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SECOND DIVISION

G.R. No. 117188 August 7, 1997]

LOYOLA GRAND VILLAS HOMEOWNERS (SOUTH) ASSOCIATION, INC., *petitioner, vs.* **HON. COURT OF APPEALS, HOME INSURANCE AND GUARANTY CORPORATION, EMDEN ENCARNACION and HORATIO AYCARDO,** *respondents.*

SYNOPSIS

The Loyola Grand Villas Homeowners Association (LGVHA), an association of homeowners of the Loyola Grand Villas, was registered with the Home Financing Corporation, the predecessor of herein respondent Home Insurance and Guaranty Corporation (HIGC) as the sole homeowners' organization in the said subdivision. For unknown reasons, LGVHA did not file its corporate by-laws.

Sometime in 1988, the officers of the LGVHA tried, but failed, to register its by-laws. These officers discovered that there were two other organizations within the subdivision, the North Association and the South Association.

In July 1989, Victorio V. Soliven, the organizer of LGVHA, inquired with the legal department of the HIGC about the status of the association and he was told that LGVHA had been automatically dissolved because it failed to submit its by-laws within the period required by the Corporation Code. The dissolution of LGVHA resulted in the registration of the South Association, herein petitioner, with the HIGC.

The LGVHA lodged a complaint with HIGC questioning the revocation of its certificate of registration without due notice and hearing.

After due notice and hearing, the HIGC recognized LGVHA as the sole homeowners' association in Loyola Grand Villas and it revoked the certificates of registration issued to the North and South associations.

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The South Association appealed to the Appeals Board of the HIGC. the Board dismissed the appeal for lack of merit.

Rebuffed, the South Association appealed to the Court of Appeals which affirmed the decision of the HIGC. Undaunted, the South Association filed the instant petition for review on certiorari, raising the sole issue of whether LGVHA's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation.

The word "must" in a statute, like "shall," is not always imperative. It may be consistent with an exercise of discretion. It is the tendency in this jurisdiction to interpret "shall" as required by a reasonable construction of the statute in which it is used. This is equally true as regards the word "must." Thus, if the language of a statue considered as a whole reveals that the legislature intended to use the words "shall" and "must" to be directory, they should be given that meaning.

The exchange of views during the deliberations of Batas Pambansa No. 68 clearly demonstrates that automatic corporate dissolution for failure to file the by-laws on time was never the intention of the legislature. Taken as a whole, Section 46 reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence thereof. The second paragraph of the law allows the filing of the by-lays even *prior* to incorporation. This provision in the same section of the Code rules out mandatory compliance with the requirement of filing the by-laws "within one month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes.

Even under Presidential Decree No. 902-A, Section 6, paragraph (1), there can be no *automatic corporate dissolution* simply because the incorporators failed to abide by the required filing of by-laws embodied in Section 46 of the Corporation Code. There is no outright "demise" of corporate existence. There must be proper notice and hearing.

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SYLLABUS

1. **STATUTORY CONSTRUCTION; STATUTE; INTERPRETATION; THE WORD "MUST" IS NOT ALWAYS IMPERATIVE.**— Ordinarily, the word "must" connotes an imperative act or operates to impose a duty which may be enforced. It is synonymous with "ought" which connotes compulsion or mandatoriness. However, the word "must" in a statute, like, "shall," is not always imperative. It may be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires. This is equally true as regards the word "must." Thus, if the language of a statute considered as a whole and with due regard to its nature and object reveals that the legislature intended to use the words "shall" and "must" to be directory, they should be given that meaning.

2. **COMMERCIAL LAW; CORPORATION CODE; SEC. 46 (ADOPTION OF BY-LAWS); BY-LAWS; REQUIREMENT FOR THE ADOPTION THEREOF WITHIN THE PERIOD PROVIDED; NOT MANDATORY.**— Taken as a whole and under the principle that the best interpreter of a statute is the statute itself *(optima statuli interpretatix est ipsum statutum),* Section 46 of the Corporation Code reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence thereof. Note should be taken of the second paragraph of the law which allows the filing of the by-laws even prior to incorporation. This provision in the same section of the Code rules out mandatory compliance with the requirement of filing the by-laws "within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes. There are in fact cases where by-laws are unnecessary to corporate existence or to the valid exercise of corporate powers, thus: "In the absence of charter or statutory provisions to the contrary, by-laws are not necessary either to the existence of a corporation or to the

