Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 22-15
Re: Election of Representatives of Corporate Unit Owners as Trustees and Officers of Condominium Corporations

19 October 2022

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Attention: Atty. Niersen C. Custodio
Atty. Ineandro Pedro P. Tolentino

Dear Gentlemen:

This refers to your letter requesting the Commission's opinion on questions regarding the election of representatives of corporate unit owners as trustees and officers of your client, Amara *en* Terrazas Condominium Corporation ("AETCC"), which is a non-stock, non-profit condominium corporation registered with the Commission.

As stated in your letter, AETCC is not engaged in wholly or partially nationalized activities. AETCC's Articles of Incorporation (AOI), Amended By-Laws (BL), and Master Deed with Declaration of Restrictions have no restriction as to the membership in AETCC to be solely natural and/or juridical persons/entities. Thus, AETCC's membership is composed of natural and juridical persons.

Relative thereto, you are requesting the Commission's opinion on the following queries:

"Firstly, in the case of our client, AETCC, who has a **mixed composition** of natural and juridical or corporate unit owners and/or members:

1. Are juridical/corporate unit owners and/or members allowed to be elected in the Board of Trustees based on said set up?

2. Is (sic) SEC Opinion No. 05-06 and other cited opinions of the same, during the current implementation of the RCC, are (sic) still considered "good opinions"?

Secondly, in case of the affirmative in the first set [of] queries:

3. May a juridical or corporate unit owner and/or members' representative, as Trustee, be elected as a corporate officer (e.g., President)?

4. If so, what are the required steps or policies to be followed for the corporation to achieve soundly the same?"

First and Second Queries

We answer the ***first query*** in the negative, with a qualification.

Generally, directors or trustees must either be elected from among the shareholders of a stock corporation or from the general membership of the corporation in case of a non-stock corporation.[1] Simply stated, no person shall be elected as trustee unless he is a member of a nonstock corporation.[2]

An exception to this rule is when the stockholder/member is a corporate unit-owner/member of a condominium corporation, to wit:

> "**In this connection, it is worth mentioning that beneficial ownership is not necessary for one to become a director, and that a person who holds the legal title to a stock on the books of the corporation is qualified, although the beneficial ownership thereof may be in another.** (2 Fletcher, Cyc. of Corps. 1982 rev. vol. sec 300 at 93, citing Transamerica Corp. v. Parrington, 115 Cal. App. 2d 346, 252 P 2d 385, 12 USC 72) Hence, a trustee may be eligible as director notwithstanding absence of beneficial right, title, or interest in the stock.
>
> It is therefore logical and practical to apply the foregoing principle in the case of condominium corporations. While a corporation cannot act by itself being a juridical person, it can act through its officers and authorized agent. **Accordingly, an officer or duly authorized agent or trustee who has been designated in the Board Resolution of the corporate unit owner or member as its representative for the express purpose of qualifying him as director and whose appointment as such has been recorded in the corporate books, may be eligible to be elected as director.** To rule otherwise would create a situation where there would be no Board of Directors of the Corporation."[3] *(Emphasis supplied)*

In fact, the BL of AETCC authorizes the appointment of a representative to be elected as a director or trustee. Article II, Section 2 of AETCC's BL allows a member, which is a juridical person, to designate a representative through an appropriate resolution issued by its governing board.[4] The same Section also requires the submission of a certified copy of the said resolution to AETCC's corporate secretary.[5]

Thus, while a corporate unit owner cannot itself be elected as a trustee of the condominium corporation because it is not a natural person, and hence cannot attend board meetings,[6] its representative duly designated and recognized as above-stated may do so.

As to your ***second query***, and in view of the foregoing, we answer in the affirmative. SEC Opinion No. 05-06 and its cited SEC opinions are still applicable with respect to the subject issue.

SEC Memorandum Circular No. 16, Series of 2019 (SEC MC 16-19) does not reverse the said opinions as it was only issued for the clear and proper implementation of Section 10[7] of the Revised Corporation Code (RCC); that is, to provide guidelines on the composition of

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[1] SEC-OGC Opinion No. 19-30 dated 09 September 2019 addressed to Atty. Victor P. Lazatin and Atty. Edson Byron K. Sy.

[2] *Ibid.*

[3] *Ibid*, citing SEC Opinion No. 05-06 dated 08 June 2005 addressed to Atty. Roderick R.C. Salazar III; SEC Opinion dated 16 April 1991 addressed to Atty. Augusto B. Sunico.

[4] AETCC's BL, "Article II. Membership

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Section 2. Representation. – In case a condominium unit is owned in common by two (2) or more persons, they shall designate jointly one of them to represent both of them in the Corporation, and the owner so designated shall be considered a member representing the co-owned condominium unit for all purposes and in all matters related to the Corporation. In case of conflict among the co-owners, the Board of Trustees shall have the right to decide whom to recognize as the authorized representative.

In case the member is a juridical person, the governing board of said member shall designate by appropriate resolution, a certified copy of which shall be furnished the Secretary of the Corporation, the person who shall represent it in the Corporation. (as amended in a meeting of the Board of Trustees and members held on July 11, 2013 and August 31, 2013, respectively)" *(Emphasis supplied)*

[5] Ibid.

[6] SEC Opinion No. 05-06 dated 08 June 2005 addressed to Atty. Roderick R.C. Salazar III.

[7] SEC. 10. *Number and Qualifications of Incorporators.* – **Any person, partnership, association or corporation, singly or jointly with others** but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes: Provided, That natural persons who are licensed to practice a profession, and partnerships or associations organized for the purpose of practicing a profession, shall not be allowed to organize as a corporation unless otherwise provided under special laws. Incorporators who are natural persons must be of legal age.

Each incorporator of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock.

A corporation with a single stockholder is considered a One Person Corporation as described in Title XIII, Chapter III of this Code.

incorporators for the **registration** of domestic corporations under the RCC. Considering the purpose for which the guidelines were implemented, the designation of incorporators as directors or trustees refers to the mandated qualifications applicable to the representatives of juridical incorporators only while the corporation is being formed, and not after its incorporation/organization.

Third and Fourth Queries

As to your ***third query***, we answer in the affirmative.

Section 24 of the RCC provides the minimum qualifications of corporate officers. It provides that immediately after the election of the board, the 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 others officers as may be provided in the BL. The same person may hold two (2) or more positions concurrently, except that no one shall act as president and secretary or as president and treasurer at the same time, unless otherwise allowed in the RCC.[8] The BL may, however, include other qualifications/disqualifications of an officer.[9]

Thus, the President is the ***only*** corporate officer required under the RCC to be a director or trustee. In other words, the other corporate officers, such as the Secretary and Treasurer, of the corporation need not be directors or trustees, absent any qualification in the BL which states otherwise.

Accordingly, a representative of a corporate unit owner who was elected as a trustee of the condominium corporation may become the President thereof.

As to your ***fourth query***, we no longer deem it necessary to provide a separate answer thereto, considering our discussion on your first three queries.

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

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[8] Section 24 of the RCC.
[9] Section 46 of the RCC.
[10] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.

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