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

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SEC Opinion No. 11-17
Limitation on Ownership of
Shares of Stock

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Madam:

This refers to your letter dated 15 February 2011 requesting our opinion on whether or not Bonlou Inc. can amend its Articles of Incorporation to include a provision stating that an individual can acquire and own only one (1) share of stock of the company.

In your letter, you stated that Bonlou Inc. (**"Bonlou"** or the **"Company"**) was organized for the purpose of building a general hospital that will cater to several specialized services. According to the company's articles of incorporation, it has an authorized capital stock of ₱40,000,000.00 divided into 3,000 common shares and 1,000 preferred shares, all with a par value of ₱10,000.00 per share. As of 2010, Bonlou's subscribed capital stock is held by 149 stockholders and consists of 2,070 common shares and 1,600 preferred shares with an aggregate value of ₱36,700,000.00.[1] Of the 149 stockholders, 69 subscribed to 30 shares each while 80 subscribed to 20 shares each.[2]

It is true that there is nothing in the Corporation Code[3] or the current SEC rules and issuances that expressly prohibit companies from restricting the number of

[1] 2010 General Information Sheet.
[2] Ibid.
[3] Batas Pambansa Blg. 68 (1980).

shares that a person may own in a corporation. However, there is a need to examine the possible effects of imposing this kind of restriction to the rights of the stockholders.

As previously mentioned, each of the company's stockholders has at least 20 shares in their name. If Bonlou's proposed amendment is approved, how will this affect the shareholdings of its current stockholders? Will they be compelled to transfer their shareholdings in excess of one (1) share, or are they exempt from the application of the amendment? Note that the proposed amendment does not state whether or not it shall only apply prospectively to future holders of shares of stock in Bonlou. In any case, we wish to point out that a restriction on ownership of shares of stock does not affect shares issued before the restriction unless the stockholders owning said shares acquiesce thereto.

Another matter that needs to be considered is the pre-emptive right of the company's stockholders, defined under Section 39 of the Corporation Code as follows:

> "Sec. 39. *Power to deny pre-emptive right.* – All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto: *Provided*, That such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt."

The above provision gives each stockholder the right to subscribe to all new issues of shares of any class that result from the increase in capital stock effected under Section 38 of the Corporation Code in proportion to his shareholdings, and is intended to enable him to retain his proportionate interest in the corporation.[4] This right is based on the principle that a stockholder, in subscribing to shares of stock, does so under the understanding that his equity is fixed by the relation which the number of shares he subscribes bears to the total authorized capital stock, issued or unissued, subscribed or unsubscribed, at the time of his subscription, as shown in the company's articles of incorporation, and should not, therefore, be diluted by the issuance of additional shares as to affect his rights to vote, to dividends, and to the distribution of assets upon liquidation, without first giving him the opportunity to subscribe to such shares in proportion to his shareholdings.[5]

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[4] Ruben E, Agpalo, *Comments on the Corporation Code of the Philippines* (Rex Printing Company, Inc.: Quezon City, 2002), p. 211.
[5] Ibid., 210-211.

Applying the foregoing to the instant case, Bonlou will have to amend its articles of incorporation to include therein an express denial of its stockholders' pre-emptive right to subscribe to additional shares in the event of an increase in the company's authorized capital stock. Without this express denial, the company's stockholders at the time of said increase have the right to subscribe to the new shares in proportion to their respective shareholdings, and the proposal to limit the stockholders' shareholdings to only one share each effectively violates their pre-emptive right. Conversely, each stockholder who exercises his pre-emptive right will necessarily have more than one share of stock in his name, in seeming contravention of the limitation imposed by the proposed amendment.

On the basis of the foregoing, we opine that the proposed amendment of the company's articles of incorporation needs to be reviewed and modified, taking into consideration the matters discussed above.

The foregoing opinion rendered is based solely 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.[6]

VERNETTE G. UMALI-PACO
General Counsel

[6] SEC Memorandum Circular No. 15, series of 2003.