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valid exercise of the powers conferred upon it, certainly in all cases where the charter sufficiently provides for the government of the body; and even where the governing statute in express terms confers upon the corporation the power to adopt by-laws, *the failure to exercise the power will be ascribed to mere nonaction which will not render void any acts of the corporation which would otherwise be valid.*" As the "rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it," by-laws are indispensable to corporations in this jurisdiction. These may not be essential to corporate birth but certainly, these are required by law for an orderly governance and management of corporations. Nonetheless, failure to file them within the period required by law by no means tolls the automatic dissolution of a corporation.

3. **ID.; ID.; ID.; ID.; EFFECT OF FAILURE TO FILE.—** Although the Corporation Code requires the filing of by-laws, it does not expressly provide for the consequences of the non-filing of the same within the period provided for in Section 46. However, such omission has been rectified by Presidential Decree No. 902-A, the pertinent provisions on the jurisdiction of the SEC of which state: "SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: x x x (1) *to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations,* partnerships or associations, upon any of the grounds provided by law, including the following: x x x 5. Failure to file by-laws within the required period; x x x. In the exercise of the foregoing authority and jurisdiction of the Commissions or by a Commissioner or by such other bodies, boards, committees and/or any officer as may be created or designated by the Commission for the purpose. The decision, ruling or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting *en banc* within thirty (30) days after receipt by the appellant of notice of such decision, ruling or order. The Commission shall promulgate rules of procedures to govern the proceedings, hearings and appeals of cases falling within its jurisdiction. The aggrieved party may appeal the order, decision or ruling of the Commission sitting *en banc* to the Supreme Court by petition for review in

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accordance with the pertinent provisions of the Rules of Court." Even under the foregoing express grant of power and authority, there can be *no automatic corporate dissolution* simply because the incorporators failed to abide by the required filing of by-laws embodied in Section 46 of the Corporation Code. There is no outright "demise" of corporate existence. Proper notice and hearing are cardinal components of due process in any democratic institution, agency or society. In other words, the incorporators must be given the chance to explain their neglect or omission and remedy the same. That the failure to file by-laws is not provided for by the Corporation Code but in another law is of no moment. P.D. No. 902-A, which took effect immediately after its promulgation on March 11, 1976, is very much apposite to the Code. Accordingly, the provisions abovequoted supply the law governing the situation in the case at bar, inasmuch as the Corporation Code and P.D. No. 902-A are statutes in *pari materia. Interpretare et concordare legibus est optimus interpretandi.* Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.

APPEARANCES OF COUNSEL

Rene A. Diokno for petitioner.
Norberto J. Quisumbing, Jr. for private respondents.

DECISION

ROMERO, *J.*:

May the failure of a corporation to file its by-laws within one month from the date of its incorporation, as mandated by Section 46 of the Corporation Code, result in its automatic dissolution?

This is the issue raised in this petition for review on certiorari of the Decision[1] of the Court of Appeals affirming the decision of the Home Insurance and Guaranty Corporation (HIGC). This quasi-judicial body recognized Loyola Grand Villas Homeowners

[1] Penned by Associate Justice Antonio M. Martinez and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Godardo A. Jacinto.

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Association (LGVHA) as the sole homeowners' association in Loyola Grand Villas, a duly registered subdivision in Quezon City and Marikina City that was owned and developed by Solid Homes, Inc. It revoked the certificates of registration issued to Loyola Grand Villas Homeowners (North) Association Incorporated (the North Association for brevity) and Loyola Grand Villas Homeowners (South) Association Incorporated (the South Association).

LGVHAI was organized on February 8, 1983 as the association of homeowners and residents of the Loyola Grand Villas. It was registered with the Home Financing Corporation, the predecessor of herein respondent HIGC, as the sole homeowners' organization in the said subdivision under Certificate of Registration No. 04-197. It was organized by the developer of the subdivision and its first president was Victorio V. Soliven, himself the owner of the developer. For unknown reasons, however, LGVHAI did not file its corporate by-laws.

