



07 August 2023

NOTICE TO STOCKHOLDERS/MEMBERS RE: IMPLEMENTATION OF THE REVISED CORPORATION CODE PROVISIONS ON ELECTION OF DIRECTORS FOR TERM OF ONE (1) YEAR AS WELL AS PROVIDING ELECTION OF INDEPENDENT DIRECTORS

Dear Stockholders/Members:

As you may have noticed in the advisories sent to you by the Nomination Committee of the Club and by subsequent communications, members were invited to submit the name/names of nominees for the positions of Regular and Independent Directors to serve for a term of one (1) year; and that the Nomination Committee was mandated to nominate a minimum of 8 and maximum of 12 candidates for regular directors and minimum of 3 and maximum of 5 candidates for independent directors for election.

There may be questions on your part about the procedure observed by the Nomination Committee and as to why Valley Golf will be electing nine (9) directors (7 regular and 2 independent) for a term of one (1) year instead of three (3) directors to serve for a term of three (3) years to replace the three directors whose three-year term has expired as currently provided for by Section 1, Article IV of the Re-Amended By Laws.

The procedure to be implemented by the Club as to the election and term of directors was adopted to strictly comply with the **mandatory provisions** of Section 22, Title III of the Revised Corporation Code, particularly paragraphs 2 and 3(a) of the same, to wit:

VALLEY GOLF AND COUNTRY CLUB, INC.
Don Celso S. Tuason Avenue, Antipolo City 1870 Philippines
Telephone: 86584901 to 03

www.valleygolf.com.ph
E-mail: info@valleygolf.com.ph

Unless otherwise provided in this Code, the board of directors and trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation.

Directors shall be elected for a term of one (1) year from among the holders of stocks registered in the corporation's books while trustees shall be elected from among the members of the corporation. Each director and trustee shall hold office until the successor is elected and qualified. A director who ceases to own at least one (1) share of stock or trustee who ceases to be a member of the corporation shall cease to be such.

The board of the following corporations vested with public interest shall have independent directors constituting at least twenty percent (20%) of such board:

- a) Corporations covered by Section 17.2 of Republic Act No. 17.2 of Republic Act No. 8799, otherwise known as the "Securities Regulations Code", namely those whose securities are registered with the Commission, corporations listed with an exchange or assets of at least Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more holders of shares, each holding at least one hundred (100) shares of a class of its equity shares; (emphasis supplied)
- b) xxx
- c) xxx

An independent director is a person who, apart from shareholdings and fees received from the corporation, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to materially interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Independent directors must be elected by the shareholders present or entitled to vote *in absentia*. Independent directors shall be subject to rules and regulations governing their qualifications, disqualifications, voting requirements, duration of term limit and term limit, maximum number of board memberships and other requirements that the Commission will

prescribe to strengthen their independence and align with international law practices. (Underscoring supplied).

As a stock corporation, regardless if it is non-profit or does not declare dividends to its shareholders, Valley Golf and Country Club, Inc. is mandated to comply with the aforementioned provision of the Revised Corporation Code dictating that directors of a stock corporations shall be elected for a term of one (1) year.

As a registered issuer of securities, Valley Golf is deemed under the same Section 22 of the Revised Corporation Code to be a corporation vested with public interest who are required to have independent directors constituting at least twenty percent (20%) of such board.

Thus, the provision of Section 22 of the Revised Corporation Code has effectively superseded and rendered as contrary to law Article IV, Section 1 of the Club's Re-Amended By Laws which provided that every year, there shall be elected three (3) Directors who shall serve for a term of three (3) years (to join the six directors whose three-year term has not yet expired).

As a matter of fact, the SEC (through the Corporate Governance and Finance Department) in its 18 May 2023 response to Valley Golf's letter dated 09 May 2023 seeking advice on this point, has already reiterated to Valley Golf that it remains NON-COMPLIANT with CGFD's directive issued last 22 October 2021 for VGCCI to amend Article IV, Section 1 of its BL (ByOLaws) to align with Section 22 of the RCC, to wit:

While we understand that the required number of votes was not obtained when the amendment of the term of directors in its BL was submitted for approval by its stockholders during the 25 September 2022 annual stockholders' meeting and the same disclosed in the Club's Current Report (SEC Form 17C), it cannot be denied that the Club remains NON-COMPLIANT with CGFD's directive issued last October 2021 for VGCCI to amend Article IV, Section 1 of its BL to align with Section 22 of the RCC.

