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

Office of the General Counsel

02 June 2014

SEC-OGC Opinion No. 14-10
Re: Cumulative Voting in
Condomini um Corporation

MR. KARL MICHAEL KOA
Unit 408, Empire Plaza
1473 G. Masangkay Street, Sta. Cruz
Manila

Sir:

This is in response to your letter dated 3 January 2014, requesting for our opinion on whether cumulative voting is applicable for the election of trustees of Empire Plaza Condominium Corporation ("EPCC"), as well as the formula to be used therefor. EPCC is a non-stock corporation registered with the Commission on 10 April 2000 under SEC Registration No. A200002639.

The issue is premised on Section 6, Article I of the EPCC By-Laws and Section 7(c) of the EPCC Master Deed with Declaration of Restrictions.

Please be advised that based on SEC Memorandum Circular No. 15, Series 2003, it has been the policy of the Commission not to render opinions on litigious issues which may eventually be litigated in the future such as matters which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest, as well as matters which would necessarily require a review and interpretation of contracts since interpretation of contract is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.

Considering that your query affects substantive and contractual rights of private parties, i.e. voting rights of members in a corporation, as well as interpretation of your By-Laws, which is essentially, in itself, a contract, the same falls within the ambit of the aforementioned policy. Thus, we refrain from categorically answering your query.

However, for purposes of information only, the following may be imparted.

Cumulative voting is a mode of casting votes during the election of directors in a stock corporation. It is provided for in Section 24 of the Corporation Code, to wit:

> *Sec. 24. Election of directors or trustees.* x x x **In stock corporations**, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many

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> persons as there are directors to be elected or **he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected**: Provided, however, That no delinquent stock shall be voted. x x x (emphasis ours)

Under this provision, there are two methods of cumulative voting: cumulative voting for one candidate, and cumulative voting by distribution.

Under the first method, a stockholder is allowed to concentrate his votes and "give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal." By way of example, supposing a stockholder owns 200 shares of stock and there are five directors to be elected, he is entitled to 1,000 votes all of which he may cast in favor of any one candidate.[1]

On the other hand, by the second method, a stockholder may cumulate his shares by multiplying also the number of his shares by the number of directors to be elected and distribute the same among as many candidates as he shall see fit. To illustrate, a stockholder with 100 shares of stock is entitled to 500 votes if there are five directors to be elected. He may cast his votes in any combination desired by him provided that the total number of votes cast by him does not exceed 500, which is the number of shares owned by him multiplied by the total number of directors to be elected.[2]

A condominium corporation, whether stock or non-stock, is primarily governed by the provisions of Republic Act No. 4726, or the Condominium Act, as amended ("RA 4726"). Under Section 9 thereof, the declaration of restrictions shall provide for the voting majorities quorums, notices, meeting date, and other rules governing the condominium's management bodies.[3] Among those other rules may involve the manner of voting for the election of directors or trustees. Further, under Section 10, the articles of incorporation or by-laws of the condominium corporation shall not contain any provision contrary to or inconsistent with the provisions of RA 4726, the enabling or master deed, or the declaration of restrictions of the project.

Upon perusal of EPCC's Amended Master Deed with Declaration of Restrictions, there appears to be no specific rule prescribed for voting in the election of trustees. Also, the Articles of Incorporation, as well as the By-Laws of EPCC are silent regarding that matter. The Corporation Code, being the general law governing corporations, applies suppletorily.

Section 24 of the Corporation Code provides for the conduct of election of trustees, to wit:

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[1] De Leon. The Corporation Code of the Philippines Annotated, 9th Ed. (2006). Pp. 238-239.
[2] Ibid., pp. 239-240.
[3] A management body may be a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named in the declaration.

> *Sec. 24. Election of directors or trustees.* x x x **Unless otherwise provided in the articles of incorporation or in the by-laws,** members of corporations which have no capital stock may cast as many votes as there are trustees to be elected **but may not cast more than one vote for one candidate.** x x x (emphasis supplied)

Accordingly, the general rule for the election of trustees of a non-stock corporation is that members may cast as many votes as there are trustees to be elected but may cast only one vote per candidate. By way of exception, a non-stock corporation may adopt other modes of casting votes, including, but not limited to, cumulative voting, if the same is authorized in its articles of incorporation or by-laws. [4]

This exception is consistent with Section 89 of the Corporation Code, which provides that the 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 by-laws.

To reiterate, cumulative voting may be adopted by a non-stock corporation in the election of Trustees, provided that the said manner of voting is authorized in the articles of incorporation, or the by-laws, or the master deed or declaration of restrictions (in the case of a non-stock condominium corporation). Otherwise, the general rule is that members may not cast more than one vote for any candidate.

It can be noted that Sec. 6, Article I of the EPCC By-Laws, and Sections 8(e) and 7(c) of the EPCC Amended Master Deed with Declaration of Restrictions merely state, to wit:

> **Sec. 6. Voting Proxy** – only unit owners or their duly authorized proxies are entitled to vote or have voting rights in any meeting of the corporation where voting is called for. **The voting rights acquired by each member of the Condominium Corporation shall be equal to the appurtenant interest of his Unit in the Common Areas as provided in Section 7 (c) of the Master Deed.** (emphasis supplied)
>
> **Section 8. THE CONDOMINIUM CORPORATION:**
> x x x
> **e.** only unit owners or their duly authorized proxies are entitled to vote or have voting rights in any meeting of the corporation where voting is called for. The voting rights acquired by each member of the Condominium Corporation shall be equal to the appurtenant interest of his Unit in the Common Areas as provided in Section 7 (c) of the Master Deed.
> x x x
>
> **Section 7. NATURE AND EXTENT OF INTEREST AND OBLIGATIONS OF UNIT OWNERS AND PURCHASERS:**
> x x x
> c. To each unit in the project shall indirectly appertain an undivided interest in the Common Areas equal to the **percentage which the floor area of the unit bears to the total floor area of saleable Units.** (emphasis supplied)

[4] De Leon. p. 246; Decasa, Lucila. Handbook on Private Corporations (Domestic and Foreign), 2009 Ed., p. 238

Thus:

Area of Unit (_____) sq.m.
Total Saleable Area of all Units in the project = Interest of unit

x x x.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and 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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[5]

Please be guided accordingly.

Very truly yours,

JAMILO S. CORREA
General Counsel

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[5] SEC Memorandum Cricular No. 15, Series of 2003.

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