Sometime in 1988, the officers of the LGVHAI tried to register its by-laws. They failed to do so.[2] To the officers' consternation, they discovered that there were two other organizations within the subdivision — the North Association and the South Association. According to private respondents, a non-resident and Soliven himself, respectively headed these associations. They also discovered that these associations had five (5) registered homeowners each who were also the incorporators, directors and officers thereof. None of the members of the LGVHAI was listed as member of the North Association while three (3) members of LGVHAI were listed as members of the South Association.[3] The North Association was registered with the HIGC on February 13, 1989 under Certificate of Registration No. 04-1160 covering Phases West II, East III, West III and East IV. It submitted its by-laws on December 20, 1988.

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[2] On March 4, 1993, LGVHAI filed its by-laws with the HIGC. Its filing fee was duly receipted for under O.R. No. 6393291 (Private Respondents' Comment, p. 5; *Rollo*, p. 72).

[3] Private Respondents' Comment, pp. 3-4.

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In July, 1989, when Soliven inquired about the status of LGVHAI, Atty. Joaquin A. Bautista, the head of the legal department of the HIGC, informed him that LGVHAI had been automatically dissolved for two reasons. First, it did not submit its by-laws within the period required by the Corporation Code and, second, there was non-user of corporate charter because HIGC had not received any report on the association's activities. Apparently, this information resulted in the registration of the South Association with the HIGC on July 27, 1989 covering Phases West I, East I and East 11. It filed its by-laws on July 26, 1989.

These developments prompted the officers of the LGVHAI to lodge a complaint with the HIGC. They questioned the revocation of LGVHAI's certificate of registration without due notice and hearing and concomitantly prayed for the cancellation of the certificates of registration of the North and South Associations by reason of the earlier issuance of a certificate of registration in favor of LGVHAI.

On January 26, 1993, after due notice and hearing, private respondents obtained a favorable ruling from HIGC Hearing Officer Danilo C. Javier who disposed of HIGC Case No. RRM-5-89 as follows:

"WHEREFORE, judgment is hereby rendered recognizing the Loyola Grand Villas Homeowners Association, Inc., under Certificate of Registration No. 04-197 as the duly registered and existing homeowners association for Loyola Grand Villas homeowners, and declaring the Certificates of Registration of Loyola Grand Villas Homeowners (North) Association, Inc. and Loyola Grand Villas Homeowners (South) Association, Inc. as hereby revoked or cancelled; that the receivership be terminated and the Receiver is hereby ordered to render an accounting and turn-over to Loyola Grand Villas Homeowners Association, Inc., all assets and records of the Association now under his custody and possession."

The South Association appealed to the Appeals Board of the HIGC. In its Resolution of September 8, 1993, the Board[4] dismissed the appeal for lack of merit.

[4] Fernando M. Miranda, Jr., Chairman, and Wilfredo F. Hernandez, Arthur G. Tan and Aida A. Mendoza, Members.

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Rebuffed, the South Association in turn appealed to the Court of Appeals, raising two issues. *First*, whether or not LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code resulted in the automatic dissolution of LGVHAI. *Second,* whether or not two homeowners' associations may be authorized by the HIGC in one "sprawling subdivision." However, in the Decision of August 23, 1994 being assailed here, the Court of Appeals affirmed the Resolution of the HIGC Appeals Board.

In resolving the first issue, the Court of Appeals held that under the Corporation Code, a private corporation commences to have corporate existence and juridical personality from the date the Securities and Exchange Commission (SEC) issues a certificate of incorporation under its official seal. The requirement for the filing of by-laws under Section 46 of the Corporation Code within one month from official notice of the issuance of the certificate of incorporation presupposes that it is already incorporated, although it may file its by-laws with its articles of incorporation. Elucidating on the effect of a delayed filing of by-laws, the Court of Appeals said:

"We also find nothing in the provisions cited by the petitioner, i.e., Sections 46 and 22, Corporation Code, or in any other provision of the Code and other laws which provide or at least imply that failure to file the by-laws results in an automatic dissolution of the corporation. While Section 46, in prescribing that by-laws must be adopted within the period prescribed therein, may be interpreted as a mandatory provision, particularly because of the use of the word 'must,' its meaning cannot be stretched to support the argument that automatic dissolution results from non-compliance.

