OFFICE OF THE GENERAL COUNSEL

19 February 2025

SEC OGC Opinion No. 25-04
Re: Quorum in Meetings of a Condominium Corporation

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Attn: Atty. Alberto Garcia, Jr.

Sir:

This refers to your letter dated 30 August 2022[1] requesting for the Commission's opinion on the determination of quorum for purposes of holding the Annual General Membership Meeting ("AGMM") of The Residences at Greenbelt Condominium Corporation ("TRAGCC").

As mentioned in your letter, TRAGCC is a non-stock and non-profit *condominium corporation* consisting of 1027 members (i.e. 1003 residential + 24 commercial members) in the complex.

In particular, you seek clarification on the following:

1. Is the determination of the quorum based on the total number of members or unit owners (@1027 total), in accordance with its by-laws and the Revised Corporation Code (RCC)?;

2. Due to the high number requirement to attain a quorum which led to several failed AGMMs, is there any other legal recourse or remedy for TRAGCC to be able to reach the quorum or conduct a valid AGMM? (i.e. a quorum less than the number required in no. 1 hereof—via Referendum);

3. Due to the high number requirement to attain a quorum and even a higher number for the amendment of the by-laws, is there any other legal recourse or remedy for TRAGCC to be able to amend its by-laws (i.e. lower quorum number/threshold) at a lower number of approval?; and

4. When a non-stock/non-profit condominium corporation lowers its quorum requirement (i.e. lower than 50% plus 1), is there any required or recommended percentage for quorum, so that the interest of the members and the condominium corporation will still be protected?

Relative to the foregoing, we provide our opinion below.

Quorum in <u>Meetings</u> of a Condominium Corporation

Sections 9 of Republic Act (RA) No. 4726[2] or the Condominium Act provides:

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[1] Received by our office on 2 September 2022.
[2] The Condominium Act, Republic Act No. 4726, June 18, 1966

"Section 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions shall constitute a lien upon each condominium in the project, and shall insure to and bind all condominium owners in the project. xxx

The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies: a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named in the declaration. It shall also provide for voting majorities, quorums, notices, meeting date, and other rules governing such body or bodies.

xxx

Meanwhile, Section 51 of the RCC provides:

"Section 51. Quorum in meetings. — **Unless otherwise provided for in this Code or in the by-laws, 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 non-stock corporation.**" (Emphasis ours)

xxx

Under the RCC, a majority of the outstanding capital stock held by stockholders (stock corporation) or a majority of the members (non-stock corporation) is needed to constitute a quorum for the transaction of a corporation's business and other corporate acts. However, the Commission, citing Section 51 of the RCC, has opined that any corporation, whether stock or non-stock, **is authorized to provide in its by-laws** a different specific number of stockholders or members necessary to constitute a quorum for the transaction of corporate business.[3]

Relative to the foregoing, in determining who are considered as members of a non-stock corporation, the Supreme Court held in *Lim vs. Moldex Land, Inc.*:[4]

Membership in a condominium corporation is limited only to the unit owners of the condominium project. This is provided in Section 10 of the Condominium Act which reads:

> Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. *When a member* or *stockholder ceases to own a unit in the project* in which the condominium corporation owns or holds the common areas, *he shall automatically cease to be a member or stockholder of the condominium corporation.*

Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, a corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are not inconsistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project. *(Emphasis, ours)*

The Supreme Court further explained in the same case:

"To be clear, the basis in determining the presence of quorum in non-stock corporations is the **numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation.** The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members. To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein. xxx xxx

xxx x x x **Applying the law and Condocor's By-Laws, if there are 100 members in a non-stock corporation, 60 of which are members in good standing, then the presence of 50% plus 1 of those members in good standing will constitute a quorum. Thus, 31 members in good standing will suffice in order to consider a meeting valid as regards the presence of quorum.** x x x." (Emphasis ours)

However, the by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of the said Act, the enabling or master deed, or the declaration of restrictions of the project. In case of inconsistency in the provisions of the by-laws or the Articles of Incorporation (AOI) and

[3] SEC-OGC Opinion No. 19-25, Re: Quorum in Meetings of a Condominium Corporation, 22 July 2019
[4] Lim v. Moldex Land, Inc., G.R. No. 206038, 25 January 2017, 804 PHIL 341-364

the Condominium Act, the master deed, or the declaration of restrictions, the provision of the latter shall prevail, pursuant to Section 10[5] of the Condominium Act. [6]

Based on the foregoing and to answer your first query, the determination of the quorum of TRAGCC is **based on what is provided in the declaration of restrictions, AOI and/or its by-laws.** We note that a copy of the TRAGCC's declaration of restrictions or of its AOI was not provided to us nor was mentioned in your letter.

Thus, provided that there is no inconsistency between the declaration of restrictions or AOI and the by-laws, Article II, Section 11 of the latter, which you cited in your letter, shall apply, to wit:

> "Section 11. Quorum. **The presence of members in good standing representing at least a majority of the units in the Project shall constitute a quorum**. A majority of the quorum (50% plus 1) shall be competent to decide on any matter xxx"

Hence, TRAGCC must *first* determine the number of members in *good standing*, as defined in TRAGCC's by-laws, in order to arrive at the required quorum for its AGMM. The majority (50%+1) shall be based on the numerical equivalent of the total members who are considered in good standing.

