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

15 February 2006

SEC Opinion No. 06-12
Assignment to the Board of Directors of the voting rights of delinquent members of a condominium corp.

MR. ERIC B. MANALANG
Unit 2706, Cityland Shaw Tower
Shaw Blvd. cor. St. Francis Street
Mandaluyong City

Dear Mr. Manalang:

This refers to your undated letter received by the Commission on 23 January 2006, requesting opinion on the following queries:

(1) Since delinquent members of a condominium corporation are not allowed to vote under the law, can the voting rights of delinquent members of Cityland Shaw Tower, Inc. ("Cityland" for brevity) be assigned to its Board of Directors?
(2) If the answer is no, will it be the same if such assignment is so provided in Cityland's by-laws?
(3) Can the Commission still withdraw its approval of the by-laws or provisions thereof subsequently found to be contrary to law?

It appears on record that Cityland's Master Deed and By-laws contain the following provisions, respectively:

"9,c. Only members of the Condominium Corporation in good standing, as defined in this MASTER DEED and By-laws of the Condominium Corporation, shall be entitled to vote or having rights in any meeting of the Condominium Corporation where votation is called for, provided, that the voting rights of the members who are not in good

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standing...are deemed assigned to the Condominium Corporation...until such time as all the...obligations of the owners...are extinguished. A member in good standing is one who is up to date in paying association dues and other assessments made by the Condominium Corporation. For this purpose, each Unit shall be entitled to such votes as will correspond to its percentage of participation or ownership in proportion to the total area of all the units held. The percentage of participation of each unit shall be determined by dividing the area of each unit by the total area of all the units held. xxx."

"Section 5. xxx. 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 it by these by-laws shall not be qualified to cast his vote in any meeting of the Condominium Corporation and his voting rights...shall be deemed assigned to the Condominium Corporation...which shall be the representative of the defaulting member...until such time as the defaulting member...shall have fully settled their respective obligations to the Condominium Corporation...."

We answer your first query in the negative.

Section 71 of the Corporation Code ("the Code") provides:

"Section 71. Effect of delinquency.- No delinquent stock shall be voted for or be entitled to vote or to representation at any stockholders' meeting, nor shall the holder thereof be entitled to any of the rights of stockholder except the right to dividends in accordance with the provisions of this Code, until and unless he pays the amount due on his subscription with accrued interest, and the costs and expenses of advertisement, if any."

While the above-quoted provision pertains to stock corporations, the same may be applied to non-stock corporations, like Cityland. This is in accordance with Section 87 of the Code, paragraph 2 thereof, which provides that: *The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by special provisions of this Title.*

Inasmuch as there is no specific provision in the Code relating to delinquent members of non-stock corporations, Section 71 of the Code shall apply. **Thus, like**

delinquent stockholders, delinquent members are not entitled to vote. Therefore, there is no voting right to be delegated.[1]

Neither can the Condominium Act[2], as the law primarily governing condominium corporations like Cityland, provide legal basis for such assignment. There is no provision therein which provides that assignment of delinquent members' voting rights is permitted.

Consequently, the answer to your second query is in the affirmative.

One of the powers of a corporation is the power to adopt its by-laws "not contrary to law, morals or public policy."[3] The validity or reasonableness of a by-law provision is a question of law, and in such case, the issue to be resolved would be whether a by-law provision conflicts with a provision of law, or with the charter of the corporation; or is in the legal sense unreasonable and therefore unlawful.[4]

A provision in a condominium corporation's by-laws mandating the assignment of the voting rights of its delinquent members to its Board of Directors is contrary to the provisions of Section 71 of the Code. Hence, the same is void.

The answer to your third query is likewise in the affirmative.

A by-law or provision thereof that is contrary to law cannot attain validity through acquiescence or on the basis of long practice, nor give rise to any vested right.[5] Any action to have the same declared as null and void is imprescriptible. Hence, any party may petition the Commission to annul the certificate of filing of a corporation's by-laws or any provision thereof that is contrary to law. Amendment of the by-laws is likewise an option.

However, please be advised that the foregoing cited authorities do not restrain or preclude judicial interpretation and application of the law on the actual facts, should the issues raised herein be litigated in the proper court.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

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[1] SEC Opinion, letter to Mr. Antonio M. Elicano, dated September 29, 2000
[2] Republic Act No. 4726
[3] Section 36, Corporation Code
[4] Gokongwei v. SEC, 89 SCRA 336, 361-362
[5] Grace Christian High School vs. CA, 281 SCRA 133

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