We realize that Section 46 or other provisions of the Corporation Code are silent on the result of the failure to adopt and file the by-laws within the required period. Thus, Section 46 and other related provisions of the Corporation Code are to be construed with Section 6 (1) of P.D. 902-A. This section empowers the SEC to suspend or revoke certificates of registration on the grounds listed therein. Among the grounds stated is the failure to file by-laws (see also II Campos: The Corporation Code, 1990 ed., pp. 124-125). Such suspension or revocation, the same section provides, should be made upon proper

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notice and hearing. Although P.D. 902-A refers to the SEC, the same principles and procedures apply to the public respondent HIGC as it exercises its power to revoke or suspend the certificates of registration or homeowners associations. (Section 2 [a], E.O. 535, series 1979, transferred the powers and authorities of the SEC over homeowners associations to the HIGC.)

We also do not agree with the petitioner's interpretation that Section 46, Corporation Code prevails over Section 6, P.D. 902-A and that the latter is invalid because it contravenes the former. There is no basis for such interpretation considering that these two provisions are not inconsistent with each other. They are, in fact, complementary to each other so that one cannot be considered as invalidating the other."

The Court of Appeals added that, as there was no showing that the registration of LGVHAI had been validly revoked, it continued to be the duly registered homeowners' association in the Loyola Grand Villas. More importantly, the South Association did not dispute the fact that LGVHAI had been organized and that, thereafter, it transacted business within the period prescribed by law.

On the second issue, the Court of Appeals reiterated its previous ruling[5] that the HIGC has the authority to order the holding of a referendum to determine which of two contending associations should represent the entire community, village or subdivision.

Undaunted, the South Association filed the instant petition for review on certiorari. It elevates as sole issue for resolution the first issue it had raised before the Court of Appeals, i.e., whether or not the LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation.

Petitioner contends that, since Section 46 uses the word "must" with respect to the filing of by-laws, noncompliance therewith would result in "self-extinction" either due to non-occurrence

[5] This was in *Bagong Lipunan Community Association v. HIGC,* CA-G.R. SP No. 12592, November 16, 1987.

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of a suspensive condition or the occurrence of a resolutory condition "under the hypothesis that (by) the issuance of the certificate of registration alone the corporate personality is deemed already formed." It asserts that the Corporation Code provides for a "gradation of violations of requirements." Hence, Section 22 mandates that the corporation must be formally organized and should commence transactions within two years from date of incorporation. Otherwise, the corporation would be deemed dissolved. On the other hand, if the corporation commences operations but becomes continuously inoperative for five years, then it may be suspended or its corporate franchise revoked.

Petitioner concedes that Section 46 and the other provisions of the Corporation Code do not provide for sanctions for non-filing of the by-laws. However, it insists that no sanction need be provided "because the mandatory nature of the provision is so clear that there can be no doubt about its being an essential attribute of corporate birth." To petitioner, its submission is buttressed by the facts that the period for compliance is "spelled out distinctly"; that the certification of the SEC/HIGC must show that the by-laws are not inconsistent with the Code, and that a copy of the by-laws "has to be attached to the articles of incorporation." Moreover, no sanction is provided for because "in the first place, no corporate identity has been completed." Petitioner asserts that "non-provision for remedy or sanction is itself the tacit proclamation that non-compliance is fatal and no corporate existence had yet evolved," and therefore, there was "no need to proclaim its demise."[6] In a bid to convince the Court of its arguments, petitioner stresses that:

"x x x the word MUST is used in Sec. 46 in its universal literal meaning and corollary human implication—its compulsion is integrated in its very essence—MUST is always enforceable by the inevitable consequence—that is, 'OR ELSE.' The use of the word MUST in Sec. 46 is no exception—it means file the by-laws within one month after notice of issuance of certificate of registration OR ELSE. The OR ELSE, though not specified, is inextricably a part of MUST.

[6] Petition, pp. 7-10.

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Do this or if you do not you are 'Kaput.' The importance of the by-laws to corporate existence compels such meaning for as decreed the by-laws is 'the government' of the corporation. Indeed, how can the corporation do any lawful act as such without by-laws. Surely, no law is intended to create chaos."[7]

Petitioner asserts that P.D. No. 902-A cannot exceed the scope and power of the Corporation Code which itself does not provide sanctions for non-filing of by-laws. For the petitioner, it is "not proper to assess the true meaning of Sec. 46 x x x on an unauthorized provision on such matter contained in the said decree."

