Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

27 August 2008

MR. JAIME O. LARDIZABAL
c/o Valley Golf and Country Club, Inc.
Don Celso Tuason Avenue
Antipolo City

SEC OGC Opinion No. 08-18
By-Laws: Exemption from
Dues and Assessment

Sir:

This refers to your letter dated 04 June 2008 requesting opinion on the following queries:

> 1. Does our Board have the legal or inherent power, without approval of the general membership, to make exceptions or grant exemptions from dues and assessments to certain members of the Club notwithstanding the express proviso in the Amended By-laws that all members must pay?
>
> 2. In the affirmative, is there a need to amend the Amended By-laws to reflect such right and privileges of certain members so that the shareholders and share buyers would know?

It is well-settled that the by-laws are the private laws of the corporation. They are in effect written into the charter and in this sense, they become part of the fundamental law of the corporation, and therefore, the corporation, its directors, officers and members must be guided by them in running the affairs of the corporation.[1]

Article VII, Section 2 of the By-laws of Valley Golf and Country Club (*"Club"*) mandates all members to pay the stipulated monthly dues and other assessment of the Club, thus:

> "Section 2. Membership in the Club shall be subject for approval by the Board of Directors upon the favorable recommendation of the Membership Committee. **All members shall pay the stipulated monthly dues and other assessment of the Club.**"

[1] 8 Fletcher Cyc. Corp., 1982 ed. ch.50, 691.

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Stockholders who are exempted from such payment is clearly provided in Section 4, Article VII of the by-laws, thus:

> "Section 4. Stockholders who subscribed to the additional increase in capital stock of P8.1 Million last August 1981 shall be excluded from paying the regular monthly dues and special assessments corresponding to such additional shares until they decide to sell the same, or to assign the playing rights corresponding thereto."

In the absence of an explicit provision in the By-laws authorizing the board to grant exemption to a member or to exclude him from payment of monthly dues and other assessments, a mere board resolution will not suffice to grant such exemption or exclusion. Where resolution of directors is inconsistent with corporation's by-laws, by-laws will prevail.[2]

Anent your second query, it is necessary that the By-laws of the Club be amended to incorporate provisions which grant exemptions to certain members of the Club from the payment of monthly dues and other special assessment.

It shall be understood that the opinion rendered is based on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[2] Ibid, 597.

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