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

SHERWOOD HILLS GOLF CLUB, INC.,
Petitioner,

- versus -

SEC En Banc Case No. 02-10-195

ATTY. JUSTINA F. CALLANGAN, in her capacity as the Director of the CORPORATION FINANCE DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION,
Respondent.

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DECISION

This resolves the Verified Petition for Review filed on 15 February 2010 by Petitioner **SHERWOOD HILLS GOLF CLUB, INC. (SHERWOOD HILLS),** praying that the En Banc reverse the Letter-Order of the Commission's **CORPORATION FINANCE DEPARTMENT (CFD)** dated 20 January 2010, where the CFD directed SHERWOOD HILLS to amend its articles of incorporation for 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 **13 March 1996**, SHERWOOD HILLS was registered with the Commission[1] as a "non-profit stock corporation," viz.

ARTICLES OF INCORPORATION
OF
SHERWOOD HILLS GOLF CLUB, INC.

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[1] SEC Reg. No. AS096-002859.

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 SHERWOOD HILLS 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 golf course, tennis courts, swimming pools, and other indoor and outdoor related sports and recreational facilities.

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

> SEVENTH – That the total **authorized capital stock** of the Corporation shall consist of Two Thousand Five Hundred (2,500) no par value common shares, **divided into** 1,156 Class "A" Common Shares, 500 Class "B" Common Shares, inclusive of NINE (9) Founders' Shares, 300 Class "C" Common shares, and 544 Class "D" Common shares. (Emphasis supplied)

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

> That the ownership of all shares of stock of this Club is subject to the following restrictive conditions:
>
> xxx xxx xxx
>
> 4. 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).

Significantly, **the Articles of Incorporation contains a provision restricting the voting rights to the holders of the nine (9) Founders' Shares** "for a period of five (5) years from and after the formal turnover of the project from the developer to SHERWOOD HILLS," viz.

> The Founders' Shares shall have all the features of a Class "B" Common Share. In addition, **only holders of Founders' Shares may vote at any meeting of the members and be elected to the Board of Directors of the Corporation** for a period of five (5) years from and after the formal turnover of the project by the developer to the Corporation. (Emphasis supplied)

On **21 July 2009**, SHERWOOD HILLS filed with the CFD, as the department in charge of golf/country clubs, its Preliminary Information Statement (PIS) for the 2009 Annual Meeting of Members Entitled to Vote.

On **23 July 2009**, the CFD sent a letter stating that SHERWOOD HILLS' PIS was not fully compliant with the Implementing Rules and Regulations of the Securities Regulation Code, along with the CFD's comments.

In the same letter, the CFD directed SHERWOOD HILLS to amend its articles of incorporation, specifically the provision on exclusive voting rights of Founders' Shares "for a period of five (5) years from and after the formal turnover of the project from the developer to SHERWOOD HILLS," as this provision violates **Section 7 of the Corporation Code**,[2] 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)

On **29 July 2009**, SHERWOOD HILLS filed with the CFD its Definitive Information Statement (DIS) for the 2009 Annual Meeting of Members Entitled to Vote, which incorporated most of the CFD's comments. However, SHERWOOD HILLS informed the CFD that it would not amend the provision on Founders' Shares because **Section 89 of the**

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[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.

Corporation Code allows a non-stock, non-profit corporation to limit, broaden, or deny voting rights of its members.

SHERWOOD HILLS argued that Section 89 applies and not Section 7, citing **SEC Opinion dated 6 July 2001** addressed to the Knights of Columbus Fraternal Association of the Philippines, Inc. (KCFAPI), viz.

> Furthermore, it should be stressed that Section 7 of the Code shall be applicable to non-stock corporations only when the same may be pertinent and in the absence of any specific provisions governing non-stock corporations. In the instant query, the surrounding circumstances indicate that **the cited definitions of founders' shares have no bearing with the features of the Founder Member as found in KCFAPI's by-laws** and there is a specific provision under Title XI of the Code governing non-stock corporations.
>
> It can therefore be concluded that Sec. 7 of the Corporation Code finds no application to the Founder Members' rights under Sec. 2 of the association's by-laws. Instead, Section 89 of the Code in which the rights of members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or by-laws. (Emphasis supplied)

On **14 September 2009**, the CFD wrote that SHERWOOD HILLS cannot be considered a non-stock, non-profit corporation. The CFD cited **SEC Opinion dated 28 April 1997 addressed to Calatagan Golf Club, Inc.**, viz.

> While the Club is a "non-profit" corporation, it has the character of a "stock corporation." **Unlike an ordinary non-profit, non-stock corporation, the member stockholders thereof 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.** This kind of corporation is called "proprietary membership corporation." While it has the color of a "non-stock corporation" being non-profit, it has the character more of a "stock corporation." (Emphasis supplied)

The CFD further argued that the SEC Opinion issued to KCFAPI is not applicable because, in that case, the so-called "Founder Member" did not have the features of the Founders' Shares under Section 7 of the Corporation Code, whereas SHERWOOD HILLS' Founders' Shares—which grant unique rights to its nine (9) incorporators—falls precisely within the statutory definition. The CFD argued that the more specific provision, Section 7, should apply and not Section 89.

On **2 December 2009**, SHERWOOD HILLS sent a letter where it reiterated that it would not amend its articles of incorporation. 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 provision for restriction of voting rights in a non-stock corporation, Section 89,[3] 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 one (1) vote. (Emphasis supplied)

On **20 January 2010**, the CFD issued the assailed Letter-Order, viz.

> This refers to your letter dated December 2, 2009 filed on behalf of Sherwood Hills Golf Club, Inc. reiterating the Club's position that it is a non-stock corporation and that Section 7 of the Corporation Code, which limits voting privileges of Founders' Shareholders to five (5) years from incorporation, is not applicable to it.
>
> **After careful consideration of your arguments, we find no cogent reason to disturb our earlier position.** Article Seventh of the Club's Articles of Incorporation states that "[t]he total authorized capital stock of the Corporation shall consist of Two Thousand Five Hundred (2,500) no par value common shares, divided into 1,156 Class 'A' Common Shares, 500 Class 'B' Common Shares, inclusive of Nine (9) Founders' Shares, 300 Class 'C' Common Shares, and 544 Class 'D' Common Shares." Per its Articles of Incorporation, the Club was formed and registered as a stock, non-profit corporation. **As stated in the earlier Opinion of the Commission, which was also cited in our September 14, 2009 letter, this kind of corporation is called a 'proprietary membership corporation.' While it has the color of a 'non-stock corporation' being non-profit, it has the character more of a 'stock corporation.'**

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[3] 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.

> The Club is henceforth directed to amend its Articles of Incorporation particularly on the exclusive voting rights of Founders' Shares in order to comply with the requirement of Section 7 of the Corporation Code. (Emphasis supplied)

On **15 February 2010**, SHERWOOD HILLS filed the instant **Verified Petition for Review**, praying that the En Banc reverse the CFD 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 CFD committed an error of law when it considered SHERWOOD HILLS as a <u>stock</u> corporation; and **(2)** the CFD committed an error of law when it applied Section 7 of the Corporation Code to SHERWOOD HILLS, instead of Section 89.

SHERWOOD HILLS cited the Supreme Court cases of **<u>Collector of Internal Revenue v. Club Filipino</u>, G.R. No. L-12719, 31 May 1962** (Club Filipino case) and **<u>Philippine Fisheries Development Authority v. Court of Appeals</u>, G.R. No. 169836, 31 July 2007** (Philippine Fisheries 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.***

<u>DISCUSSION</u>

The only genuine issue here is whether or not SHERWOOD HILLS, which was self-described and incorporated as a "**<u>stock</u>** 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 <u>stock</u> or <u>non-stock</u>, and **non-stock corporations are those excluded from the definition of a stock corporation** in Section 3,[4] 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. <u>Corporations which have</u>

[4] 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.

> **non-stock** corporations. <u>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.</u> **All other corporations are <u>non-stock</u> corporations.** (Emphasis supplied)

The Corporation Code further defines a **<u>non-stock</u>** corporation in Section 87[5] 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 <u>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</u>**: 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 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:

> <u>[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.</u> In the case at bar,

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[5] 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.

> 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 2007 *Philippine Fisheries* case, the Supreme Court held that:

> Section 3 of the Corporation Code defines a stock corporation as one whose capital stock is divided into shares and xxx authorized to distribute to the holders of such shares dividends xxx.
>
> xxx xxx xxx
>
> xxx Section 87 of the Corporation Code defines a non-stock corporation as one where **no part of its income is distributable as dividends to its members, trustees or officers.** A non-stock corporation must have members. (Emphasis supplied)

In 2012, the Supreme Court decided the case of **Republic of the Philippines v. City of Paranaque, G.R. No. 191109, 18 July 2012** (City of Paranaque case) which reiterated the two requisites in *Club Filipino*, viz.

> 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[6] that a non-stock corporation must be organized for a specific "eleemosynary" purpose,[7] viz.

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[6] Reenacted as **Section 87 of the Revised Corporation Code**, viz.
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.
[7] 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

> Sec. 88. *Purposes.* - **<u>Non-stock</u>** 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 **<u>non-stock</u> 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 **<u>profitable business</u>**. 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 corporation is organized, but <u>unlike stock corporations, any profit that may be derived from such business activities are not distributable to the directors, officers, or members</u>, but are used for the furtherance of corporate purposes. (Emphasis supplied)

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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)

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.[8] 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.[9]

The CFD's argument that "The Commission has long determined the nature of such corporations as [SHERWOOD HILLS]"[10] is based on **SEC Opinion dated 28 April 1997 addressed to Patrick T. Lugue**, viz.

> 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

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[8] 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."

[9] 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.

[10] Page 3 of Comment filed 30 March 2010.

> 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 <u>stock</u> 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.

<u>However, the term "proprietary membership club corporation," as used in this Opinion, did not create a third class of corporation.</u> 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,**[11] 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. <u>Thus, the fact that a non-stock issues proprietary membership certificates does not turn it into a "proprietary membership corporation."</u>

CONCLUSION: SHERWOOD HILLS IS A <u>STOCK</u> CORPORATION

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

However, the perpetuation of such <u>stock</u>, non-profits goes against legal principle and common sense. As one author succinctly put it: "A non-stock corporation is a non-profit corporation, while a stock corporation is a for-profit corporation."[12]

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[11] 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)

[12] De Leon and De Leon, Jr., <u>The Corporation Code of the Philippines Annotated</u> (2013) at 664.

In this case, SHERWOOD HILLS 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 SHERWOOD HILLS 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 SHERWOOD HILLS, by its own admission and actuations is a stock corporation.

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

Second, SHERWOOD HILLS 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.[13]

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, SHERWOOD HILLS 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.

Third, SHERWOOD HILLS' choice not to declare dividends is not a conclusive factor in determining whether it should be regarded as a

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[13] Primer on the Corporation Code of the Philippines, published by the Securities and Exchange Commission (2010) at 5.

non-stock. We assert that the determining factor is "non-profit" purpose.

The Supreme Court ruled in <u>USEAEA v. USEA</u>,[14] 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 SHERWOOD HILLS receive not just (1) access to the club facilities, but also (2) an ownership interest in the club's assets.

Fourth, SHERWOOD HILLS' 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 <u>profit</u> 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, SHERWOOD HILLS' shareholders have an **inchoate right to the assets** of the corporation, viz.

> That the ownership of all shares of stock of this Club is subject to the following restrictive conditions:

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

xxx xxx xxx

> 4. 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.[15] (Emphasis supplied).

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

Sections 94 and 95 of the Corporation Code,[16] 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.

SHERWOOD HILLS' 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)

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[15] Articles of Incorporation of SHERWOOD HILLS.
[16] 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. SHERWOOD HILLS 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 Verified Petition for Review is hereby **DENIED**. The Letter-Order of the then CFD dated 20 January 2010 is hereby AFFIRMED.

SHERWOOD HILLS 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