from the definition of a stock corporation** in Section 3,[6] viz.

> TITLE I - GENERAL PROVISIONS
> DEFINITIONS AND CLASSIFICATIONS
>
> xxx xxx xxx
>
> Section 3. *Classes of corporations.* - Corporations formed or organized under this Code may be **stock** or **non-stock** 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.** (Emphasis supplied)

The Corporation Code further defines a **non-stock** corporation in Section 87[7] as one where **no income is distributed as dividends to its members**, viz.

> TITLE XI - NON-STOCK CORPORATIONS
>
> Section 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

---

[6] Reenacted as **Section 3 of the Revised Corporation Code**, viz.
SEC. 3. Classes of Corporations. – Corporations formed or organized under this Code may be stock or nonstock corporations. Stock corporations are those 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. All other corporations are nonstock corporations.

[7] Reenacted as **Section 86 of the Revised Corporation Code**, viz.
SEC. 86. Definition. – For purposes of this Code and subject to its provisions on dissolution, a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers: Provided, That any profit which a non-stock corporation may obtain incidental 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 corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.

> 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. (Emphasis supplied)

UNLESS A CORPORATION CAN BE CONSIDERED A STOCK, IT IS A NON-STOCK

Prevailing jurisprudence suggests that the key to identifying a **non-stock** corporation is to first eliminate the possibility that it is a **stock** corporation.

In the 1962 *Club Filipino* case, the Supreme Court held that:

> [F]or a **stock** corporation to exist, two requisites must be complied with, to wit: (1) a capital stock divided into shares and (2) an authority to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of the shares held. In the case at bar, nowhere in its articles of incorporation or by-laws could be found an authority for the distribution of its dividends or surplus profits. Strictly speaking, it cannot, therefore, be considered a stock corporation, within the contemplation of the corporation law. (Emphasis supplied)

In the 2012 *City of Paranaque* case, the Supreme Court held that:

> Two requisites must concur before one may be classified as a **stock** corporation, namely: (1) that it has capital stock divided into shares; and (2) that it is authorized to distribute dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. **As for non-stock corporations, they must have members and must not distribute any part of their income to said members** (Emphasis supplied)

A NON-STOCK CANNOT HAVE "PROFITABLE BUSINESS" AS ITS PURPOSE

The Corporation Code also mandates in Section 88[8] that a non-stock corporation must be organized for a specific "eleemosynary" purpose,[9] viz.

---

[8] Reenacted as **Section 87 of the Revised Corporation Code**, viz.

> Sec. 88. *Purposes.* - **Non-stock** corporations may be formed or organized for **charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof**, subject to the special provisions of this Title governing particular classes of non-stock corporations. (Emphasis supplied)

The articles of incorporation must not include any purpose inconsistent with the character of a non-stock corporation, viz.

> 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:
>
> xxx xxx xxx
>
> 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 non-stock corporation may not include a purpose which would change or contradict its nature as such[.]** (Emphasis supplied)

The meaning of "a purpose which would change or contradict its nature as such" in Section 14(2) was clarified as "profitable business" in **SEC Opinion dated 11 September 1995 addressed to Lawrence D. Feliciano**, viz.

> [I]t is clear that **non-stock** corporations, as a general rule, are not empowered to venture on **profitable business**. A corporation organized as a non-profit concern is not permitted to engage in business with the object of making income or profits *directly* or *indirectly*. It may be allowed to engage in business activities only if it is necessary to carry out the purpose(s) for which the

---

SEC. 87. Purposes. – Nonstock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations.

[9] Cesar L. Villanueva and Teresa Villanueva-Tiansay, Philippine Corporate Law (2018) at 760, viz. "By definition, therefore, the essence of a non-stock non-profit corporation is not the non-existence of shares of stock to cover its capital, but that: (a) its primary purpose should be **eleemosynary** in nature; and (b) there is a prohibition in its articles of incorporation and by-laws that no part of the income or any form of dividend is distributable to the members, trustees and officers of the corporation, even though the corporation may incidentally earn profits from its operations." (Emphasis supplied)

> corporation is organized, but unlike stock corporations, any profit that may be derived from such business activities are not distributable to the directors, officers, or members, but are used for the furtherance of corporate purposes. (Emphasis supplied)

Further, **SEC Opinion dated 18 June 1990 addressed to Coffee Exporters Association of the Philippines, Inc.** clarifies that:

> Even if there is a manifestation in the articles of incorporation that any profit which may be derived from the proposed business venture shall not redound to the benefit of any of the members, if the business activity would run counter to its very nature as a non-profit association, such business activity cannot be undertaken by a **non-stock** corporation. (Emphasis supplied)

Since "profitable business" is contrary to its very character, a non-stock corporation must be not-for-profit. Hence the term, "non-stock non-profit."

