Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 October 2019

SEC-OGC Opinion No. 19-49
RE: Condominium Corporation
vis-à-vis Homeowner's Association

EMBASSY GARDENHOMES
CONDOMINIUM CORPORATION
77 T. Benitez St., West Triangle,
Quezon City

ATTENTION: MS. LOURDES BUSTAMANTE

Dear Ms. Bustamante:

This refers to your letter dated 03 September 2018, requesting the Commission's opinion on certain queries regarding Embassy Gardenhomes Condominium Corporation ("Embassy").

In your letter, you aver that pursuant to Section 10 of its Master Deed, Embassy's power to manage its affairs may be likened to that of an association of homeowners of subdivisions/villages members because the corporation units are for exclusive residential use. However, with the enactment of Republic Act ("R.A.") No. 9904 and its Implementing Rules and Regulations ("IRR"), you state that some of the members of Embassy now raise the query on whether it should register with the Housing and Land Use Regulatory Board ("HLURB"). Thus, you now seek clarification of this matter in view of the similarity of the operations and management of the corporation to that of an association of homeowners of subdivisions/villages.

Further, you also inquire on how to invoke the authority of the Commission to compel the attendance of the members of a corporation for purposes of holding the election of officers.

From the foregoing, you raise the following queries:

1. How can Embassy invoke the authority of the Commission to compel the attendance of its members for purposes of holding the election of officers; and

2. Whether Embassy should register with the HLURB in compliance with Section 4 of R.A. 9904.

FIRST QUERY

Section 25 of R.A. 11232, otherwise known as the Revised Corporation Code of the Philippines ("RCC"), provides:

> SECTION 25. Report of Election of Directors, Trustees and Officers, Non-holding of Election and Cessation from Office. – **Within thirty (30) days after the election of the directors, trustees and officers of the corporation**, the secretary, or any other officer of the corporation, shall submit to the Commission, the names, nationalities, shareholdings, and residence addresses of the directors, trustees, and officers elected.
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> **The non-holding of elections and the reasons therefor shall be reported to the Commission within thirty (30) days from the date of the scheduled election**. The report shall specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date.
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> **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.**
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> **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.**
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> 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, shall, within seven (7) days from knowledge thereof, report in writing such fact to the Commission. (Emphasis supplied)

Based on Sections 23[1] and 24[2] of the RCC, the members of the Board of Directors must be elected, who, in turn, will elect the corporate officers. The corporate officers are the following: President, Treasurer, Secretary, Compliance Officer, if the corporation is vested with public interest, and other officers as may be provided in the by-laws of the corporation.

Should there be a failure to hold the election of the corporation's directors, trustees, and officers, this fact shall be reported to the Commission together with the reasons therefor. The report shall also specify a new date for the conduct of the election.

If no new date has been designated or if the rescheduled election is still not held, an application or Petition to Call an Election under Section 25 of the RCC may be filed with the Commission therein alleging failure to re-schedule the election or failure to conduct the re-scheduled election and the reasons therefor.[3]

Also, please be informed that in order for the election of officers to be a valid corporate act, Sections 24 and 52[4] of the RCC requires the vote of a majority of all the members of the Board of Directors.

It is evident from the foregoing discussion that while the law empowers the Commission to compel the conduct of elections, the same cannot be said in terms of compelling the members of the corporation to attend the same.

Nevertheless, we emphasize that this does not necessarily preclude the conduct of the elections. This is because under Section 25, **the shares of stock represented by those who opt to attend the meeting for purposes of holding an election shall constitute a quorum,** and thus, the election may still proceed.

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[1] Section 23. Election of Directors or Trustees. – Except when the exclusive right is reserved for holders of founders' shares under Section 7 of this Code, each stockholder or member shall have the right to nominate any director or trustee who possesses all of the qualifications and none of the disqualifications set forth in this Code.

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. x x x

If no election is held, or the owners of majority of the outstanding capital stock or majority of the members entitled to vote are not present in person, by proxy, or through remote communication or not voting in absentia at the meeting, such meeting may be adjourned and the corporation shall proceed in accordance with Section 25 of this Code. x x x

[2] SECTION 24. Corporate Officers. – Immediately after their election, the directors of a corporation must formally organize and elect: (a) a president, who must be a director; (b) a treasurer, who must be a resident; (c) a secretary, who must be a citizen and resident of the Philippines; and (d) such other officers as may be provided in the bylaws. If the corporation is vested with public interest, the board shall also elect a compliance officer. x x x

[3] Section 25 of R.A. 11232.

[4] SECTION 52. Regular and Special Meetings of Directors or Trustees; Quorum. – Unless the articles of incorporation or the bylaws provides for a greater majority, a majority of the directors or trustees as stated in the articles of incorporation shall constitute a quorum to transact corporate business, and every decision reached by at least a majority of the directors or trustees constituting a quorum, except for the election of officers which shall require the vote of a majority of all the members of the board, shall be valid as a corporate act.

SECOND QUERY

With respect to your inquiry as to whether the condominium corporation should register with the HLURB, we regret to inform you that as a matter of policy, the Commission refrains from rendering an opinion on requests which involve interpretation of administrative rules and issuances of other government agencies considering that it is the promulgating agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances.[5] Thus, the competence to answer your query resides with the HLURB as the implementing agency of R.A. 9904.

However, **for purposes of information only**, the following may be imparted.

A condominium corporation is especially formed for the purpose of holding title to the common areas, including the land, or the appurtenant interests in such areas, in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. The corporation shall likewise constitute the management body of the project.[6]

On the other hand, **a homeowners' association is formed to promote and protect the mutual interest of the buyers and residents, and to assist in their community development**. And unlike a condominium corporation, it does not hold title to the common areas, including the land, or appurtenant interests in such areas. **A homeowners association is thus different from a condominium corporation**.[7]

In relation thereto, R.A. 9904 mandates the registration of such associations of homeowners with the HLURB, to wit:

> "Section 4. *Registration with the HLURB.* – Every **association of homeowners shall be required to register with the HLURB**. This registration shall serve to grant juridical personality to all such associations that have not previously acquired the same by operation of the General Corporation Law or by any other general law.
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> x x x - - - - - - - - x x x
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> The existence of associations previously registered with the Home Insurance Guarantee Corporation or the SEC shall be respected, and the said associations shall not be charged a penalty when they register with the HLURB after this Act takes effect."

It must be noted, however, that R.A. 9904 generally prohibits the compulsion of a homeowner to join the association, thus:

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[5] Sec. 5.6., SEC Memorandum Circular No. 15, Series of 2003
[6] Lim vs. Moldex Land, Inc., et al., G.R. No. 206038, January 25, 2017.
[7] Ibid.

"Section 22. *Prohibited Acts.* – **It shall be prohibited for any person**:

> **To compel a homeowner to join the association, without prejudice to the provisions of the deed of restrictions, its extensions or renewals** as approved by the majority vote of the members or as annotated on the title of the property; **the contract for the purchase of a lot in the subdivision project; or an award under a CMP project or a similar tenurial arrangement**;"

Relative thereto, the IRR of R.A. 9904 states:

"Section 9. Membership. – Unless otherwise provided in the Contract to Sell, Deed of Sale, or other instruments of conveyance, or annotated in the title of the property, **membership in the association is optional**."

It shall be understood that the opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances. 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.

ROMUALD C. PADILLA
Officer-in-Charge