Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

09 November 2006

SEC-OGC Opinion No. 06-37
Quorum consisting of
less than majority

SANIDAD ABAYA TE VITERBO
ENRIQUEZ & TAN
2nd Floor, Eastside Building
77 Malakas Street
Brgy. Pinyahan, Diliman Quezon City

Attention: ATTY. ALEXES M. ENRIQUEZ

Gentlemen:

This refers to your letter dated 03 November 2006 requesting opinion on whether it is permissible for the by-laws to provide quorum which is less than a majority.

Pertinent to your query is the provision of Section 52 in relation to Section 42 (3) of the Corporation Code of the Philippines[1], which reads as follows:

> "Sec. 52. Quorum in meetings. Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations."

The term "quorum" has been defined as "that number of members of the body which, when legally assembled in their proper places, will enable the body to transact its proper business, or, in other words, that number that makes a lawful body and gives it power to pass a law or ordinance or do any other valid corporate act."[2]

As a rule, a majority of members or stockholders is a quorum for the transaction of a corporation's business and other corporate acts. A careful reading of the afore-quoted provision would, however, show that corporations are authorized to define what

1 Batas Pambansa Blg. 68.
2 People v. Ebio, G.R. No. 147450, 29 Sept. 2004 citing Gavellana v. Tayo, 6 SCRA 1042 (1962).

114

constitutes a quorum. In fact, the Commission had the occasion to opine that 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 a corporate business.[3] Thus, a corporation can state in its by-laws that a quorum shall be less than majority or greater than what was provided for in the Corporation Code unless the Code specifically provides otherwise.

Worthy of note also is that the by-laws provision on quorum will not apply in instances where the Corporation Code explicitly requires a specific number of stockholders or members necessary to resolve or carry out a particular corporate proposal. Some of these instances are:

1. Amendment of articles of incorporation[4]- by a vote or written assent of at least two-thirds (2/3) of the member or stockholders representing at least two-thirds (2/3) of the outstanding capital stock and a majority of the board of directors or trustees;
2. Removal of directors or trustees[5]- by a vote of at least 2/3 of the outstanding capital stock or of the members entitled to vote;
3. Extension or shortening of corporate term[6]-by a majority vote of the board of directors or trustees and at least 2/3 vote of the outstanding capital stock or of the members; and
4. Sale, lease, exchange, mortgage, pledge or any disposition of all or substantially all of the corporate assets[7]- by a majority vote of the board of directors or trustees and at least 2/3 vote of the outstanding capital stock or of the members.

In view of the foregoing, this Office is of the opinion that Paragon Plaza Condominium Corporation can specify in its by-laws that members representing forty (40%) percent of the entire membership will suffice to constitute a quorum unless otherwise provided by the Corporation Code.

The foregoing opinion is based solely on the facts disclosed in the query and it shall not be used in the nature of a standing rule binding upon the Commission in other cases.[8]

VERNETTE G. UMALI-PACO
General Counsel

paragon plaza condo assn.opinion.sxw

3 SEC Summary of Advisory Opinions (1982-1994), p. 194 citing Letter dated 03 March 1986 addressed to Fernando Ma. Alberto, SQB March and June 1986, p. 34.
4 Sec. 16, Corporation Code.
5 Section 28, Ibid.
6 Sec. 37, Ibid.
7 Sec. 40, Ibid.
8 SEC Memorandum Circular No. 15, series of 2003.