



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

2 June 2014

SEC-OGC Opinion No. 14-09
Re: Election of Trustees;
Less than the number of seats

MR. KARL MICHAEL KOA
Unit 408, Empire Plaza
1473 G. Masangkay Street, Sta. Cruz
Manila

Sir:

This is in response to your letter dated 30 December 2013 requesting our opinion on the matter of election to the board of trustees of Empire Plaza Condominium Corporation ("EPCC"). EPCC is a non-stock corporation registered with the Commission on April 10, 2010 under SEC Registration No. A200002639.

You have presented as basis for the queries Article 6 of the EPCC Articles of Incorporation, which states: "That the number of trustees of the association shall be **Fifteen (15)** x x x."

The following are your queries:

1. Should the eleven (11) nominees who accepted fall below the required number of trustees to be elected [fifteen (15)] as provided by EPCC Articles of Incorporation, are all eleven (11) considered automatically elected regardless of the number of votes received by each?
2. What is the minimum number of trustees/nominees who accepted to be voted in order for the election to be valid? Is it at least eight (8)?
3. What if only seven (7) were elected, is it valid? Consequently are all transactions entered by the 7-trustee board void ab initio?
4. What if after election of the board [of] trustees the former President or the previous board of trustees refuse to call on the newly elected trustees and continue to exercise his/their functions?
5. What should the newly-elected trustees do in order to prevent the previous president or board of trustees to perform all acts in connection with the management of the Condominium Corporation?

Please be advised that the Commission does not, as a matter of settled policy, render opinions on matters which are hypothetical, abstract, speculative and anticipatory in character and those pertaining to undisclosed principals, as well as on litigious issues which may eventually be litigated in the future such as matters which involve the substantive and

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contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.¹

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

On the first query, Section 24 of the Corporation Code is relevant:

Sec. 24. Election of directors or trustees. - At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. x x x **Candidates receiving the highest number of votes shall be declared elected.** x x x (emphasis supplied)

While the Corporation Code requires the presence of at least a majority of the members of a non-stock corporation for the election of its Board, it does not require such number of votes for one to be declared elected. Under the aforesaid provision, the candidates receiving the highest number of votes shall be declared elected.²

Thus, for a candidate to be elected as trustee, said candidate must be among the group of candidates who received the highest number of votes. In case the number of candidates does not exceed the number of seats in the board, said candidates, provided they received votes, can be said to have received the highest number of votes, as the law requires only plurality of the votes cast at the election.

Anent the second and third queries, it has been previously opined that:

“An election of less number of directors than the number which the meeting was called to elect is valid as to those actually elected.”³

Thus, the stockholders or members of a corporation may opt to elect a number of directors/trustees less than the number of directors/trustees as fixed in the articles of incorporation. Such a situation would merely give rise to vacancy in the board, which may be later filled up.⁴ The power of the board is not suspended by vacancies in the board unless the number is reduced below a quorum.⁵

The number of candidates elected, however, is not without importance. Section 25, 2nd Paragraph of the Corporation Code states:

Sec. 25. Corporate officers, quorum. x x x

¹ SEC Memorandum Circular 15, series of 2003

² SEC Opinion dated 5 March 1992 addressed to Mr. Robert S. Sehwan.

SEC Opinion dated 11 April 1994 addressed to Ms. Cresencia C. Silva.

³ SEC Opinion dated 10 June 1992, citing *In Re: Excelsior Ins. Co.*, 38 Barb. 297; *In Re Union Insurance Co.*, 22 Wend. 591, cited in 2 *Fletcher, Cyc. Corp.* 1969 Rev. Vol. Sec. 291, p. 77

⁴ *Ibid.*

⁵ *Ibid.*, citing *Fletcher*, sec. 421, citing *Porter v. Lassen Country Land and Cattle Co.*, 127 Cal 261, 59 p. 563



The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. **Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.**

x x x (emphasis supplied)

The grant of corporate power is to the Board as a body, and not to the individual members thereof, and that the corporation can be bound only by the collective act of the Board.⁶ In relation to this, the Board can only transact business if it reaches a quorum, which is at least a majority of the number of trustees as fixed in the articles of incorporation or by-laws, unless the Articles of Incorporation, the By-Laws, or the Master Deed, in the case of condominium corporation, provide for a greater number. For the decisions of the Board to be valid as a corporate act, at least a majority of such a majority or quorum has to concur. However, for the election of officers, the vote of a majority of all the members of the Board as fixed in the articles of incorporation, rather than of a majority of a quorum, shall be required.

Concerning the fourth and fifth queries, Section 23 of the Corporation Code provides that the directors or trustees “shall hold office for one (1) year until their successors are elected and qualified.” Thus, when the successors to the incumbent board of trustees have been elected and qualified, the incumbent board of trustees ceases to hold office and to exercise the corporate powers.

Those newly-elected must meet as trustees and act at a meeting at which there is a quorum. Under Section 25 of the Corporation Code, first paragraph –

*Sec. 25. Corporate officers, quorum. - **Immediately after their election, the directors of a corporation must formally organize** by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. x x x (emphasis supplied)*

Besides formally organizing, a report of the election of trustees to the Securities and Exchange Commission is mandated under Section 26 of the Corporation Code, which provides:

Sec. 26. Report of election of directors, trustees and officers. - 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 Securities and

⁶ Villanueva, C., Philippine Corporate Law (2001), p. 286



Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected. Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission.

The Supreme Court held that the objective sought to be achieved by Section 26 is to give the public information, under sanction of oath of responsible officers, of the nature of business, financial condition and operational status of the company together with information on its key officers or managers so that those dealing with it and those who intend to do business with it may know or have the means of knowing facts concerning the corporation's financial resources and business responsibility.⁷

Lastly, an outgoing President or Board which refuses to recognize the legitimacy of those newly-elected and who continue to exercise their functions may be the subjects of an intra-corporate case filed with the regular courts.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and 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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.⁸

Please be guided accordingly.

Very truly yours,


General Counsel

/mpb

⁷ Premium Marble Resources v. Court of Appeals, 264 SCRA 11 (1996)

⁸ SEC Memorandum Circular No. 15, Series of 2003.

