Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

05 September 2017

SEC-OGC Opinion No: 17-09

Re: Corporate Term of a
Condominium Corporation

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This refers to your letter dated 25 May 2017, requesting an opinion with regard to the extension of the corporate term of a condominium corporation organized under Republic Act No. 4726, otherwise known as the Condominium Act ("the Act"), in relation to Batas Pambansa Blg.68, otherwise known as the Corporation Code of the Philippines ("the Code").

You stated in your letter that your client, the Urdaneta Apartments Condominium Corporation ("UACC"), is a condominium corporation that was incorporated on 14 May 1971. The Fourth Article of UACC's Article of Incorporation ("AOI") provides that:

> *FOURTH: That the term of the corporation shall be co-terminus with the duration of the Urdaneta Apartments Condominium Corporation.*

To obviate any issues related to the possible lapse of the corporate term or voluntary dissolution of UACC, the following actions were taken by the membership:

1. On 22 November 2013, in a Special Membership Meeting called for the purpose, a majority of the members of UACC approved the implementation of two (2) CAPEX

projects, namely: (1) waterproofing and repainting of the building; and (2) installation of fire-sprinkler system; and

2. On 22 November 2016, in a Special Membership Meeting called for the purpose, forty (40) out of fifty-six (56) members of UACC, representing 71.4% of the total membership, unanimously voted to extend the corporate term of UACC for a period of another fifty (50) years from 14 May 2021 to 13 May 2071.

However, upon submission of the application for the abovementioned amendment, the Commission's examiner on duty refused to accept the same stating that there was no need to extend UACC's term, as provided by the Act.

You further stated that while the Fourth Article of UACC's AOI conforms to Section 11 of the Act, the said provision of law pertains to Act No. 1459, otherwise known as the Corporation Law (the "Corporation Law"), and not the Code. This is because the Act was enacted on 18 June 1966, when the old Corporation Law of 1906 was still in effect. Thus, when Section 11 of the Act states that-

> *The term of a condominium corporation shall be co-terminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding.*

the provisions referred to are those of the Corporation Law, Section 6 of which gives corporations a maximum term of fifty (50) years. However, the Code was enacted on 01 May 1980, and thus subsequent to the Act. The Code likewise prescribes a corporate term of fifty (50) years in Section 11 thereof, to wit:

> Section 11. Corporate Term – A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, that no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission.

In relation to this, Section 146 of the Code provides;

> *Except as expressly provided by this Code, all laws or parts thereof inconsistent with any provision of this Code shall be deemed repealed.*

Considering the foregoing premises, your queries are;

1. Did the enactment of the Code in 1980 impliedly repeal Section 11 of the Act insofar as the term of a condominium corporation is concerned, such that the term of a condominium corporation is no longer coterminous with its project, thereby necessitating an extension of its corporate term?

2. Assuming that the UACC is required to extend its corporate term in accordance with the Code, can the court-appointed Receiver, who is duly authorized to exercise the powers of the Board of UACC, issue the required certificate certifying the approval of the extension of corporate term by the members in lieu of the Trustees' Certificate?

The Commission answers your first query in the negative.

A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, while a special act is one which relates to particular persons or things of a class.[1]

A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, *the special must prevail since it evinces the legislative intent more clearly than that of a general statute and must be taken as intended to constitute an exception to the general act.*[2]

The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.[3] The reason for the rule is, the legislature in passing a law of special character has its attention directed to the special facts and circumstances which the special act is intended to meet.[4]

Taking into account that the Act is a special law since it relates to a particular class, that is, condominium corporations, while the Code is a general law because it covers private corporations, whether stock or non-stock, the former remains a good law.

There is no express provision to the contrary in the Code repealing Section 11 of the Act on the matter of co-terminous existence with the condominium project. Neither can the repealing clause in Section 146 of the Code be said to have impliedly repealed Section 11 of the Act. It is a rule in statutory construction that repeal of laws by implication are not favored, and the mere repugnancy between two statutes should be very clear to warrant the court in holding that the latter in time repeals the latter.[5]

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[1] Valera vs Tuason Jr., 80 Phil., 823, G.R. No. L-1276, April 30, 1948 citing Statutory Construction, Crawford, p.265.
[2] Butuan Sawmill Inc. vs City of Butuan, G.R. No. 21516, April 29, 1966, 16 SCRA 758.
[3] Villena vs Roque, 93 Phil 370, 373 (1953)
[4] Manila Railroad Co. vs Rafferty,40 Phil. 224, (1919)
[5] See Note 3.

In view of the foregoing, the Commission opines that Section 11 of the Act is not repealed by the enactment of the Code.

Thus, Section 11 of the Act which *does not limit the term of existence of a condominium corporation for a lifespan of only fifty years*, as it provides for a corporate term of a condominium corporation that is co-terminous with the duration of the condominium project, prevails over Section 11 of the Code. The condominium corporation's dissolution may be effected under Sections 8[6] and 13[7] of the Act, provided all the elements or factors enumerated therein shall concur.

In view of the foregoing, your second query becomes moot and irrelevant.

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 similar or dissimilar circumstances.[8] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[6] Section 8. Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project; as if the owners of all of the condominiums in such project were co-owners of the entire project in the same proportion as their interests in the common areas: Provided, however, that a partition shall be made only upon a showing:

a. xxx
b. xxx
c. That the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restructuring or remodeling or modernizing of the project.

[7] Section 13. Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common areas is revoked, the corporation shall not be voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:

a. xxx
b. xxx
c. That the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that more than fifty percent of the members of the corporation, if non-stock, or the stockholders representing more than fifty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodeling or modernizing of the project.

[8] SEC Memorandum Circular No.15, Series of 2003