Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 September 2019

SEC-OGC Opinion No. 19-31
Re: Quorum in Meetings of a Non-Stock Condominium Corporation

REYES ROJAS & ASSOCIATES
Unit 1502, Jollibee Plaza Condominium
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Attention: Atty. Gian Enrico C. Navarro

Gentlemen:

This refers to your letter dated 14 February 2019 requesting for our opinion on whether delinquent members are excluded in the determination of quorum for the annual general meeting of Icon Residences Condominium Corporation (Icon).

In your letter, you stated that Icon is a non-stock, non-profit corporation whose annual general meeting is set by its By-Laws[1] every third Thursday of April of each year. On 19 April 2018, the very first general meeting was held. However, the then Board of Trustees (BoT) declared the absence of a quorum, contending that quorum should initially be based on the totality of all the members, delinquent or not. According to the BOT, the exclusion of the delinquent members, as provided for in the By-Laws, will only apply during the election of the BoT.

Hence, your query.

We answer your query in the affirmative.

Section 51 in relation to Section 46(c)[2] of the Revised Corporation Code[3] 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**

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[1] Attached to the Letter

[2] 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"; xx; Formerly Section 47(3) of the Corporation Code (B.P. No. 68)

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

> **capital stock or a majority of the members in the case of non-stock corporation.**" (Emphasis ours)

In determining the basis for quorum for non-stock corporations, the Supreme Court held in *Tan et al vs. Sycip*[4] 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.*[5], 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)

Further, "quorum" is defined in Section 6, Article II of Icon's By-Laws as follows:

> "The presence of members representing at least majority of the Condominium Shares and not delinquent in their dues and assessments shall constitute a quorum. A majority of the quorum (50% plus 1) shall be competent to decide on any matter, unless the Corporation Code or the Condominium Act requires the affirmative vote of a greater proportion. A smaller number of votes insufficient to constitute a quorum may adjourn the meeting from time to time and may take up only social or ceremonial status." (Emphasis ours)

Considering the above Supreme Court rulings and Icon's By-Laws, we opine that to constitute a quorum during the annual general meeting, there should be present a majority (50% plus 1) of the total interest of all members who are entitled to vote and not delinquent. 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. The phrase "not

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[4] Paul Lee Tan et al, vs. Paul Sycip and Merrito Lim, G.R. No. 153468, 17 August 2006
[5] Mary E. Lim vs. Moldex Land Inc. et al, G.R. No. 206038, 27 January 2017

delinquent in their dues and assessments" in Icon's By-Laws simply recognizes the power of Icon to limit or deny the right to vote of any of its members.

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. [6] 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.

ATTY. JULIO S. CORREA
General Counsel

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