Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 March 2019

SEC-OGC Opinion No. 19-12
RE: Hold-over Principle as applied to Condominium Corporations

ATTY. JOWEL T. CLOMA
Head Legal Counsel
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Dear Atty. Cloma:

This refers to your letter dated 12 December 2017 requesting an opinion for a Condominium Corporation (CondoCor), a non-stock, non-profit corporation, on:

> Whether the incumbent Board of Directors may continuously function in a "hold-over" capacity until a new set of members of the Board of Directors are elected and qualified, with limited authority only to handle the corporation's daily operations such as payment of utilities, salaries, the management of personnel and other issues/problems that requires immediate attention.

You mentioned that the election of the new members of the Board of Directors of the CondoCor has been nullified due to a.) lack of quorum and b.) disqualification of the nominee-directors of the developer for the position. Consequently, it caused the nullification of the subsequent organizational meeting and election of officers. To ensure that the day-to-day operations are unhampered, the old or incumbent Board of Directors and corporate officers of the corporation acted in a hold-over capacity to a limited extent. Relative to this, we quote your position on the holdover, to wit:

> "We have taken the position that the nullification of the election the Board of Directors does not dissolve the corporation itself. Given the fiduciary relationship and the legal and moral responsibility of the incumbent members of the Board to the CondoCor and its members, they may continuously function in a 'hold-over capacity' and limit their actions only to ensure that the day-to-day operations, continuous maintenance and upkeep of the condominium corporation remains unhampered and that as part of their "turn-over obligation," that the funds and assets of the CondoCor would be properly turned-over to a duly elected Board."

We confirm your position, with qualification.

As to your comment on the effects of nullification of the election on the life of the corporation, we agree that such nullification does not automatically cause the dissolution of the corporation. Dissolution terminates the life of a corporation and must strictly comply with the conditions provided in the Corporation Code[1] (Code) and the Condominium Act.[2]

Significant to your query is Section 23 of the Code which states:

> "The board of directors or trustees. - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (28a)"[3]

As to your query on the hold-over, we agree that the old or incumbent Board of Directors can act as a legitimate managing body pending the election of the successor directors. Pursuant to the **hold-over principle** as provided in Section 23, the incumbent Board of Directors shall serve as directors until their successors are elected and qualified in accordance with the Code or the By-Laws. The principle is applicable provided that the failure to elect the new set of directors/trustees was due to **valid and justifiable reasons**.[4]

In relation thereto, please take note that a hold-over is not indefinite and that the corporation must still hold its election for directors and officers. In case the non-holding of annual meeting for the election of the Board of Directors and Officers is without justifiable cause, the Commission may compel the officers of any registered corporation or association to call the meetings of stockholders or members thereof under its supervision.[5] Any stockholder or member may petition the Commission to order the calling of a meeting by giving proper notice required by the Code or by the by-laws.[66]

On the other hand, your position that the hold-over Board's authority is limited only to "handling the corporation's daily operation such as payment of utilities, salaries, the management of personnel and other issues/problems that requires immediate attention" is mistaken.

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[1] The Corporation Code of the Philippines [Corporation Code], Batas Pambansa Bldg. 68, Section 23 (1980).
[2] An Act to Define Condominium, Establish Requirements for its Creation, and Govern its [1 The Corporation Code of the Philippines [Corporation Code], Batas Pambansa Blg. 68, Section 23 (1980)].
[3] Corporation Code of the Philippines, Section 23.
[4] SEC Legal Opinion for Mr. Alfredo P. Palmiery dated 24 June 1998; SEC Opinion No. 06-18 dated 20 March 2006 addressed to Melvin C. Ventura.
[5] SEC Opinion No. 17-10 dated 31 August 2017 addressed to selected Homeowner Residents of URCI Las Pinas Townhomes
[6] Corporation Code, Section 50(4) (1980).

The Code expressly states that the "corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees." Thus, the Board of Directors has the authority to (1) exercise all powers provided for under the Code; (2) conduct all business of the corporation; and (3) control and hold all property of the corporation.[7] As applied to CondoCor, the hold-over principle does not diminish the exercise of discretion and authority of the incumbent Board of Directors except as provided by law. The principle still ensures that pending the selection of new set of directors, the incumbent directors will temporarily carry out the regular business and protect the interest of the corporation and its members. Thus the authority of the incumbent Board of Directors of CondoCor is not limited to handling the corporation's daily operations but may also exercise all powers and duties granted by the Code, the Condominium Act and CondoCor's By-Laws. However, whether to actually exercise such other powers and duties is already within the business judgment of said Board.

It shall be understood that the foregoing opinion is rendered 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 courts, or upon the Commission in other cases of similar or dissimilar circumstances.[88] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

CAMILO S. CARREA
General Counsel

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[7] Benedicto Hornilla and Atty. Federico D. Ricafort vs. Atty. Ernesto S. Salunat, A.C. No. 5804, July 1, 2003.
[8] SEC Memorandum Circular 2003-15, No. 7