Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 September 2019

SEC-OGC Opinion No: 19-32
Re: Quorum in Members' Meetings

JESUS B. BUENO, JR.
Alpha Phi Omega Philippines Inc.
Trustee for Alumni

Dear Mr. Bueno:

This refers to your letter dated 02 July 2018 requesting for the Commission's opinion on whether or not the quorum required in a general assembly/meeting to transact business is the same quorum required in the election of Board of Trustees (the "Board") in an organization.

The term "*quorum* "has been defined as "that number of members of the body which, when legally assembled in their proper places, will enable the body to transact its proper business, or in other words, that number that makes a lawful body and gives it power to pass a law or ordinance or do any other valid corporate act".[1]

Quorum required in transacting business and other corporate acts

Section 51[2] of the Revised Corporation Code (the "Code"), provides:

> "Section 51. Quorum in Meetings. – **Unless otherwise provided in this Code or in the bylaws**, 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 nonstock corporations**.

Hence, as a rule, a majority of members is a quorum for the transaction of a corporation's business and other corporate acts, except when the Code requires or fixes a minimum stockholders' or members' votes for a certain corporate action (*e.g.*, 2/3 of the stockholders representing the outstanding capital stock or the members, for amendment of

[1] SEC-OGC Opinion No. 06-37 dated 09 November 2006 addressed to Sanidad Abaya Te Viterbo Enriquez & Tan.
[2] Formerly Section 52 of the old Corporation Code.

the articles of incorporation), or when the bylaws provides for more or less than the majority of the members.[3]

Further, in determining quorum in meetings, the Commission had held that the same is based on the presence of the stockholders or members, **entitled to vote**, representing the majority of the outstanding capital stock or majority of the members.[4]

This follows the pronunciation of the Supreme Court in the case of *Tan v. Sycip & Lim*[5], thus:

> "In non-stock corporations, the voting rights attach to membership. Members vote as persons, in accordance with the law and the bylaws of the corporation. Each member shall be entitled to one vote unless so limited, broadened, or denied in the articles of incorporation or bylaws. We hold that when the principle for determining the quorum for stock corporations is applied by analogy to non-stock corporations, only those who are actual members with voting rights should be counted.
>
> Under Section 52 of the Corporation Code[6], **the majority of the members representing the actual number of voting rights**, not the number or numerical constant that may originally be specified in the articles of incorporation, **constitutes the quorum**."

Quorum required in Board election

In the same vein, Section 23[7] of the same Code provides:

> "At all elections of directors or trustees, **there must be present, either in person or through a representative authorized to act by written proxy**, the owners of majority of the outstanding capital stock, or if there be no capital stock, **a majority of the members entitled to vote**.
>
> xxx **Nominees for directors or trustees receiving the highest number of votes shall be declared elected**. xxx [emphasis supplied]

As to meetings held for the purpose of Board election, it is likewise mandatory that at least a **majority of all members entitled to vote** must be present either in person or by proxy at the meeting held for the purpose. Thus, in the absence of the required quorum, there cannot be a valid election of trustees.[8]

It must be noted, however, that while the presence of at least a majority of the members entitled to vote is required to constitute a quorum for the election of the Board, such number of votes is not required for one to be declared elected. Under Section 23 of the

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[3] SEC-OGC Opinion No. 16-11 dated 24 May 2016 addressed to Atty. Lucas M. Managuelod F.I.C.D.
[4] Ibid.
[5] G.R. No. 153468, 17 August 2006.
[6] Now Section 51 of the Revised Corporation Code.
[7] Essentially the same with Section 24 of the old Corporation Code.
[8] SEC Opinion No. 11-31 dated 13 July 2011 addressed to Atty. Mark Thursday P. Alciso.

Code , the nominees receiving the highest number of votes shall be declared elected, as the law requires only plurality of the votes cast at the election.[9]

In sum, to answer your query, unless the Code or the bylaws provides otherwise, the **quorum required in members' meetings for the purpose of transacting business and other corporate acts is the same quorum necessary in meetings held for the purpose of electing trustees to the Board. Such quorum requires the majority of the members entitled to vote.**

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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[10]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[9] SEC-OGC Opinion No. 14-09 dated 02 June 2014 addressed to Mr. Karl Michael Koa.
[10] SEC Memorandum Circular No.15, Series of 2003.