In their comment on the petition, private respondents counter that the requirement of adoption of by-laws is not mandatory. They point to P.D. No. 902-A as having resolved the issue of whether said requirement is mandatory or merely directory. Citing *Chung Ka Bio v. Intermediate Appellate Court*,[8] private respondents contend that Section 6(I) of that decree provides that non-filing of by-laws is only a ground for suspension or revocation of the certificate of registration of corporations and, therefore, it may not result in automatic dissolution of the corporation. Moreover, the adoption and filing of by-laws is a condition subsequent which does not affect the corporate personality of a corporation like the LGVHAI. This is so because Section 9 of the Corporation Code provides that the corporate existence and juridical personality of a corporation begins from the date the SEC issues a certificate of incorporation under its official seal. Consequently, even if the by-laws have not yet been filed, a corporation may be considered a ***de facto*** corporation. To emphasize the fact the LGVHAI was registered as the sole homeowners' association in the Loyola Grand Villas, private respondents point out that membership in the LGVHAI was an "unconditional restriction in the deeds of sale signed by lot buyers."

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[7] *Ibid.*, p. 10-11.

[8] G.R. No. 71837, July 26, 1988, 163 SCRA 534.

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In its reply to private respondents' comment on the petition, petitioner reiterates its argument that the word "must" in Section 46 of the Corporation Code is mandatory. It adds that, before the ruling in *Chung Ka Bio v. Intermediate Appellate Court* could be applied to this case, this Court must first resolve the issue of whether or not the provisions of P.D. No. 902-A prescribing the rules and regulations to implement the Corporation Code can "rise above and change" the substantive provisions of the Code.

The pertinent provision of the Corporation Code that is the focal point of controversy in this case states:

"Sec. 46. ***Adoption of by-laws.***— Every corporation formed under this Code, must within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the members, in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to inspection of the stockholders or members during office hours; and a copy thereof, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation.

Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code.

The Securities and Exchange Commission shall not accept for filing the by-laws or any amendment thereto of any bank, banking institution, building and loan association, trust company, insurance company,

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public utility, educational institution or other special corporations governed by special laws, unless accompanied by a certificate of the appropriate government agency to the effect that such by-laws or amendments are in accordance with law."

As correctly postulated by the petitioner, interpretation of this provision of law begins with the determination of the meaning and import of the word *"must"* in this section. Ordinarily, the word "must" connotes an imperative act or operates to impose a duty which may be enforced.[9] It is synonymous with "ought" which connotes compulsion or mandatoriness.[10] However, the word "must" in a statute, like "shall," is not always imperative. It may be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires.[11] This is equally true as regards the word "must." Thus, if the language of a statute considered as a whole and with due regard to its nature and object reveals that the legislature intended to use the words "shall" and "must" to be directory, they should be given that meaning.[12]

In this respect, the following portions of the deliberations of the Batasang Pambansa No. 68 are illuminating:

"MR. FUENTEBELLA. Thank you, Mr. Speaker.

On page 34, referring to the adoption of by-laws, are we made to understand here, Mr. Speaker, that by-laws must immediately be filed within one month after the issuance? In other words, would this be mandatory or directory in character?

MR. MENDOZA. This is mandatory.

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[9] Soco *v.* Hon. Militante, *et al.*, 208 Phil. 151, 154 (1983); Caltex Filipino Managers & Supervisors Ass'n. *v.* CIR, 131 Phil. 1022, 1029 (1968).

[10] People *v.* Tamani, L-22160 & 22161, January 21, 1974, 55 SCRA 153, 157.

[11] Diokno *v.* Rehabilitation Finance Corporation, 91 Phil. 608, 611 (1952).

[12] 27A WORDS AND PHRASES 650 citing Arkansas State Highway Commission *v.* Mabry, 315 S.W. 2d 900, 905, 229 Ark. 261.

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MR. FUENTEBELLA. It being mandatory, Mr. Speaker, what would be the effect of the failure of the corporation to file these by-laws within one month?

MR. MENDOZA. There is a provision in the latter part of the Code which identifies and describes the consequences of violations of any provision of this Code. One such consequence is the dissolution of the corporation for its inability, or perhaps, incurring certain penalties.

