Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23-13
Re: Number of Directors; Quorum to transact corporate business

9 August 2023

FORTUN NARVASA & SALAZAR
23F, Multinational Bancorporation Center
6805 Ayala Avenue
Makati City, 1226

Attn: ATTYS. RODERICK R.C. SALAZAR III and KEVIN KEN S. GANCHERO

Sirs:

This pertains to your letter dated 10 November 2020 requesting the Commission's opinion on whether your client, Fine Seamen Holdings, Inc. (FHSI), can amend its Articles of Incorporation to provide for a range of the number of directors instead of a definite number.

You stated that FSHI intends to amend its Articles of Incorporation where the number of its directors will be changed from "five (5) directors" to "at least two (2) directors" or "two (2) directors to five (5) directors."

In this regard, you are seeking for the opinion of the Commission on the following legal issues:

1. Whether or not an amendment in the number of directors from a definite number to a range of the number of directors permitted to be elected in the board is allowed under Section 13 of the Revised Corporation Code (RCC); and
2. If said amendment is allowed, what would constitute a quorum to transact corporate business in case there are only two (2) directors elected.

Anent your first query, we answer in the negative. Section 13 of the RCC provides:

> Section 13. *Contents of the Articles of Incorporation.* – All corporations shall file with the Commission articles of incorporation in any of the official languages, duly signed and acknowledged or authenticated, in such form and manner as may be allowed by the Commission, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
>
> xxx xxx xxx
>
> (f) *The **number** of directors, which shall not be more than fifteen (15) or the number of trustees which may be more than fifteen (15);*
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> xxx xxx xxx[1]

One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum* — from the words of a statute there should be no departure.[2]

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[1] Emphasis, italics, and underscoring supplied.
[2] *Francisco I. Chavez vs. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel C. Tupas Jr.,* G.R. No. 202242, July 17, 2012.

A plain reading of Section 13 of the RCC shows that it does not permit a range of the number of directors to be elected in the board. The word "number" is unambiguous enough to be understood and directly applied without any resulting misinterpretation. The word "number" denotes a fixed quantity. On the other hand, the phrases "range of the number," "at least two (2) directors," or "two (2) directors to five (5) directors" denote that there is a variation between the upper and lower limits of a particular measure. Thus, the word "number" can only mean that, at the time of the meeting called for the purpose, only a *fixed* number of director/s can be elected. No further interpretation is necessary to clarify the law's applicability.

That a fixed number of directors is required under Section 13 of the RCC is in line with the definition of quorum under Section 52 thereof which provides that what constitutes as a "majority" shall be based on a number as stated in the articles of incorporation, to *wit:*

> Section 52. Regular and Special Meetings of Directors or Trustees; Quorum. - Unless the articles of incorporation or the bylaws provides for a greater majority, a **majority** of the directors or trustees ***as stated in the articles of incorporation*** **shall constitute a quorum** to transact corporate business, and every decision reached by at least a majority of the directors or trustees constituting a quorum, except for the election of officers which shall require the vote of a majority of all the members of the board, shall be valid as a corporate act.
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> x x x x x x x x x[3]

SEC-OGC Opinion No. 22-02[4] provides that the number of directors that a corporation can legally have is that which is **fixed** in the articles of incorporation. Any decrease or increase thereof can be effected only by amending the articles of incorporation pursuant to Section 15 of the RCC.

Anent your second query, assuming arguendo that two (2) directors were elected, as the Commission resolved in a previous opinion, the formula in determining the "majority of the number of directors" as fixed in the articles of incorporation would be one-half plus one of the number of directors as fixed in the articles of incorporation.[5] Accordingly, one-half of two (2) is one, plus one of the directors as fixed in the articles of incorporation, which results to two (2). As a consequence, the *unanimity of two (2) directors* is required to transact corporate business.

It shall be understood that the foregoing opinion is rendered solely on the basis of 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.[6] 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

[3] Emphasis and italics supplied.
[4] SEC-OGC Opinion No. 22-02 dated 2 March 2022, addressed to Maria Lourdes D. Fajardo, *quoting* SEC Opinion dated 10 June 1992, addressed to Mr. Geminiano R. Pineda.
[5] SEC-OGC Opinion dated 13 March 1987, addressed to Eusebio S. Garcia and UP Medicine '36 Foundation Inc.
[6] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.