Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 September 2019

SEC-OGC Opinion No. 19- 43
RE: Non-holding of Annual Membership Meeting

Arthur Michael E. De Castro
Resident and Owner; Unit 905 The Asia Tower Condominium
Member, The Asia Tower Condominium Corporation
Benavidez Street, Corner Paseo De Roxas
Legaspi Village, Makati City 1226

Dear Mr. De Castro:

This refers to your letter dated 03 January 2019 requesting the Commission's opinion on certain legal matters affecting your corporation, The Asia Tower Condominium Corporation ("TATCC").

In your letter, you stated that the Bylaws of TATCC provides for the holding of an annual membership meeting (AMM) every month of July. However, the 2018 AMM originally fixed on 15 July 2018 was postponed several times by TATCC's Board of Trustees ("BOT") for failure to achieve a quorum.

You further stated that despite the non-holding of the 2018 AMM, TATCC intends to proceed with the filing of its 2018 General Information Sheet (GIS) by availing of a provision which seemingly allows corporations that were unable to hold their AMM to submit its GIS "not later than January of the following year."

You likewise stated that a TATCC trustee resigned in October 2018.

From the foregoing, you raise the following queries:

1. Whether or not a GIS submitted by TATCC within the month of January 2019 be valid notwithstanding failure to conduct an AMM for calendar year 2018;
2. How should a vacancy in the BOT due to resignation of a trustee be reflected in the 2019 GIS; and
3. What are TATCC's recourse to hold recalcitrant members accountable for their failure to participate in the AMM.

FIRST QUERY

SEC Memorandum Circular No. 3, Series of 2007[1] provides in part: "*if the corporation is unable to hold the meeting for the calendar year, the GIS shall be filed not later than January 30 of the following year.*" This is also reflected under paragraph 2 of the General Instructions found in the GIS Form for Non-Stock Corporations, attached as Annex C to SEC Memorandum Circular No. 17, Series of 2019[2], with an addendum stating that: "*should an annual members' meeting be held thereafter; a new GIS shall be submitted/filed.*"

Please be informed, however, that non-holding of an annual meeting is a violation of Section 49[3] of the Revised Corporation Code ("RCC") and subject to a corresponding penalty pursuant to Section 170[4] of the same Code.

SECOND QUERY

Section 25 of the RCC provides in part:

> "xxx Should a director, trustee or officer die, resign or in any manner cease to hold office, the secretary, or the director, trustee or officer of the corporation, or in case of death, the officer's heirs shall, within seven (7) days from knowledge thereof, report in writing such fact to the Commission."

As applied to your case, the resignation by a trustee of TATCC is considered a change in the composition of the BOT which must be reflected and clearly highlighted in an Amended GIS to be submitted by the above authorized persons within 7 days from knowledge of the trustee's resignation. In the absence of a replacement trustee to the vacated position, the same may be reflected as vacant in the amended GIS.

In relation, please be guided by Section 28 of the RCC in the filling-up of vacancy in the BOT, to wit:

> "**Section 28. Vacancies in the Office of Director or Trustee; Emergency Board.** – Any vacancy occurring in the board of directors or trustees other than by removal or by expiration of term may be filled by the **vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said**

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[1] Amendment of Reportorial Requirements.
[2] 2019 Revision of the General Information Sheet.
[3] Section 49. Regular meetings of stockholders or members shall be held annually on a date fixed in the bylaws, or if not so fixed, on any date after April 15 of every year as determined by the board of directors or trustees. xxx
[4] Section 170. Violations of any of the other provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than Ten Thousand Pesos (P10,000.00) but not more than One Million Pesos (P1,000,000.00) xxx

vacancies must be filled by the stockholders or members in a regular or special meeting called for that purpose.

xxx In all other cases. the election must be held no later than forty-five (45) days from the time the vacancy arose. A director or trustee elected to fill a vacancy shall be referred to as replacement director or trustee and shall serve only for the unexpired term of the predecessor in office. xxx"

Thus, if the remaining trustees of TATCC still constitute a quorum, they may elect a replacement trustee to the Board without necessarily holding an AMM.

THIRD QUERY

As a matter of policy, the Commission refrains from rendering opinion on matters which 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.[5]

However, for purposes of information, please be advised that a corporation cannot coerce its members to attend members' meetings for the same should be done voluntarily or of their own volition. However, if the members' non-attendance results to no quorum for at least two (2) attempts at meetings for the purpose of electing directors/trustees, Section 25[6] of the RCC applies.

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.[7]

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[6] Section 25. xxx If no new date has been designated, or if the rescheduled election is likewise not held, the Commission may, upon the application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election, summarily order that an election be held. The Commission shall have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote.

Notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this section. xxx

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