Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 September 2019

SEC-OGC Opinion No. 19-36
Re: Notice and Quorum in membership meetings

Legrand Properties, Inc.
747 San. Bernardo St.
Sta. Cruz, Manila

Attention: Mr. Benjamin K. Calubad

Dear Mr. Calubad,

This is in relation to your letter dated 23 October 2017 requesting for an opinion on the notice and quorum requirement as well as voting rights in membership meetings of Le Mar Ben Classic Condominium Tower II Association, Inc. (Le Marben II Association).

You stated that Legrand Properties, Inc. (Legrand) owns 8 condominium units in Le Mar Ben Classic Condominium Tower II, the legal title of which has been transferred from Legrand to an assignee by way of a Deed of Assignment. The project consists of 62 individually titled condominium units owned by 36 persons, natural and corporate.

You further stated that Le Marben II Association held a membership meeting on 22 September 2017 and an election on 6 October 2017. The notices of meetings were posted in the common areas of the project. Contrary to what is provided in the By-laws, the members were not served with notice personally or by special delivery mail at least 2 weeks before the dates set for the meetings. During the October 6 meeting, the election proceeded with 17 attendees. Out of the 62 individually titled units, only 34 unites were represented in the meeting and voted in the election.

You thus request for an opinion on the following queries:

1. Since the notice requirement was not complied with, are the decisions or resolutions adopted during the meetings/election considered void and ineffective?
2. Is it appropriate for Legrand to cast 8 votes on the basis of its ownership of 8 individually titled condominium units in the project?
3. What is the quorum requirement in order that a decision in a meeting may be considered valid if there are 62 individually titled condominium units owned by 36 persons, natural and corporate?
4. Will the quorum requirement change with Legrand's execution of the Deed of Assignment?
5. Is the assignee entitled to vote in the next meeting of Le Marben II Association?
6. If the Deed of Assignment is coupled with a trust agreement, is the assignee still entitled to vote in the next meeting of Le Marben II Association?

As to your first query, Section 50 of the Revised Corporation Code (RCC) provides that written notice of the meetings shall be sent through the means of communication provided in the by-laws, which notice shall state the time, place and purpose of the meetings. [1]

Article I Section 3 of Le Marben II Association's By-laws provides:

> Section 3. Notices - Notices of the time and place of annual, and special meetings of the members shall be given either personally or by special delivery mail, at least two (2) weeks before the date set for such meeting. The notice of every special meeting shall state briefly the purpose or purposes of the meeting.

The Commission has held that where the corporate by-laws provide that notices of meetings shall be either by ordinary mail or personal delivery, it is not valid to notify the stockholders by mere publication. [2]

Hence, since the notice was simply posted in the common areas of the project, the same is not compliant with the By-laws, and the 22 September 2017 and 6 October 2017 meetings were improperly called or held.

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[1] Republic Act No. 11232, effective on February 23, 2019. This is essentially the same rule as that provided under the Old Corporation Code (Batas Pambansa Blg. 68), i.e., that a written notice should be sent through regular post mail, unless the By-Laws provide a different mode of notice.

2 SEC Opinion dated 14 June 1982 addressed to Luis Vera Cruz

3 Section 50 of the Revised Corporation Code

However, even if the meetings were improperly called or held, all proceedings and any business transacted at such meetings shall be valid provided that such proceedings and business transacted are within the powers or the authority of the corporation, and that all the members of the corporation are present or duly represented at the meeting and not one of them expressly states at the beginning of the meeting that the purpose of their attendance is to object to the transaction of any business because the meeting is not lawfully called or convened.[3]

Hence, if the above conditions are met, the decisions/resolutions adopted during the 22 September 2017 and 6 October 2017 meetings would be valid.

