Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-02
Re: Composition of Board of Trustees of a Condominium Corporation

19 January 2024

The Cambridge Village Condominium Association, Inc.
Blk 19 Kabisig Road San Andres Floodway Cainta Rizal
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Attn: **Mr. Juanito N. Angeles**
Property Manager

Gentlemen:

This refers to your letter[1] requesting for the Commission's opinion as regards the composition of the Board of Trustees of The Cambridge Village Condominium Association, Inc. ("TCVCAI").

You mentioned in your letter that TCVCAI is a non-stock non-profit corporation registered and existing under Philippine laws. Currently, its Articles of Incorporation (AOI) and By-laws provide for five (5) trustees to be appointed as Board members. However, per TCVCAI's Master Deed and Declaration of Restrictions (MDDR), the same requires seven (7) trustees to be appointed as members of the Board.

In relation to the foregoing, you seek guidance and confirmation on which between the two: 1) AOI and By-laws or 2) MDDR shall be followed. Specifically, you raise the following issues:

1. In view of Section 10 of Republic Act (RA) No. 4726 or the Condominium Act, does the prescribed number of board of trustees in the MDDR *(7 in the case of TCVCAI's MDDR)* prevail over what is stated in the company's AOI and By-laws *(5 in the case of TCVCAI's AOI and By-laws)*?;
2. If the MDDR prescribed number is to be followed, is there a need to amend TCVCAI's AOI and By-laws?;
3. If no quorum is mustered to amend the AOI and By-laws, which number of trustees should be used during the elections, pending amendment of the AOI and By-laws?; and
4. In the determination of quorum, are all members including those in delinquent status entitled to vote or only those in good standing?

Condominium Corporation's Master Deed vis-à-vis its AOI and By-Laws

Section 10 of the RA No. 4726 or the Condominium Act[2], as amended, provides:

> "xxx The articles of incorporation or by-laws of the corporation **shall not contain** **any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project.** xxx" (Emphasis ours)

As to your *first* query, settled is the rule that in case of inconsistencies in the provisions of the AOI/ By-laws and Master Deed, the provision of the latter shall prevail.[3]

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[1] Letter Request from The Cambridge Village Condominium Association Inc. dated 4 May 2022.
[2] Republic Act No. 4726, The Condominium Act,18 June 1966, as amended by Republic Act No. 7899, 23 February1995
[3] SEC-OGC Opinion No. 18-05 addressed to Salvador Llanillo & Bernardo March 19, 2018 dated 19 March 2018, Re: Membership in a Condominium Corp.

It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*[4] The provisions of the Revised Corporation Code (RCC)[5], a general law, should therefore give way to the Condominium Act, a special law. Consequently, while as a rule, a corporation is authorized to provide in its By-laws, guidelines and rules for transacting corporate business, the same shall be subject to the provisions of an applicable special law *(i.e. the Condominium Act)*, which explicitly provides for a specific rule on how to carry out the affairs of the condominium corporation.

Hence, for purposes of determining the composition of the Board of Trustees, it is the MDDR that should be followed.

As to your *second* query, considering the express and strict construction of Section 10 of the Condominium Act, TCVCAI's AOI and By-laws must be amended to be consistent with the provisions stated in its MDDR.

Quorum

Section 51 of the RCC 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.

Meanwhile, Section 52 of the RCC provides for the quorum in meetings of directors or trustees:

> ***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. (Emphasis supplied)

As a rule, a corporation is authorized to provide in its By-laws the desired quorum for the transaction of a corporate business. However, the provision in the By-Laws relative to quorum will not hold true in those instances where the RCC or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal. In such cases, a quorum shall consist of such ratio of stockholders or members as may be declared by statutory provisions.[6] Some of these instances are:

1. Amendment to the Articles of Incorporation;[7]
2. Removal of directors or trustees;[8]
3. Extension or shortening of corporate term;[9]
4. Sale, lease, exchange, mortgage, pledge or any disposition of all or substantially all of the corporate assets.[10]

