

Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

28 November 2019

SEC-OGC Opinion No. 19-56

Re: Remote Communication in
Stockholder's Meeting; Waiver of
Right to Vote

Batuhan Blando Concepcion and Trillana

15th Floor Picadilly Star Building
4th Avenue corner 27th Street
Bonifacio Global City, Taguig

Attention: Atty. Albert Garcia, Jr.
Atty. Kathreen Joyce Camba

Attorneys;

This refers to your letter dated 9 September 2019, requesting for the Commission's Opinion on the alternative remedies that the resident members of One Oasis Condominium Corporation (OCCC) may avail to reach the required quorum for the purpose of electing the new members of OCCC's Board of Trustees.

In said letter, you represented that the Annual General Membership Meeting of the members of OCCC for the purpose of electing the new members of OCCC's Board of Trustees was held on 8 June 2019. However, no quorum was reached because majority of the unit owners are living abroad.

You further stated that in the elections held before the above-stated date, no quorum was also mustered and thus, you now come to the Commission asking for an Opinion on the proposed alternatives it may avail in order to reach the required quorum, specifically: by voting in absentia, particularly through Facebook or Messenger; or by waiving the member's right to vote after three failed attempts of reaching out to the unit owner or if no answer/feedback was received.

As to your first proposed alternative, pertinent portion of Section 49 of the Revised Corporation Code (RCC) reads:

"Section 49. Regular and Special Meeting of Stockholders or Members. –

XXXXX

The right to vote of stockholders or members may be exercised in person, through a proxy, or when so authorized in the bylaws, through remote communication or in absentia. The Commission shall issue the rules and regulations governing participation and voting through remote communication or in absentia, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the protection and promotion of shareholders' or member's meetings." (Emphasis supplied)

Although the RCC now allows voting via remote communication or in absentia in stockholders' or members' meeting provided that the same is allowed in the corporation's By-Laws, said provision is not self-executory as it requires the Commission to issue rules and regulations for same. As of date, the Commission has not issued any rule, regulation, circular or guideline for this matter and thus, this portion of said provision may not yet be enforced.

As to your second proposed alternative, it is our understanding that you intend to exclude OCCC's member from the computation of the required quorum should said member/s fail to give their answers or feedbacks after three (3) attempts of being notified of a meeting or election, which is in the nature of a restriction of their right to vote.

In this connection, the Commission previously opined that "[t]he right to vote is a stockholder's most basic and fundamental right inherent in and incidental to the ownership of corporate shares of stock. It is an incident of ownership or of the property in the stock of which the stockholder cannot be deprived without his consent. It is through the right to vote that stockholders participate in the management of the corporation. The right to vote, unlike the right to receive dividends and liquidating distributions, is not a passive thing because management or administration is, under the Corporation Code (now the RCC), vested in the board of directors, with certain reserved powers residing in the stockholders directly."¹ Considering that the rules governing stock corporations, when pertinent, shall also be applicable to non-stock corporations², the above-stated opinion of the Commission may be applied by analogy to OCCC's case.

Since the right to vote in a corporation is a fundamental one, the same may only be waived personally upon the initiative of the stockholder/member. In the case of *Marsh Thompson vs Court of Appeals (G.R. No. 116631, 28 October 1998)*, the Supreme Court held that:

"Settled is the rule that a waiver to be valid and effective must, in the first place, be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. A waiver may not be attributed to a person when the terms thereof do not explicitly and clearly evidence an intent to abandon a right vested in such person." (Emphasis supplied)

¹ SEC-OGC Opinion No. 19-37, dated 13 September 2019 and addressed to Philippine Veterans Bank.

² Section 86 of the RCC.

Section 88 of the RCC (previously Section 89 of the Corporation Code) provides that "[t]he 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 (1) vote.**"

Stockholders or members of a corporation are bound by the provisions of the corporation's Articles of Incorporation (AOI) and/or By-Laws (BL) regardless of whether they have read the same or not. The fact that said members opted to associate themselves with said corporation despite the existing restriction of their right to vote as contained in said AOI and/or BL is considered a waiver of said right.

Thus, in the absence of any provision in the AOI and/or BL of a non-stock corporation restricting the right of its members to vote, the said right must be respected.

Additionally, you may consider Section 25 of the RCC, which reads:

"SEC. 25. Report of Election of Directors, Trustees and Officers, Non-holding of Election and Cessation from Office. – Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, **shall** submit to the Commission, the names, nationalities, shareholdings, and residence addresses of the directors, trustees, and officers elected.

The non-holding of elections and the reasons therefor **shall** be reported to the Commission within thirty (30) days from the date of the scheduled election. The report shall specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date.

If no new date has been designated, or if the rescheduled election is likewise not held, the Commission may, **upon the application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election,** summarily order that an election be held. The Commission shall have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote.

Notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this section.

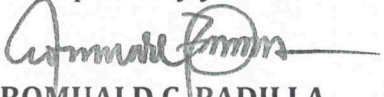
Should a director, trustee or officer die, resign or in any manner cease to hold office, the secretary, or the director, trustee or officer of the corporation, **shall**, within seven (7) days from knowledge thereof, report in writing such fact to the Commission." (Emphasis supplied)

By virtue of this provision, the members of OCC may file the appropriate Petition to Conduct an Election before the Commission. After a finding that the non-holding of election was unjustified, this Commission may order the Corporation to hold an election, as well as to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote. For purposes of Section 25 of the RCC, the attendants of the election summarily ordered by this Commission who are entitled to vote shall constitute a quorum regardless of the required number of attendants stated in the Articles of Incorporation or By-Laws of the corporation.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.³ If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Respectfully yours;


ROMUALD C. PADILLA
Officer-in-Charge

³ SEC Memorandum Circular No. 15, Series of 2003, No.7