With regard to your second query, the RCC provides:

> "Section 88. *Right to vote.* - The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote."[4]

Thus, in a non-stock corporation, the general rule is that each member shall be entitled to one vote, regardless of the amount of contribution. The exception is when the right of members of any class to vote is limited, broadened, or denied to the extent specified in the articles of incorporation or the by-laws.[5]

An example of this exception is when a non-stock corporation provides in its by-laws that the voting rights of the members shall be in proportion to the area ownership in the building[6] or that the members or unit owners be entitled to one vote per unit.[7]

In this connection, the voting requirement in a condominium corporation under the Condominium Act is summarized as follows:

1. For the amendment or revocation of the master deed, by a simple majority of the registered owners of the property, provided, that in a condominium project exclusively for either residential or commercial use, simple majority shall be on a per unit of ownership basis and that in the case of mixed use, simple majority shall be on a floor area of ownership basis[8]; and

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[4] This is an exact reproduction of Section 89 of the Corporation Code

[5] SEC Opinion dated 21 July 2015 addressed to COMMO Eduardo T. Domingo AFP (RET), citing Tan v. Sycip & Lim, GR No. 153468 dated 17 August 2006; SEC Opinion dated 17 August 1998 addressed to Atty. Edilberto S. Gaddi; SEC Opinion dated 3 July 1992 addressed to Myrna Yao & Patricia M. Alvarez

[6] SEC Opinion dated 8 February 1990 addressed to Ms. Evelyn R. San Buenaventura

[7] SEC Opinion No. 05-16, dated December 5, 2005 addressed to Mr. Pacifico Sanchez, Jr.

[8] Section 1 of Republic Act No. 7899 as cited in SEC Opinion No. 05-17 dated 05 December 2005 addressed to Ms. Amelia Gina I. Caragay

2. For any other corporate action such as in election of trustees, by the voting rights as provided in the declaration of restrictions[9].

Section 11 and 7 of Le Marben II Association's Master Deed with Declaration of Restrictions, which prevails over the By-Laws[10], provide:

> "Section 11. Nature and Interest Acquired by Purchasers of Units.
>
> xxx xxx xxx
>
> The proprietary interest acquired by each member of the condominium corporation shall be equal to the appurtenant interest of his unit in the common areas as provided in Section 7 ... xxx xxx."
>
> "Section 7. Appurtenant Interest of Each Unit in the Common Areas.
>
> To each unit in the project shall indirectly appertain an undivided interest in the common areas equal to the percentage which the floor of the unit bears to the total floor area of all the units in the project, exclusive of the common areas, thus:

$\frac{\text{Area of Unit}}{\text{Total Area of all units in the project exclusive of common areas}}$	= Percentage of Interest of unit in the common areas

Thus, it is not appropriate for Legrand to cast 8 votes on the basis of its ownership of the 8 condominium units. Instead, Legrand should be entitled to vote up to the extent of the total appurtenant interest of its 8 units in the common areas, using the formula in the Master Deed with Declaration of Restrictions.

With regard to your third query, the RCC provides the general rule:

> "Section 51. Quorum in meetings. – Unless otherwise provided in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of

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[9] Second paragraph of Section 9 of Republic Act No. 4726 otherwise known as "the Condominium Act".

[10] Le Marben II Association's By-laws provide:

> "Section 6. Voting Proxy – **Each member shall be entitled to one vote**, and he may vote either in person or by proxy which shall be in writing and filed with the Secretary of the association before the scheduled meeting. (Emphasis supplied)

the outstanding capital stock or a majority of the members in the case of non-stock corporations."[11]

In connection thereto, the RCC likewise provides:

"Section 46. Contents of by-laws. – A private corporation may provide the following in its by-laws:
xxx

c. The required quorum in meetings of stockholders or members and the manner of voting therein;
xxx."[12]

Thus, 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, except in cases where the law requires a minimum stockholders' or members' vote for a certain corporate action (e.g. 2/3 of the stockholders representing the outstanding capital stock or the members in case of amendment of articles of incorporation) which would in effect be the required quorum.[13]

Article I Section 4 of Le Marben II Association's By-Laws, provide:

"Section 4. Quorum – A quorum for any meeting of the members shall consist of a **majority** of the members and a majority of such quorum may decide any question at the meeting, except those matters where the Corporation Code requires the affirmative vote of a greater proportion."

The quorum in meetings 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. As enunciated by the Supreme Court in the case of *Paul Lee Tan, et Al v. Paul Sycip and Merritto Lim*[14]:

"In non-stock corporations, **the voting rights attach to membership**. Members vote as persons, in accordance with the law and the by-laws of the corporation. Each member shall be entitled to one vote unless so limited, broadened, or denied in the articles of incorporation or by-laws. We hold that when the principle for determining the quorum for stock corporations is applied by analogy to nonstock corporations, only those who are *actual* members **with voting rights** should be counted.

