Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 September 2019

SEC-OGC Opinion No. 19-30
Re: Election of representatives of a corporate unit-owner in the Board of Trustees of a Condominium Corporation

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Attention: Atty. Victor P. Lazatin and
Atty. Edson Byron K. Sy

Gentlemen,

This is in relation to your letter dated 08 January 2018 requesting for an opinion on whether a corporate unit-owner having multiple units may appoint representatives based on the number of units owned, and consequently, nominate those representatives as members of the Board of Directors.

You stated that 926 Pasay Road Condominium Corporation (the "926 Pasay Road"), formerly known as the "Jackson Building Corporation", was incorporated in 1981 to manage the condominium project. The project consists of 68 individually titled condominium units owned by various persons, natural and corporate.

In the election of the Board of Directors during the annual members' meeting last 11 December 2017, corporate unit-owners Tagaytay Overlook Terraces, Inc. (TOTI)[1] and Languages Internationale, Inc. (LI)[2] sent their respective representatives and nominated them as members of the Board of 926 Pasay Road. Thus, your queries.

A.) Corporate Unit-Owners may Appoint Representatives

Generally, membership in a condominium corporation is limited only to the unit-owners of the condominium project. Section 10 of the Condominium Act [Republic Act (RA) No. 4726] provides:

> 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.**[3] (Emphasis supplied)

Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, the corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are consistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project.[4]

Article II Section 2 of the 926 Pasay Road's By-laws provides:

> "Section 2. Representation. **A member may designate another person to represent him as a member of the corporation** by filing a written designation with the Secretary of the corporation. In case a unit is owned in common by two or more persons, they shall designate only one of them to represent them in the corporation **and their representative so designated shall be considered as member representing the apartment unit for all purposes in all matters related in the corporation.** (Emphasis supplied)
>
> **In case a member is a legal entity, authorized officers shall designate who should represent it in the corporation."** (Emphasis supplied)

From the foregoing, corporate unit-owners are granted the right to designate their representatives in 926 Pasay Road, by filing a written notification with the Corporate

[1] Which owns 10 units
[2] Which owns 7 units
[3] Sec. 10, The Condominium Act (RA 4726)
[4] Mary E. Lim vs Moldex Land, Inc. G.R. No. 206038 dated January 25, 2017

Secretary. Accordingly, the corporate unit-owners which designated their representatives have the right to send their representatives to the membership meeting.

B.) The Appointment of Representatives is Based on the Number of Units Owned

On whether a corporate unit-owner having multiple units may appoint as many representative-members as there are units owned, no guidance can be found under the Condominium Act. Likewise, 926 Pasay Road's Articles of Incorporation, By-Laws, Master Deed and Declaration of Restrictions are silent.

This notwithstanding, since membership in a condominium corporation is appurtenant or attaches to ownership of a unit, then each unit should be represented regardless of whether one or several persons owns such units. Unless so limited by the Articles of Incorporation, By-Laws, Master Deed and Declaration of Restrictions, a corporation owning more than one unit in a condominium project is not limited to a single membership in the condominium corporation. Each unit-owner has to be represented. It is a rule of statutory construction that what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order. [5] Hence, the corporate unit-owners may appoint as many representatives in 926 Pasay Road as there are units owned.

C.) Voting Rights of the Representatives is Based on Proportionate Floor Area of the Units

Notwithstanding the number of designated representatives, the maximum number of votes or voting rights allowed under the Deed of Restrictions, Articles of Incorporations and/or By-laws should be complied with.

926 Pasay Road's Master Deed and Declaration of Restrictions provides:

> "<u>Section 9. Nature of Interest Acquired by Purchasers of Units.</u>
>
> xxx xxx xxx
>
> b. As an appurtenance of ownership of the unit, the purchaser shall automatically become a member of the Condominium Corporation with such interests, **participation**, or equity therein **corresponding to the percentage or the fractional share which the floor area of his unit bears to the total saleable area in the condominium project.**[6] The total saleable area refers to the combined floor area of all the units in the condominium project.
>
> c. Each member of the Condominium Corporation shall be entitled in all meetings to such number of votes as shall correspond to his fractional share in the Condominium Corporation.

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[5] Knights of Rizal vs. DMCI Homes, Inc. et al, G.R. No. 213948 dated April 18, 2017

[6] Same as Article 11 of 926 Pasay Road's Articles of Incorporation and Section 3 of its By-Laws

xxx xxx xxx."

Based on the above provision, each member is entitled to a participation based on the total floor area of units owned. Thus, while a corporate unit-owner owning more than one unit is not limited to a single membership, it is only entitled to such number of votes corresponding to the percentage which the floor area of his unit bears to the total saleable area in the condominium project.

TOTI and LI, despite being allowed to designate as many representatives as the number of units they own, are entitled only to such number of votes based on the total floor area of units owned.

D.) The Representatives may be Nominated as Members of the Board

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 non-stock corporation. [7] Simply stated, no person shall be elected as trustee unless he is a member of the non-stock corporation.

An exception to this rule is the case of corporate unit-owner/member of a condominium corporation. In this case, the SEC opined[8] that:

> "xxx xxx xxx
>
> ...xxx 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.[9] Hence, a trustee may be eligible as director notwithstanding absence of beneficial right, title, or interest in the stock.
>
> 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."

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[7] Section 23 and Section 92 of the Corporation Code

[8] SEC Opinion dated 16 April 1991 addressed to Atty. Augusto B. Sunico; SEC Opinion No. 05-06 dated 8 June 2005 addressed to Atty. Roderick R.C. Salazar III; SEC Opinion dated 26 June 1969 addressed to Mr. Dante P. Sarraga; SEC Opinion dated 16 July 1985 addressed to Atty. Antonio C. Pastelero

[9] 2 Fletcher, Cyc. Of Corps. 1982 rev. vo. Sec. 300 at 93, citing Transamerica Corp. v. Parrington, 115 Cal. App. 2d 346, 252 P 2d 385, 12 USC 72

Further, Article II Section 2 of 926 Pasay Road's By-laws provides that ".. their representative so designated shall be considered as member representing the apartment unit <u>for all purposes in all matters related in the corporation</u>." Hence, the designated representatives of the corporate unit-owners may be nominated as members of the Board.

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. 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 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.

CAMILO S. CORREA
General Counsel

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