SOME GOLF/COUNTRY CLUBS HAVE BEEN REGISTERED AS "STOCK, NON-PROFIT" BECAUSE THEY ISSUE PROPRIETARY MEMBERSHIP CERTIFICATES

The Commission does not dictate whether a golf/country club must register itself as a stock corporation or a non-stock corporation. The economic reality, however, is that **membership in golf/country clubs are often coupled with the issuance of a share of stock**, representing a proprietary interest in the club facilities.[10] The moment that a corporation, even a non-stock non-profit, offers for sale **proprietary membership certificates** to the public for the use of its facilities, it must comply with the registration requirements of the Commission.[11]

The Commission recognized the unique nature of golf/country clubs in **SEC Opinion dated 28 April 1997 addressed to Patrick T. Lugue**, viz.

---

[10] See Timoteo B. Aquino, Philippine Corporate Law Compendium (2014) at 580, viz. "There are instances when the membership involves property rights (like membership in a club) where the purchase of a share is a [condition] sine qua non." See also *Villanueva*, supra at 763, viz. "**Proprietary Membership** – There are many instances, especially in leisure clubs, such as a golf club, that membership is granted coupled with the issuance of a share of stock representing a proprietary interest in the facilities of the club. In most cases, apart from being able to avail of the facilities of the club, the purchase of the certificate represents a form of investment in anticipation of the value of the share in the future and its disposition at a profit."

[11] See Lucila M. Decasa, Handbook on Private Corporations (2009) at 565, citing **SEC Opinion dated 27 June 1991** addressed to Federacion of Small and Medium Scale Enterprises, Inc.

> Unlike an ordinary corporation, the members of a "**proprietary membership club** corporation" have individual pecuniary interest in the club represented in terms of **proprietary shares**, ownership of which is evidenced by certificates of proprietary share or membership, and the corresponding market value of which can be easily determined or fixed. While it has the color of a "non-stock corporation" being a non-profit corporation, **it has the character more of a stock corporation.** Hence the provisions of the Corporation Code governing stock corporations, when pertinent, may be applied. (Emphasis supplied)

Shares in a proprietary membership club, because they may be considered an investment which may be bought and sold at a profit, were seen as inconsistent with the "non-profit" purpose of a non-stock corporation. Recall that a non-stock corporation may not have a purpose inconsistent with its character as such.

However, the term "proprietary membership club corporation," as used in this Opinion, did not create a third class of corporation. In other words, "proprietary membership club" should be read as merely describing the structure of a corporation which has to necessarily be incorporated as either **stock** or **non-stock**.

Also, the term "proprietary membership" describes the securities offered by a golf/country club to the public, consistent with **Section 3.1(f) of the Securities Regulation Code**,[12] which expressly includes "proprietary membership certificates in the definition of "securities." As already pointed-out, while a "stock corporation" issues stock, it does not necessarily follow that a "non-stock corporation" does not issue stock. Thus, the fact that a non-stock issues proprietary membership certificates does not turn it into a "proprietary membership corporation."

CONCLUSION: FAIRWAYS IS A STOCK CORPORATION

The unintended consequence of this SEC Opinion is that during the many years that followed its issuance, the Commission has allowed the incorporation of golf/country clubs as "stock, non-profit" corporations.

However, the perpetuation of such stock, non-profits goes against legal principle and common sense. As one author succinctly put it: "A

---

[12] Section 3. Definition of Terms. - 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes: xxx (f) **Proprietary** or nonproprietary **membership certificates in corporations**; xxx (Emphasis supplied)

non-stock corporation is a non-profit corporation, while a stock corporation is a for-profit corporation."[13]

In this case, FAIRWAYS argues that, even though it described itself and was incorporated as a "stock non-profit" corporation, it should be considered a "non-stock" and thus be entitled to the more liberal provisions of Section 89.

On the contrary, we rule that FAIRWAYS is a stock corporation.

We stated that unless a corporation can be considered a stock, it is a non-stock. Here, there is ample support that FAIRWAYS, by its own admission and actuations is a stock corporation.

First, FAIRWAYS identified itself as a **stock** corporation in its Articles of Incorporation.

Second, FAIRWAYS issues stock. Not just "proprietary membership" but plain and simple **common shares**, defined by the Commission thus:

> 7.5 Common shares refer to the basic class of stock whose owners are entitled to pro-rata share in the profits of the corporation and its assets upon liquidation, and in the management of its affairs without any preference or advantage whatsoever.[14]

Features of common shares may be altered in the articles of incorporation, such as adding a right of first refusal, but the authority to declare dividends is inherent in a common share. Of course, the corporation may *choose* to stipulate that "no dividends will at any time be declared and/or paid."

In other words, FAIRWAYS is **authorized** to distribute profit by the very existence of common shares, although it has chosen to withhold or waive the declaration of dividends.