Under Section 52 of the Corporation Code, the majority of the **members representing the actual number of voting rights**, not the number or numerical

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[11] Exact reproduction of Section 52 of the Corporation Code
[12] Essentially the same as Section 47 of the Corporation Code
[13] SEC Opinion dated 20 November 2013 addressed to Mr. James Cu Unjieng
[14] Tan vs. Sycip & Lim, G.R. No. 153468, 17 August 2006

> constant that may originally be specified in the articles of incorporation, constitutes the quorum.

From the foregoing, it is evident that the voting rights of stockholders and members are considered in the determination of quorum.[15]

Applying this to the instant case, the voting rights of the 36 members of Le Marben II Association attached to the ownership of 62 units should be considered in determining the quorum. Since the voting rights of the members are determined by the percentage which the floor areas of the units bear to the total floor area of all the units, as provided for in the Master Deed with Declaration of Restrictions, the quorum shall be such number of members representing a simple majority of the total floor area covered by the 62 units.

With regard to your fourth query, the quorum required, as discussed earlier, is fixed by law or the provision of the by-laws and cannot be changed by the assignment of the condominium unit or its concomitant rights.

Hence, the quorum requirement will not change with Legrand's execution of the Deed of Assignment.

With regard to your last two queries, please note that as a matter of policy, the Commission refrains from rendering categorical opinion where the resolution of the question would involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.[16] Nor does the Commission render opinion on matters that would necessitate the determination of factual issues[17], or that would necessarily require a review and interpretation of contracts, since this is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.[18] Since your queries would require a determination of ownership of the condominium units of Legrand and the latter's status as member of Le Marben II Association, we cannot give a categorical opinion. However, for your guidance and for purposes of information only, the following are imparted.

Section 89 of the RCC provides:

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[15] SEC Opinion No. 16-11 dated 24 May 2016
[16] SEC Memorandum Circular No. 15, Series of 2003, par. 5.2
[17] Ibid, par. 5.8
[18] Ibid, par. 5.3

"Section 89. Non-transferability of membership. - Membership in a non-stock corporation and all rights arising therefrom are personal and non-transferable, unless the articles of incorporation or the by-laws otherwise provide."[19]

Membership in a non-stock corporation has personal elements accompanied by social ties, hence, it cannot be transferred to other persons who wish to be members. However, this general rule admits of an exception as when the articles or by-laws so provide that membership and rights arising therefrom may be subject to transfer.[20]

Membership in a condominium corporation is inseparable from ownership of a condominium unit, and shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project, he shall automatically cease to be a member or stockholder thereof. [21] In short, ownership of a unit is a condition sine qua non to being a shareholder in the corporation.[22]

The owner of property has an absolute and inherent right, as an incident of his ownership, to sell, dispose, alienate, transfer or encumber the same at will, except insofar as the right may be restricted by law. In this connection, the pertinent provision of the Condominium Act[23], provides:

"Sec. 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:

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(h) Any reasonable restriction not contrary to law, morals or public policy regarding the right of any condominium owner to alienate or dispose of his condominium.

xxx."

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[19] Exact reproduction of Section 90 of the Corporation Code of the Philippines

[20] SEC Opinion dated 27 July 1990 addressed to Atty. Manuel O. Chan

[21] Sec. 10, The Condominium Act (RA 4726); SEC Opinion dated 4 May 1990 addressed to Europa Condominium Villas, Inc.; SEC Opinion dated 26 June 1986 addressed to Consolidated Financing Corporation.

[22] Sunset View Condominium Corporation v. The Hon. Jose C. Campos Jr. .and Aguilar Bernares Realty, G.R. No. L-52361 dated 27 April 1981

[23] R.A. No. 4726

Thus, any restriction as to the transfer, lien or encumbrance of condominium units, to be valid, must be expressly provided in the Master Deed or Declaration of Restrictions duly annotated in the certificate of title registered under the Land Registration or Cadastral Act.[24]

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. It 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.[25] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

[24] SEC Opinion dated 4 January 1994 addressed to Ms. Fe P. Vicencio
[25] SEC Memorandum Circular 2003-15, No. 7