Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

30 March 2021

SEC-OGC Opinion No. 21-04
Re: Quorum in By-Laws

DURAN & DURAN-SCHULZE LAW
Unit 604, The Infinity Tower
26th Street, Fort Bonifacio Global City
Taguig City, 1634 Philippines

Attention: ATTY. RHONALIZA BURCE
Counsel

Dear Atty. Burce:

This refers to your letter requesting for a legal opinion on whether the By-laws of The Infinity Condominium Corporation (TICC) can provide therein and require as quorum for members' meeting the presence of members in good standing representing at least thirty percent (30%) of the relevant number of units entitled to be represented and vote.

In said letter, you represented that your client TICC is a non-stock, non-profit, condominium corporation duly organized on 5 July 2011 with Company Registration No. CN201110847. You stated that TICC would like to seek confirmation from the Commission in relation to its intention to amend its By-law provisions on quorum in members' meeting.

Article VI, Section 5 of the By-laws of TICC embodies the provision on quorum, to wit:

> "Section 5. Quorum. The presence of members in good standing representing at least **a majority** of the relevant number of units entitled to be represented and vote at the meeting shall constitute a quorum. A majority of the quorum (50% +1) shall be competent to decide on any matter, unless the Corporation Code or the Condominium Act requires the affirmative vote of a greater proportion. A smaller number of votes

> insufficient to constitute a quorum may adjourn the meeting from time to time and may take up only social or ceremonial matters."

Relative to the instant request, you stated that TICC intends to amend the afore-quoted provision of its By-laws as follows:

> "Section 5. Quorum. The presence of members in good standing representing at least **thirty percent (30%)** of the relevant number of units entitled to be represented and vote at the meeting shall constitute a quorum. A majority of the quorum (50% +1) shall be competent to decide on any matter unless the Corporation Code or the Condominium Act requires the affirmative vote of a greater proportion. A smaller number of votes insufficient to constitute a quorum may adjourn the meeting from time to time and may take up only social or ceremonial matters."

You cited Section 51 in relation to Section 46(c) of the Revised Corporation Code (RCC)[1] as basis for the proposed amendment, to wit:

> "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."
>
> "Section 46. **Contents of Bylaws.** – A private corporation may provide the following in its bylaws: x x x
>
> (c) **The required quorum in meetings of stockholders or**

[1] Republic Act No. 11232, Revised Corporation Code of the Philippines

> **<u>members</u>** and the manner of voting therein;"

The Commission, citing Section 52 of the Corporation Code[2] (now Section 51 of the RCC), has opined that **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, *<u>except</u>* in those instances where the Corporation Code or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal**, to wit:

> "**<u>Stock corporations or non-stock corporations are authorized to define what constitutes a quorum based on its by-laws</u>**. The Commission has opined that 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 a corporate business.
>
> x x x **<u>However, the provision in the by-laws relative to quorum will not hold true in those instances where the Corporation Code or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal.</u>** In such cases, a quorum shall consist of such ratio of stockholders or members as may be declared by statutory provisions. It is a cardinal rule that a by-law providing what shall constitute a quorum is invalid if it is in conflict with the provisions of a statute on the subject matter. Where the number necessary to constitute a quorum is prescribed by a statute, a by-law requiring less than the proportion required by the particular legislation is subordinate to the statute.

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[2] Batas Pambansa Bilang 68, The Corporation Code of the Philippines

> It was noted that "*regardless of the provision in the by-laws on quorum*, when the Corporation Code (now RCC) explicitly requires a specific number of stockholders or members necessary to resolve or carry out a particular corporate proposal the Corporation Code prevails. *Some* of these instances are: 1. Amendment to the Articles of Incorporation[3]; 2. Removal of directors or trustees[4]; 3. Extension or shortening of corporate term[5]; and 4. Sale, lease, exchange, mortgage, pledge or any disposition of all or substantially all of the corporate assets[6]"[7]

Similarly, in *Legrand Properties, Inc.*, it was opined:

> "Thus, **<u>any corporation</u>**, whether stock or non-stock, **is <u>authorized</u> to provide in its by-laws a specific number of stockholders or members necessary to constitute a quorum for the transaction of corporate business, <u>except in cases where the law requires a minimum stockholders' or members' vote for a certain corporate action</u>** (e.g., 2/3 of the stockholders representing the outstanding capital stock or the members in case of amendment of articles of incorporation) **<u>which would in effect be the required quorum</u>**."[8]

Given the wording of the proposed amendment to Section 5 of the By-laws of TICC, we answer your query in the affirmative.

It shall be understood, however, that the foregoing opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue

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[3] RCC, Section 15
[4] RCC, Section 27
[5] RCC, Section 36
[6] RCC, Section 39
[7] SEC-OGC Opinion No. 11-23 dated 13 April 2011, Architect Norberto V. Uy; See also *SEC-OGC Opinion No. 25-19 dated July 22, 2019 addressed to Mr. William L. Chew and SEC-OGC Opinion No. 25-14 dated September 4, 2014 addressed to Mr. Gerardo L. Romero-Salas.*
[8] *SEC-OGC Opinion No. 36-19 dated 13 September 2019 addressed to Legrand Properties, Inc.*

raised therein. This opinion shall not be considered and 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.[9] 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
General Counsel

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[9] SEC Memorandum Circular 2003-15, No.7