Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

08 June 2005

SEC Opinion No. 05-05
Re: Voting Rights of a Delinquent Member

MR. RIZAL D. LAYUGAN
814 C Antel Seaview Towers
2626 Roxas Blvd., Pasay City

Sir:

This refers to your letter dated 14 April 2005 requesting the interpretation of Article 1, Section 5 of the amended by-laws of Antel Sea View Towers Condominium Association, Inc.

Article 1, Sections 5 of the by-laws provides and we quote:

> "Section 5. Voting Power – Each member shall be entitled to such number of votes as shall correspond to his membership interest or participation in the corporation as provided in the Amended master Deed and Declaration of Restrictions of the Project: Provided: however, that any member who is delinquent in the payment of any assessment levied upon him by the Board of Directors pursuant to the powers granted by these by-laws shall not be qualified to cast its vote in any meeting of the corporation and his voting rights shall be exercised by the corporation, while those of the amortizing owners shall be exercised by the developer, Sea View Properties, Inc. until such time as the defaulting members and amortizing owners shall have fully settled their respective obligations to the corporation and developer and or until the title to the unit of the Project is transferred in the name of the owner thereof. (as amended on 10 March 2001)"

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The issue that should be raised before the Commission is whether or not the voting rights of a delinquent member in a non-stock, non profit corporation may be assigned and represented by the Condominium Corporation in any meeting of the corporation.

The Corporation Code of the Philippines under Title XI, Non Stock Corporation has no provision on the rights and obligations of a delinquent member. In such event, the provision governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provision of Title XI, Non-Stock Corporation of the Corporation Code of the Philippines.

A corollary provision can be found under Section 24 of the Corporation Code which categorically provides that:

> "Section 24. Election of directors or trustees – At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, *a majority of the members entitled to vote*. Provided, however, *that no delinquent stock shall be voted*. xxx"

In a previous opinion, the Commission ruled that "no stock delinquent for unpaid subscription shall be voted or entitled to vote or represented at any stockholders' or directors meeting, or for any corporate purpose whatsoever."[1]

Considering the applicability of the above-cited provision on the delinquency of a member in a condominium corporation, the voting rights of a delinquent member cannot be assigned or represented by the condominium corporation. Moreover, for purposes of determining a quorum, it is clear that the required quorum for the election of the board of trustees of non-stock corporation is majority of the members entitled to vote. Accordingly, only members in good standing are entitled to vote. "Delinquent members should not be included in determining the existence of the required quorum."[2]

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[1] SEC Opinion dated 16 November 1982 addressed to Philippine Overseas Drilling and Oil Exploration Development Corporation.

[2] SEC Opinion dated 23 February 1993 addressed to Mr. Ponciano Marquez.

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In view of the foregoing, you are hereby directed to amend Article 1, Section 5 of the by-laws of the condominium association to conform with the provisions of the Corporation Code.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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