MR. FUENTEBELLA. But it will not automatically amount to a dissolution of the corporation by merely failing to file the by-laws within one month. Supposing the corporation was late, say, five days, what would be the mandatory penalty?

MR. MENDOZA. I do not think it will necessarily result in the automatic or *ipso facto* dissolution of the corporation. Perhaps, as in the case, as you suggested, in the case of El Hogar Filipino where a *quo warranto* action is brought, one takes into account the gravity of the violation committed. If the by-laws were late—the filing of the by-laws were late by, perhaps, a day or two, I would suppose that might be a tolerable delay, but if they are delayed over a period of months—as is happening now—because of the absence of a clear requirement that by-laws must be completed within a specified period of time, the corporation must suffer certain consequences."[13]

This exchange of views demonstrates clearly that automatic corporate dissolution for failure to file the by-laws on time was never the intention of the legislature. Moreover, even without resorting to the records of deliberations of the Batasang Pambansa, the law itself provides the answer to the issue propounded by petitioner.

Taken as a whole and under the principle that the best interpreter of a statute is the statute itself *(optima statuli interpretatix est ipsum statutum)*,[14] Section 46 aforequoted reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence

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[13] Record of the Batasang Pambansa, Vol. III, November 12, 1979, p. 1303.

[14] Lopez and Javelona v. El Hogar Filipino, 47 Phil. 249, 277 (1925) cited in AGPALO, STATUTORY CONSTRUCTION, 3rd ed., p.197.

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thereof. Note should be taken of the second paragraph of the law which allows the filing of the by-laws even *prior* to incorporation. This provision in the same section of the Code rules out mandatory compliance with the requirement of filing the by-laws "within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes.[15] There are in fact cases where by-laws are unnecessary to corporate existence or to the valid exercise of corporate powers, thus:

"In the absence of charter or statutory provisions to the contrary, by-laws are not necessary either to the existence of a corporation or to the valid exercise of the powers conferred upon it, certainly in all cases where the charter sufficiently provides for the government of the body; and even where the governing statute in express terms confers upon the corporation the power to adopt by-laws, *the failure to exercise the power will be ascribed to mere nonaction which will not render void any acts of the corporation which would otherwise be valid.*"[16] (Italics supplied.)

As Fletcher aptly puts it:

"It has been said that the by-laws of a corporation are the rule of its life, and that until by-laws have been adopted the corporation may not be able to act for the purposes of its creation, and that the first and most important duty of the members is to adopt them. This would seem to follow as a matter of principle from the office and functions of by-laws. Viewed in this light, the adoption of by-laws is a matter of practical, if not one of legal, necessity. Moreover, the peculiar circumstances attending the formation of a corporation may impose the obligation to adopt certain by-laws, as in the case of a close corporation organized for specific purposes. And the statute or general laws from which the corporation derives its corporate

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[15] CAMPOS, THE CORPORATION CODE, Vol. I, 1990 ed., p. 123.

[16] 18 C.J.S. 595-596.

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existence may expressly require it to make and adopt by-laws and specify to some extent what they shall contain and the manner of their adoption. *The mere fact, however, of the existence of power in the corporation to adopt by-laws does not ordinarily and of necessity make the exercise of such power essential to its corporate life, or to the validity of any of its acts.*"[17]

Although the Corporation Code requires the filing of by-laws, it does not expressly provide for the consequences of the non-filing of the same within the period provided for in Section 46. However, such omission has been rectified by Presidential Decree No. 902-A, the pertinent provisions on the jurisdiction of the SEC of which state:

"SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x;

(l) To *suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations,* partnerships or associations, upon any of the grounds provided by law, including the following:

x x x x x x x x x

5. Failure to file by-laws within the required period;

x x x x x x x x x

In the exercise of the foregoing authority and jurisdiction of the Commissions or by a Commissioner or by such other bodies, boards, committees and/or any officer as may be created or designated by the Commission for the purpose. The decision, ruling or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting en banc within thirty (30) days after receipt by the appellant of notice of such decision, ruling or order. The Commission shall promulgate rules of procedures to govern the proceedings, hearings and appeals of cases falling within its jurisdiction.

The aggrieved party may appeal the order, decision or ruling of the Commission sitting *en banc* to the Supreme Court by petition for

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[17] 8 FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS 640.

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review in accordance with the pertinent provisions of the Rules of Court."

Even under the foregoing express grant of power and authority, there can be no *automatic corporate dissolution* simply because the incorporators failed to abide by the required filing of by-laws embodied in Section 46 of the Corporation Code. There is no outright "demise" of corporate existence. Proper notice and hearing are cardinal components of due process in any democratic institution, agency or society. In other words, the incorporators must be given the chance to explain their neglect or omission and remedy the same.

That the failure to file by-laws is not provided for by the Corporation Code but in another law is of no moment. P.D. No. 902-A, which took effect immediately after its promulgation on March 11, 1976, is very much apposite to the Code. Accordingly, the provisions abovequoted supply the law governing the situation in the case at bar, inasmuch as the Corporation Code and P.D. No. 902-A are statutes in *pari materia. Interpretare et concordare legibus est optimus interpretandi.* Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[18]

As the "rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it,"[19] by-laws are indispensable to corporations in this jurisdiction. These may not be essential to corporate birth but certainly, these are required by law for an orderly governance and management of corporations. Nonetheless, failure to file them within the period required by law by no means tolls the automatic dissolution of a corporation.

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[18] Corona *v.* Court of Appeals, G.R. No. 97356, September 30, 1992, 214 SCRA 378, 392.

[19] 8 FLETCHER, *supra,* at p. 633.

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In this regard, private respondents are correct in relying on the pronouncements of this Court in *Chung Ka Bio v. Intermediate Appellate Court,*[20] as follows:

"x x x. Moreover, failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution.

Section 19 of the Corporation Law, part of which is now Section 22 of the Corporation Code, provided that the powers of the corporation would cease if it did not formally organize and commence the transaction of its business or the continuation of its works within two years from date of its incorporation. Section 20, which has been reproduced with some modifications in Section 46 of the Corporation Code, expressly declared that 'every corporation formed under this Act, must within one month after the filing of the articles of incorporation with the Securities and Exchange Commission, adopt a code of by-laws.' Whether this provision should be given mandatory or only directory effect remained a controversial question until it became academic with the adoption of PD 902-A. Under this decree, it is now clear that the failure to file by-laws within the required period is only a ground for suspension or revocation of the certificate of registration of corporations.

Non-filing of the by-laws will not result in automatic dissolution of the corporation. Under Section 6(I) of PD 902-A, the SEC is empowered to 'suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of a corporation' on the ground *inter alia* of 'failure to file by-laws within the required period.' It is clear from this provision that there must first of all be a hearing to determine the existence of the ground, and secondly, assuming such finding, the penalty is not necessarily revocation but may be only suspension of the charter. In fact, under the rules and regulations of the SEC, failure to file the by-laws on time may be penalized merely with the imposition of an administrative fine without affecting the corporate existence of the erring firm.

It should be stressed in this connection that substantial compliance with conditions subsequent will suffice to perfect corporate personality. Organization and commencement of transaction of corporate business are but conditions subsequent and not prerequisites for acquisition of corporate personality. The adoption and filing of by-laws is also

[20] *Supra.*

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a condition subsequent. Under Section 19 of the Corporation Code, a corporation commences its corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues certificate of incorporation under its official seal. This may be done even before the filing of the by-laws, which under Section 46 of the Corporation Code, must be adopted 'within one month after receipt of official notice of the issuance of its certificate of incorporation.'"[21]

That the corporation involved herein is under the supervision of the HIGC does not alter the result of this case. The HIGC has taken over the specialized functions of the former Home Financing Corporation by virtue of Executive Order No. 90 dated December 17, 1986.[22] With respect to homeowners associations, the HIGC shall "exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission x x x, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding."[23]

WHEREFORE, the instant petition for review on certiorari is hereby DENIED and the questioned Decision of the Court of Appeals AFFIRMED. This Decision is immediately executory. Costs against petitioner.

SO ORDERED.

Regalado (Chairman), Puno, and *Mendoza, JJ.,* concur.

Torres, Jr., J., on leave.

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[21] *Ibid.,* at pp. 543-544.

[22] The capitalization of HIGC was increased to P2,500,000,000 by Rep. Act No. 7835.

[23] No. 2 (a), Executive Order No. 535 dated May 3, 1979 (78 O.G. 6805).