Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

22 July 2019

SEC-OGC Opinion No. 19-25
Re: Quorum in Meetings of a Condominium Corporation

WILLIAM L. CHEW
President
Pico de Loro Cove
Condominium Corporation
Hamilo Coast, Barangay Papaya
4231 Nasugbu, Batangas

Gentlemen:

This refers to your letter dated 16 March 2018 requesting an opinion on determining quorum during annual membership meetings of Pico De Loro Cove Condominium Corporation ("Pico De Loro").

In your letter, you stated that Pico De Loro is a non-stock, non-profit corporation whose annual membership meeting is set by its By-Laws on the last day of April of each year. For years 2016 and 2017, the annual meetings were adjourned for failure to constitute a quorum.

As some members are suggesting that the basis of quorum for Pico de Loro's annual membership meeting is "the attendance of only a simple majority of the members who are in good standing", you are now seeking confirmation that the proper basis of quorum should be as stated in the By-Laws and Master Deed with Declaration of Restrictions ("Master Deed"), and that the absence of such quorum would render all acts or transactions made during a meeting of no force and effect, thus, not binding on the corporation or parties concerned.

Section 51 in relation to Section 46(c)[1] of the Revised Corporation Code[2] provides:

> "Section 51. 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 corporation." (Emphasis ours)

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[1] Section 46 (c) of the Revised Corporation Code of the Philippines: "**Contents of By-Laws**. The required quorum in meetings of stockholders or members and the manner of voting therein"; xxx; Formerly Section 47(3) of the Corporation Code (B.P. No. 68)

[2] Republic Act No. 11232, Revised Corporation Code of the Philippines, 20 February 2019 ("Revised Corporation Code")

7/23/19

As a rule, a majority of the members or stockholders is needed to constitute a quorum for the transaction of a corporation's business and other corporate acts. However, the Commission, citing Section 52 of the Corporation Code[3] (now Section 51 of the Revised Corporation Code), 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 corporate business.[4]

In determining the basis for quorum for non-stock corporations, the Supreme Court has held in *Tan et al vs. Sycip*[5] that only those who are actual, living members with voting rights shall be counted in determining the existence of a quorum.

In *Lim vs. Moldex Land, Inc.*[6], the Supreme Court also explained:

> "To be clear, **the basis in determining the presence of quorum in non-stock corporations is the numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation.** The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members. **To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein.**
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> x x x **Applying the law and Condocor's By-Laws, if there are 100 members in a non-stock corporation, 60 of which are members in good standing, then the presence of 50% plus 1 of those members in good standing will constitute a quorum. Thus, 31 members in good standing will suffice in order to consider a meeting valid as regards the presence of quorum.** The 31 members will naturally have to exercise their voting rights." (Emphasis ours)

"Quorum" is defined in Section 8, Article I of Pico de Loro's By-laws as follows:

> "The presence of members representing majority (more than 50%) interests in the Corporation and whose units are not delinquent in their duties and assessments shall constitute a quorum. x x x" (Emphasis ours)

On the other hand, "Interest" is defined in Pico de Loro's Master Deed with Declarations of Restrictions by computing the floor area of unit owned over the total area of all units in the condominium project.

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[3] Batas Pambansa Bilang 68, "The Corporation Code of the Philippines", 1 May 1980
[4] SEC-OGC Opinion No. 11-23 dated 13 April 2011, Architect Norberto V. Uy
[5] Paul Lee Tan et al, vs. Paul Sycip and Merrito Lim, G.R. No. 153468, 17 August 2006
[6] Mary E. Lim vs. Moldex Land Inc. et al, G.R. No. 206038, 27 January 2017

Considering the above Supreme Court rulings, Pico de Loro's By-Laws and Master Deed, we believe that to constitute a quorum during the annual Pico de Loro membership meeting, majority (more than 50%) interests should be based on the numerical equivalent of the total interest of all members who are entitled to vote, unless there is a clear intention by the members to the contrary. Otherwise, there will be members who will be present but will not be able to vote on any matter that will be taken up during said meeting. As stated in Section 2, Article III of Pico de Loro's By-Laws, only those members who are in good standing are eligible to vote.[7] The phrase "whose units are not delinquent in their duties and assessments" in Section 8, Article I of Pico de Loro's By-Laws simply recognizes the power of Pico de Loro to limit or deny the right to vote of any of its members.

We are constrained, however, not to comment on the accuracy of the figures in the computation you have presented in your letter. As a matter of policy, the Commission shall refrain on rendering opinion where resolution of the queries would necessitate the determination of factual issues.

As to your query on the effects of an absence of a quorum in a meeting, we opine that no action can be taken except to adjourn.[8] Any act or transaction made during a meeting without quorum is rendered of no force and effect, thus, not binding on the corporation or parties concerned.[9]

It shall be understood, however, that the foregoing opinion is rendered based solely on facts and circumstances disclosed 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 in other cases or upon the courts whether of similar or dissimilar circumstances. [10] If, upon further inquiry and 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. CORREA
General Counsel

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[7] Section 2, Article III of Pico de Loro's By-Laws provides: "Eligibility to Vote. All members shall have the right to vote at any meeting of the members provided that they are in good standing. A member shall be in good standing if he is not delinquent in paying his dues and assessments and is not subject to any disciplinary action by the Board of Trustees."

[8] The Corporation Code of the Philippines, Annotated by Hector S. De Leon, 2002 Edition, p. 480

[9] As held in Lim vs. Moldex Land, Inc.: "As there was no quorum, any resolution passed during the July 21, 2012 annual membership meeting was null and void and, therefore, not binding upon the corporation or its members. The meeting being null and void, the resolution and disposition of other legal issues emanating from the null and void July 21, 2012 membership meeting has been rendered unnecessary."

[10] SEC Memorandum Circular No. 15, s. of 2003, No.7