VALLEY GOLF AND COUNTRY CLUB, INC.
Don Celso S. Tuason Avenue, Antipolo City 1870 Philippines
Telephone: 86584901 to 03

www.valleygolf.com.ph
E-mail: info@valleygolf.com.ph

In addition, the SEC CGFD in the same letter has warned Valley Golf that non-compliance with a legal requirement of the RCC as well as CGFD's directive may subject the Club to administrative sanctions as provided in Sec. 158 of the RCC, to wit:

“Section 158. Administrative Sanctions.—If, after, due notice and hearing, the Commission finds that a provision of **this Code**, rules or regulations, **or any of the Commission's orders has been violated**, the Commission may impose any or all of the following sanctions, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation:

- a) Imposition of a fine ranging from Five Thousand Pesos (P5,000.00) to Two Million Pesos (P2,000,000.00), and not more than One Thousand Pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two Million Pesos (P2,000,000.00);\
- b) Issuance of a permanent cease and desist order'
- c) Suspension or revocation of the certificate of the incorporation;
- d) Dissolution of the corporation and forfeiture of its assets under the condition in Title XIV of this Code.” (emphasis supplied)

Thus, SEC's letter dated 18 May 2023 cannot be considered as mere guidance or opinion to Valley Golf but an order/directive from the regulatory body to comply with Section 22 of the RCC and amend its By Laws accordingly or face the possibility of being sanctioned as mentioned. Valley Golf's non-compliance to date with Section 22 of the RCC can even be considered as a continuing violation by the SEC until there is actual compliance.

The SEC CGFD even noted that the requirement that directors for stock corporations should be elected for a term of one year has already existed before the RCC under the previous law (Batas Pambansa Blg. 68). Thus, it said in the same letter, “even before the *RCC* took effect and even without the issuance of the CGFD Comment, VGCCI is already duty bound to comply with the CCP (Corporation Code of the Philippines of 1980), including the amendment of its BL to prescribe only for one-year term for members of the board of directors.

VALLEY GOLF AND COUNTRY CLUB, INC.
Don Celso S. Tuason Avenue, Antipolo City 1870 Philippines
Telephone: 86584901 to 03

www.valleygolf.com.ph
E-mail: info@valleygolf.com.ph

You may also ask why the Club should not amend its By Laws first to conform to the provision of the law being cited by the SEC. Ideally, that should be the procedure but please recall that there had already been two (2) previous attempts to amend the By Laws to adhere to the provisions of the RCC. In 2020, amendments were proposed to increase the number of directors to include independent directors. In 2022, as acknowledged by the letter of the SEC, amendments were also proposed to incorporate all amendments required by the SEC to the AOI and By-Laws, including having one year term for all directors and the institutionalization of the election of independent directors. Unfortunately, in both instances, the necessary affirmative vote of the required number of shareholders was not achieved. Thus, status quo remained insofar as concern the AOI and By Laws of Valley Golf.

This year, the same amendments as of last year are being proposed again to comply with the RCC provisions on the term of directors and election of independent directors, among other amendments. However, we stress that Valley Golf's compliance with the mandatory provisions of the RCC does not depend on the actual approval/ratification of the amendment of the AOI and By Laws. Valley Golf cannot continue citing the non-ratification by the shareholders of the required amendments of the AOI and By Laws as an excuse for non-compliance with the law. Even if the amendments are not ratified, Valley Golf is still obligated to comply with the mandatory provisions of the RCC. Otherwise, it risks the administrative sanctions as mentioned by the SEC in its letter. The SEC has also given notice that it will not approve other amendments to Valley Golf's AOI and By Laws even if ratified unless the mandatory provisions under the RCC and other laws are incorporated as well in the AOI and By Laws.

Thus, after weighing the need to comply with the mandatory provisions of the RCC and the SEC directive, and avoid a situation where the Club can be sanctioned for non-compliance with legal provisions, the Board of Directors, during its meeting on 26 June 2023, upon the recommendation of the Club's Legal Committee, resolved to implement Section 22 of the RCC in the election process and shorten the term of directors considering that Article IV, Section 1 of the Re-Amended By Laws was already rendered superseded and deemed contrary to law. There is sufficient legal basis to implement Section 22 of the RCC even if amendments to the By-Laws have yet to be approved as the

provisions of the law is deemed read into Valley Golf's By Laws and shall prevail in case of a conflict with the standing By Laws of the Club.

Therefore, the implementation of Section 22 of the RCC in the election process and in the term of directors is not illegal as it strictly follows legal mandate. On the contrary, it is the continued observance of the particular provision of the By Laws already deemed superseded by law for being inconsistent therewith which can be considered as contrary to law.

We hope that this clarifies matters. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allan Jocson', written over a thin horizontal line.

ALLAN JOCSON
Corporate Secretary
Valley Golf & Country Club, Inc.