Section 3 of the Corporation Code provides:

> 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.

---

[13] De Leon and De Leon, Jr., The Corporation Code of the Philippines Annotated (2013) at 664.
[14] Primer on the Corporation Code of the Philippines, published by the Securities and Exchange Commission (2010) at 5.

Third, FAIRWAYS' choice not to declare dividends is not a conclusive factor in determining whether it should be regarded as a non-stock. We assert that the determining factor is "non-profit" purpose.

The Supreme Court ruled in USEAEA v. USEA,[15] the absence of dividends was not held conclusive as to "non-profit" purpose, viz.

> Specifically, private respondent USEA asserts that its **non-profit** character is discernible from the fact that there is **no distribution of earnings or profits by way of dividends or otherwise** and the members do not receive any interest in the net funds and assets resulting from liquidation.
>
> We find the foregoing contention of private respondent USEA **untenable**.
>
> A close examination of the contribution of respondent association will show that **while it is true that the members of the association do not receive dividends in the form of cash, nevertheless, they do receive benefits in the form of commissary privileges** xxx (Emphasis supplied)

In this case, the shareholders of FAIRWAYS receive not just (1) access to the club facilities, but also (2) an ownership interest in the club's assets.

Fourth, FAIRWAYS' shares are subject to market forces, they appreciate and depreciate in value. They are an **investment**. Such a "profitable business" purpose cannot co-exist with non-profit purposes.

While the law does exempt "incidental" business activities, the investment in golf/country club shares are **not incidental** because it is the very means by which membership is acquired. In other words, the monetary value and property rights attached to a golf/country club share are **fundamental** to the existence of the corporation.

Moreover, the accumulated profit from golf/country club shares that have increased in value translates to a claim over such profits via the common shares as discussed above. The shareholders of a golf/country can look forward, in most cases, to a return that far exceeds their initial investment.

Fifth, FAIRWAYS' shareholders have an **inchoate right to the assets** of the corporation, viz.

---

[15] G.R. No. L-36896, 31 August 1981.

> That the ownership of the foregoing shares of stock of the Club is subject to the following restrictive conditions:
>
> xxx xxx xxx
>
> 4. xxx No profit shall inure to the benefit of any member. Hence, no dividend shall at any time be declared and/or paid. Members shall be entitled only to a **pro-rata share of the assets of the Corporation** at the time of its dissolution or liquidation.[16] (Emphasis supplied).

Thus, FAIRWAYS' **members** can look forward to acquiring **ownership** of the club's assets.

Sections 94 and 95 of the Corporation Code,[17] pertaining to the **"Distribution of Assets in Non-Stock Corporations,"** provide that the members' share in the assets of a non-stock, non-profit are determined either by the Articles of Incorporation (Section 94) or a Distribution Plan (Section 95). It should come as no surprise that **common stock** as evidence of an inchoate right to the assets of the non-stock, non-profit is not provided for.

Sixth, the Supreme Court's ruling in Club Filipino does not cover a "stock, non-profit" and is not on all fours with this case.

FAIRWAYS' very structure is a circumvention of law—it is a stock corporation with **investment value** claiming the more **flexible voting rights** of a non-stock corporation, the best of both worlds.

The easiest way to spot a counterfeit non-stock, non-profit is to compare it with a legitimate non-stock, non-profit. When the Supreme Court ruled that Club Filipino is a non-stock, non-profit, they were dealing with a corporation that declared itself as **non-stock**, non-profit, viz.

> ARTICLES OF INCORPORATION
> OF THE
> **CLUB FILIPINO, INC. DE CEBU**
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> That we the majority of whom are residents of the Philippines have this day voluntarily associated ourselves together for the purpose of forming a **non-stock** and non-profit corporation under the laws of the Philippines. (Emphasis supplied)

---

[16] Articles of Incorporation of FAIRWAYS.
[17] Reenacted as Sections 93 and 94 of the Revised Corporation Code, respectively.

Moreover, Club Filipino does not have a provision for issuance of shares anywhere in its articles of incorporation. It does not issue **common** shares.

CONCLUSION

There is no such thing as a "stock, non-profit" corporation. FAIRWAYS is a stock corporation. It needs to amend its articles of incorporation to reflect that it is a plain and simple stock corporation to avoid further confusion.

WHEREFORE, premises considered, the Memorandum on Appeal is hereby **DENIED**. The Letter-Orders of the CGFD dated 1 August 2016 and 19 December 2016 are hereby AFFIRMED.

FAIRWAYS is directed to amend its Articles of Incorporation to indicate that it is a stock corporation, within a period **not exceeding one (1) year** from receipt of this Decision.

Let a copy of this Decision be furnished the Company Registration and Monitoring Department for information and appropriate action.

SO ORDERED.

Pasay City, Philippines; 23 July 2019

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner