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

11 November 2005

**SEC Opinion No. 05-14**
**Non- stock Corporation:**
**Quorum in Meetings**

**ATTY. RUBEN C. LADIA**
Ladia Bacalla Law Offices
2603 D, East Tower,
Philippine Stock Exchange Center,
Exchange Road, Ortigas Center,
Pasig City

Sir:

This refers to your letter dated 16 September 2005 requesting opinion on the validity of an amendment to the by-laws providing for a quorum and voting requirement of less than a majority of the

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voting members of the AIR MATERIEL WING SAVINGS AND LOAN ASSOCIATION, INC. (AMWSLAI).

The letter had no accompanying record as to the existing by-laws of AMWSLAI but it did mention the proposed amendment, quoted as follows:

"The proposed amendment reads, in Section 6 of Article XV thereof, as follows:

> **"The quorum requirement for regular and special meetings, and calling and holding of general or special meetings, shall be based on *twenty five (25%) percent of the official list of regular and special members* of good standing, as determined by the Board of Trustees." (Italics supplied)"**

The letter also made mention that "the proposed amendment is intended to be used as basis for the quorum and voting requirements in the scheduled special election of the Board of Trustees on October 14, 2005, the validity and legality of which, to the mind of some of the members and officers, is doubtful, and for which an opinion is being sought of your good office."

The Company Registration and Monitoring Department of the SEC has certified that as of 20 October 2005, the AMWSLAI has no pending application for amendment of by-laws with its department.

In view of the above, the following is imparted for purposes of information only:

Any corporation, whether stock or non-stock, is authorized to provide in its by-laws a specific number of stockholders or members necessary to constitute a quorum for the transaction of corporate business, except in those cases where the Corporation Law itself prescribes a greater number of stockholders or members necessary to



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constitute a quorum. (SEC Opinion dated January 2, 1980, reiterated in SEC Opinion dated September 28, 1984)

Please take note of the following instances wherein the Corporation Code prescribes what would legally constitute a quorum:

1. In the amendment of the articles of incorporation, the law requires the majority vote of the Board of Directors/Trustees and the vote or written assent of two-thirds (2/3) of the members. (Section 16)

2. In the amendment or repeal of by-laws or adoption of new by-laws, the law requires the majority vote of the Board of Directors/Trustees and at least a majority of the members of a non-stock corporation. (Section 48)

Accordingly, in one opinion, the Commission ruled as follows:

> "Thus, a corporation is authorized to provide in its by-laws the desired quorum for the transaction of a corporate business. However, the provision in the by-laws relative to quorum will not hold true in those instances where the Corporation Code or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal. In such cases, a quorum shall consist of such ratio of stockholders or members as may be declared by statutory provisions. It is a cardinal rule that a by-law providing what shall constitute a quorum is invalid if it is in conflict with the provisions of a statute on the subject matter. Where the number necessary to constitute a quorum is prescribed by a statute, a by-law requiring less than the proportion



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required by the particular legislation is subordinate to the statute."[1]

Anent the required quorum for the election of the Board of Directors or Trustees, we direct your attention to the following provision of the Corporation Code:

"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 a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. x x x"

The aforementioned section fixes the number of quorum required for the election of directors or trustees, which is a majority of the members entitled to vote in person or by proxy. Less than the required number cannot hold a valid meeting, although those present may adjourn.[2]

Please be advised accordingly.

Very truly yours,

**VERNETTE G. UMALI-PACO**
General Counsel

[1] SEC Opinion dated November 25, 1998, addressed to Gregorio G. Sancianco High School Class of 1958 Alumni Association, Inc.
[2] SEC Opinion dated August 25, 1987, addressed to Mr. James Vinzon



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