Quorum Required to <u>Amend the By-Laws</u>

It was mentioned in your letter that due to the high number requirement to attain a quorum for purposes of conduct of a valid AGMM and even a higher number for an amendment of the by-laws, TRAGCC encountered several failed AGMMs. You therefore explore the possibility of lowering the quorum requirement of TRAGCC for the valid conduct of its AGMM.

Section 51 of the RCC suggests that the by-laws of the corporation may provide for a quorum lesser or greater than that of the majority rule, *provided* that the same is stated under the corporation's by-laws, *except* 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.[7] **Hence, if a quorum less than majority is being sought by TRAGCC, then an application for amendment of by-laws with the Commission is necessary to modify the present quorum requirement of TRAGCC.**

To amend the by-laws, Section 47 of the RCC strictly requires the concurrence of majority of the board of directors or trustees, and the owners of at least a majority of the outstanding capital stock of a stock corporation, or at least a majority of the members of a nonstock corporation, to wit:

> "*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.
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[5] Section 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. 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. x x x"

[6] SEC-OGC Opinion No. 18-05 addressed to Salvador Llanillo & Bernardo, 19 March 2018.

[7] SEC-OGC Opinion No. 21-04 addressed to Duran & Duran-Schulze Law, 30 March 2021

Attendance in Meetings and Voting via Remote Communication

However, as previously mentioned, one of the concerns of TRAGCC is not being able to meet the quorum requirement for purposes of its AGMM, and more so in amending its by-laws.

To help corporations address such issue, attendance and voting in meetings via remote communication is now authorized upon the passage of the RCC. Sections 49 and 57 of the RCC provide:

> "**Section 49. Regular and Special Meetings of Stockholders or Members.** — 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:
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> **The right to vote of stockholders or members may be exercised in person, through a proxy, or when so authorized in the bylaws, through remote communication or in absentia.** The Commission shall issue the rules and regulations governing participation and voting through remote communication or in absentia, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the protection and promotion of shareholders' or members' meetings."
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> "**Section 57. Manner of Voting; Proxies.** — Stockholders and **members may vote in person or by proxy in all meetings of stockholders or members.**
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> **When so authorized in the bylaws or by a majority of the board of directors, the stockholders or members of corporations may also vote through remote communication or in absentia: Provided, That the votes are received before the corporation finishes the tally of votes.**
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> A stockholder or member who participates through remote communication or in absentia shall be deemed present for purposes of quorum.
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> The corporation shall establish the appropriate requirements and procedures for voting through remote communication and in absentia, taking into account the company's scale, number of shareholders or members, structure and other factors consistent with the basic right of corporate suffrage. xxx " *(Emphasis supplied)*

In relation thereto, SEC Memorandum Circular No. 6, Series of 2020[8] ("MC No. 6, s. 2020") was issued by the Commission to provide for the guidelines on participation of stockholders or members in regular and special meetings through remote communication:

> "*Section 10. Participation in Stockholders' or Members' Meetings Through Remote Communication.* — **When so provided in the bylaws or by majority of the board of directors**, stockholders or members who cannot physically attend at stockholders' or members' meetings may participate in such meetings through remote communications or other alternative modes of communication.
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> If a stockholder or member intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the meeting." *(Emphasis supplied)*
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> *Section 11. Quorum in Meetings.* — **Unless otherwise provided in the Revised Corporation 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. *[RCC-51]*
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> **A stockholder or member who participates through remote communication or *in absentia* shall be deemed present for purposes of quorum**. *[RCC-23 & 57]"*

To address your second and third queries, to help TRAGCC attain the required quorum for purposes of its AGMM or for amending its by-laws, it may conduct its meeting via remote communication, provided that the same is permitted under the corporation's by-laws or **such mode of meeting has been decided and agreed upon by the majority of the board of trustees through a board resolution.**[9] It should be

[8] Guidelines on the Attendance and Participation of Directors, Trustees, Stockholders, Members, and Other Persons of Corporations in Meetings through Remote or Electronic Means of Communication, SEC Memorandum Circular No. 06-20,
[9] SEC Opinion No. 21-09 addressed to Cyber One Condominium Corporation, Inc., 22 June 2021

noted that, in the **latter** case, **voting through remote communication is only applicable for the particular meeting stated in the said resolution, as clarified by Section 12 of MC No. 6, s. 2020.**[10]

Required or recommended percentage for quorum

In relation to your fourth query, there is no specific requirement or recommended percentage when a corporation provides in its by-laws a lower percentage for quorum purposes as authorized under Section 51 of the RCC. For example, the quorum may only be 30% of all members in good standing.[11] However, best corporate governance practices under current or future policies and/ or rules may/ will have to be considered. Further, as discussed above, please note that regardless of the provision in the by-laws on quorum, when the RCC explicitly requires a specific number of stockholders or members necessary to resolve or carry out a particular corporate proposal, e.g. *amendment of by-laws*, the RCC prevails.[12] This also holds true in case the Condominium Act or other applicable law prescribes a higher number to constitute a quorum.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted and 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.[13] 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.

Very truly yours,

Romuald C Padilla
General Counsel

[10] *Supra*, Note 9.
[11] SEC-OGC Opinion No. 11-23 addressed to Architect Norberto V. Uy, 13 April 2011
[12] *Ibid.*