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

13 April 2011

SEC-OGC Opinion No. 11-23
Quorum

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Sir:

This is in response to your letter dated 26 April 2010[1] requesting an opinion on whether it is permissible for the by-laws to provide quorum that is less than a majority in connection with the Annual Business Meeting of the National Board Elections of the Philippine Institute of Architects held on 26 February 2010.

Please be advised that the Commission does not, as a matter of settled policy, render opinions on queries or transactions involving justiciable issues that may eventually be litigated in the future or that could only be clarified and determined in a proper proceeding, such as those presented in your letter. The opinion that may be rendered thereon would not be binding upon private parties who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it before the Court. For this reason, the Commission refrains from giving opinions on these kinds of queries.

However, **for purposes of information only**, based on the facts you provided, the following may be imparted:

> "The term "quorum" has been defined as that number of members of the body which, when legally as 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]

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[1] A letter from the SEC Cebu Extension Office dated 21 June 2010 and received by this Office on 23 June 2010 shows that the requesting party has complied with the directive of this Office to settle the payment of the opinion fee, as evidenced by the receipt attached to the letter.

[2] Javellana vs. Tayo G.R. No. 18919 (1962) citing 4 McQuillin, Municipal Corporation [3rd Ed 478]; see also State vs. Wilkesville Tp., 20 Ohio St. 288.

Section 52 in relation to Section 47(3)[3] of the Corporation Code[4] reads as follows:

> "**Section 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." (*emphasis supplied)*

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 above cited provisions, however, would show that corporations or non-stock corporations are authorized to define what constitutes a quorum based on its by-laws. The Commission has opined 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.[5]

It is worth stressing that, "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 required by the particular legislation is subordinate to the statute."[6]

Based on the Philippine Institute of Architects'[7] by-laws, as amended, the following provisions on quorum provide:

> "ARTICLE II – QUORUM AND DECISIONS OF MEETINGS
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> Section 1 – ***Quorum.*** A quorum for any General Assembly, Regular, or Special Meetings of the Institute shall require the physical presence of thirty percent (30%) of all corporate members in good standing.

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[3] Se ction 47(3). ***Contents of By-Laws.*** The required quorum in meetings of stockholders or members and the manner of voting therein; xx

[4] Batas Pambansa Blg. 68 (1980).

[5] S.E.C. Summary of Advisory Opinoins (1982-1994), p. 194, citing Letter dated 04 March 1986 addressed to Fernando Ma. Alberto, SQB March and June 1986, p. 34.

[6] Letter dated 25 November 1998 addressed to Ernesto C. Ignacio, citing SEC Opinion dated February 4, 1997, citing previous SEC Opinion and 5 Fletcher Cyc. Corp. Sec. 2013

[7] S.E.C. Registration No. 32280.

Section 2 - ***Minimum Number of Votes Required For Action.***

2.1 Not less than two- thirds (2/3) of all corporate members in good standing that constitutes the quorum is required to decide on the following matters:

a.) amendments to the by-laws;
b.) impeachment of members or officers of the Institute;
c.) purchase and disposal of property above one million pesos.

This can be initiated through a decision of two thirds (2/3) of the National Board members and voted on by the general membership. The voting shall be done during the Annual Business Meeting or through a referendum. xxx

For all other matters requiring official action, a majority (50% + 1) of the corporate members in good standing that constitute the quorum is required."[8]

A reading of the above provisions would show that quorum, as defined in Section 1, applies to any General Assembly, Regular or Special meetings. Generally only the physical presence of thirty percent (30%) of all members in good standing is required for a corporation to do business. However, for matters specifically enumerated under Section 2.1, a two thirds (2/3) vote is necessary. For all other matters that do not fall under either Section 1 or 2, a majority vote is necessary.

In addition, it is worth noting that regardless of the provision in the by-laws on quorum, when the Corporation Code explicitly requires a specific number of stockholders or members necessary to resolve or carry out a particular corporate proposal the Corporation Code prevails. Some of these instances are:

1. Amendment to the Articles of Incorporation[9]
2. Removal of directors or trustees[10]
3. Extension or shortening of corporate term[11]
4. Sale, lease, exchange, mortgage, pledge or any disposition of all or substantially all of the corporate assets

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[8] Amended by-laws (approved on 27 June 2004) of Philippine Institute of Architects. pp. 23-24.
[9] Section 28, Corporation Code of the Philippines.
[10] Section 37, *Ibid.*
[11] Section 40, *Ibid.*

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission.[12]

VERNETTE G. UMALI-PACO
General Counsel

[12] SEC Memorandum Circular No. 15, series of 2003.