For purposes of amending the AOI, Section 15 of the RCC provides that:

> ***Section. 15. Amendment of Articles of Incorporation.*** - Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code. **<u>The articles of incorporation of a nonstock corporation may be amended by the vote or written assent of majority of the trustees and at least two-thirds (2/3) of the members.</u>**
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> xxx. (Emphasis ours)

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[4] Leviste Management System, Inc. v. Legaspi Towers 200, Inc., G.R. Nos. 199353 & 199389, April 4, 2018.
[5] Republic Act No. 11232, 20 February 2019
[6] SEC-OGC Opinion No. 23-11 dated April 13, 2011 citing Letter dated 25 November 1998 addressed to Ernesto C. Ignacio, citing SEC Opinion dated February 4, 1997, citing previous SEC Opinion and 5 Fletcher Cyc. Corp. Sec. 2013.
[7] Section 15 of the Revised Corporation Code.
[8] Section 27, *Ibid.*
[9] Section 36, *Ibid.*
[10] Section 39, *Ibid.*

Meanwhile, for the amendment of the By-Laws,

> *Section 47. Amendment to Bylaws.* — **A majority of the board of directors or trustees, and the owners of at least a majority of the outstanding capital stock, or at least a majority of the members of a nonstock corporation, at a regular or special meeting duly called for the purpose, may amend or repeal the bylaws or adopt new bylaws.** The **owners of two-thirds (2/3) of the outstanding capital stock or two-thirds (2/3) of the members in a nonstock corporation may delegate to the board of directors or trustees the power to amend or repeal the bylaws or adopt new bylaws**: Provided, That any power delegated to the board of directors or trustees to amend or repeal the bylaws or adopt new bylaws shall be considered as revoked whenever stockholders owning or representing a majority of the outstanding capital stock or majority of the members shall so vote at a regular or special meeting.
>
> xxx. (Emphasis ours)

Accordingly, if TCVCAI is to amend its AOI and By-Laws, the required quorum for both stockholders and trustees must be met. In the case of the trustees, the required quorum shall be majority of seven (7), which is the prescribed number in the MDDR, based on the principle that the MDDR shall prevail over the AOI and By-laws.

Likewise, and to answer your *third* query, for purposes of *election* of board of trustees pending amendment of the AOI and By-laws, the number of trustees that shall be elected must also be seven (7).

Effect of Delinquency

Section 70 of the RCC is clear on the effect of delinquency of a stockholder/ member, to wit:

> ***Section. 70. Effect of Delinquency***. – **No delinquent stock shall be voted for, be entitled to vote, or be represented at any stockholder's meeting, nor shall the holder thereof be entitled to any of the rights of a stockholder except the right to dividends in accordance with the provisions of this Code,** until and unless payment is made by the holder of such delinquent stock for the amount due on the subscription with accrued interest, and the costs and expenses of advertisement, if any. (Emphasis ours)

Meanwhile, Section 86 of the RCC, paragraph 2 thereof, provides: "***The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations,*** *except as may be covered by special provisions of this Title*".

In the case of ***Tan v. Sycip, G.R. No. 153468***[11], the Supreme Court held:

> "**The Right to Vote in**
> **Nonstock Corporations**
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> In nonstock 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 nonstock corporations, only those who are actual members *with voting rights* should be counted**. x x x."

As such, while Section 70 of the RCC pertains to stock corporations, the same may be applied to non-stock corporations [12] like TCVCAI. Thus, like delinquent stockholders, delinquent members are not entitled to vote.[13] Accordingly, to answer your *fourth* query, delinquent members should not be included in determining the existence of the required quorum.[14]

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[15] If upon

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[11] Tan v. Sycip, G.R. No. 153468, August 17, 2006, 530 PHIL 609-627
[12] SEC-OGC Opinion No. 12-06 dated February 15, 2006.
[13] *Ibid.*
[14] SEC Opinion No. 05-05 dated June 8, 2005.
[15] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.

investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel