Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

31 August 2017

SEC-OGC Opinion No. 17-10
Re: Condominium Corporation: Membership; Proxy Rules; Compensation of Directors and Officers; Hold-Over Capacity; Corporate Term

SELECTED HOMEOWNERS/RESIDENTS
OF URCI LAS PIÑAS TOWNHOMES
Bldg. Unit 15-07
URCI Las Piñas Townhomes
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ATTENTION: Cesar L. De Guzman, John F. De Guzman, Federico Malaga, Fe T. Alagos, Eduardo A. Baquir, and Francis Janda

Gentlemen:

This is in response to your letters dated 14 February 2017 and 16 February 2017, requesting for an opinion regarding the present situation of your community, URCI Las Piñas Condominium Corporation (ULPCC, for brevity).

In the letter, you raised numerous concerns regarding several topics, namely:

1. Alleged violations of the by-laws by the Officers/Board of Directors specifically those concerning Board election, implementation of increase in association dues and other contestable actions;
2. Imposition of sanctions on the members of the Board of Directors for their alleged mismanagement, overspending and other contestable actions;

3. What government agency will govern your community if you chose to be a plain Homeowners Association, as well as the requirements needed for the transition, and the composition of its management;
4. Scope of work and compensation of the employees of ULPCC;
5. The definition of "members" in relation to the ULPCC by-laws and the Governing Guidelines for the Election of New Members of the Board of Directors;
6. Validity and duration of proxy voting documents in relation to the election of the members of the Board;
7. Validity and limitation of compensation of the Directors and the Officers of ULPCC;
8. Hold-over capacity of the incumbent Board of Directors;
9. Questions on corporate term of the corporation; and
10. The list of documents that should be submitted regularly to the Commission.

Please be advised that as a matter of policy, the Commission refrains from rendering opinion on matters which: (1) require determination of factual issues, (2) involve the exercise of business judgment or discretion that properly falls within the competence of the management of the entities concerned[1], (3) require interpretation of administrative rules and issuances of other government agencies considering that it is the promulgating agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances[2], and (4) involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court in an intra-corporate or civil case, if the opinion turns out to be adverse to their interest[3].

Considering that your queries involve intra-corporate matters (Questions 1 and 2), interpretation of administrative rules and issuances of other government agencies (Questions 3 and 4), and substantive and contractual rights of private parties which are litigious in nature (Questions 4 to 9), the Commission shall thus refrain from categorically answering the same.

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

As to your first and second queries, the Securities Regulation Code (the "SRC")[4] provides that;

1. Devices or schemes employed by, or any act of, the board of **directors,** business associates, **officers** or partners, amounting to **fraud** or **misrepresentation** which may be detrimental to the interest of the public and/or of the stockholders, partners or **members** of any corporation. xxx.;

[1] Section 5.9, SEC Memorandum Circular No. 15, series of 2003
[2] Sec. 5.6, supra.
[3] Sec. 5.2, supra
[4] Republic Act No. 8799

2. Controversies arising out of **intra-corporate** partnership, or association relations, ***between and among*** stockholders, **members** or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and
3. Controversies in the **election** or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations,

are considered intra-corporate disputes which are *beyond the jurisdiction of the Commission*[5].

All actions arising from the aforementioned grounds shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned[6].

As to your third query, a Homeowners' Association is now under the exclusive jurisdiction of the **Housing and Land Use Regulatory Board** (the "HLURB")[7].

Republic Act No. 9904[8] bestows jurisdiction over issues covering homeowners' and neighborhood associations to the HLURB. Sections 4 and 20 of the law declare that every Homeowners' Association, including those previously registered by the Commission, shall register with the HLURB[9], to wit:

> ***Section 4.*** *Registration with the HLURB. – Every association of homeowners shall be required to register with the HLURB. This registration shall serve to grant juridical personality to all such associations that have not previously acquired the same by operation of the General Corporation Law or by any other general law.*
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> ***Section 20.*** *Duties and Responsibilities of the HLURB. - In addition to the powers, authorities and responsibilities vested in it by Republic Act No. 8763, Presidential Decree No.902-A, Batas Pambansa Blg. 68 and Executive Order No. 535, Series of 1981, as amended, the HLURB shall:*
>
> *xxx----------------xxx----------------xxx*
>
> *(c) Register all associations, federations, confederations or umbrella organizations of the associations;*
> *(d) Hear and decide intra-association and/or inter-association controversies and/or conflicts, without prejudice to filing civil and criminal cases by the parties concerned before the regular courts: Provided, that all decisions of the HLURB are appealable directly to the Court of Appeals;*

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[5] Section 5.2 of SRC, in relation to Section 5 of Presidential Decree No. 902-A
[6] Ibid.
[7] SEC Case No. 03-06-128, Ibabao Bagong Lipunan Community Asspciation, Inc. (A Homeowners' Association) vs. Ibabao Bagong Lipunan Community Association, Inc.
[8] Otherwise known as the Magna Carta for Homeowners' Association.
[9] See Note 7.

With regard to your fourth query, issues involving work and compensation of employees are matters subject to business judgment and are governed by the Labor Code and other pertinent special labor laws, which are enforced by, and hence, within the competence of the Department of Labor and Employment.

As to your fifth query, you stated in your letter that **"members"** is defined in ULPCC's by-laws as one who is a duly registered owner of a condominium unit at URCI, as evidenced by his Condominium Certificate of Title (CCT). However, based on the Memo dated 08 March 2010, the Board of Directors revised such definition by adding Absolute Deed of Sale as an additional evidence for one to be considered a member. You further stated that these Deeds of Absolute Sale have been abused by the incumbent directors so as to be qualified as candidates to the Board.

Your letter did not state if the aforesaid amendment to the by-laws was made in accordance with Section 48 of the Corporation Code. Under the said Section, amendment of by-laws must be made by a majority vote of the Board of Directors or Trustees, and at least a majority of the outstanding capital stock, or *at least a majority of the members of a non-stock corporation*, at a regular or special meeting duly called for the purpose. Whenever any amendments are adopted, such amendments must be *filed with the Commission* to be attached to the original by-laws. *The amended by-laws shall only be effective upon issuance by the Commission of a certification that the same are not inconsistent with the Corporation Code.*

As to your sixth query, Section 58 of the Corporation Code ("the Code") prescribes the requirement for proxies, thus:

> *Sec. 58. Proxies – Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall be in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting where it is intended. No proxy shall be valid and effective for a period longer than the five (5) years at any one time.*

However, Section 58 provides only the minimum requirements for proxies, as the by-laws can further prescribe additional requirements as to form[10], pursuant to Section 47 of the Code.

In a long line of opinions, the Commission held that in the absence of a provision in the articles of incorporation or by-laws requiring a particular form for proxy, the board of directors cannot prescribe the form of proxies other than as provided for under Section 58 of the Code, and the imposition of that particular form would be void, making it perfectly valid for any member to use other forms of proxy as long as it is compliant with the minimum requirements of Section 58.[11]

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[10] Section 47(4) of the Corporation Code of the Philippines (BP Blg. 68)

[11] SEC- OGC Opinion 07-16 dated 13 August 2007, addressed to Mr. Joaquin M. Gonzales IV.

With regard to the **duration of a proxy**, the proxy may fix the period during which it may be used, but it cannot exceed five (5) years, renewable for not more than 5 years for each renewal. If the proxy does not fix the period, then it expires after the meeting for which it was given. It cannot be used again for a subsequent meeting unless it is renewed. The reason is that though the duration of the proxy may be fixed by its own terms, the Code regulates the continuance of time of proxies.[12]

As to your seventh query, Section 30 of the Code, which, pursuant to Section 87[13], is also applicable to non-stock corporation, states that:

> *"In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems: Provided, however, That any such compensation other than per diems may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholder's meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year."*

Under the afore-quoted Section, there are two requisites before members of the board of directors can be granted compensation aside from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation or when the stockholders representing a majority of the outstanding capital stock at a regular or special meeting agree to give the directors compensation; and (2) such compensation shall not exceed 10% of the net income before income tax for the preceding year.[14]

On your eighth query as to the **hold-over capacity** of the incumbent Board of Directors, Section 23 of the Code provides:

> *"Unless otherwise provided in this Code, the corporate powers of all corporation formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation,* ***who shall hold office for one (1) year until the successors are elected and qualified."***

The Commission has consistently opined on several instances that there must be an annual election of directors and officers. However, in case of failure of the corporation to hold an election due to any justifiable reason, the incumbent Board may hold-over their office until their successors are duly elected and qualified.[15] Thus, hold-over capacity cannot be indefinite.

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[12] SEC Opinion 06-16 dated 06 March 2006 addressed to Atty. Anthony B. Peralta

[13] Section 87. xxx The provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.

[14] SEC-OGC Opinion No. 15-12 dated 22 September 2015 addressed to Capt. Eusebio V. Perez (Ret.)

[15] SEC Opinion No. 05-17 dated 06 December 2005, addressed to Ms. Nelia Estuaria-Tumarao, Secretary to PICPA (Davao) Foundation, Inc.

Relative thereto, non-holding of annual meeting for the election of the Board of Directors and Officers without justifiable reason is subject to Section 5 (k) of the SRC. Under the said provision, *the Commission may compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision.* Any stockholder or member may petition the Commission to order the calling of a meeting by giving proper notice required by the Code or by the by-laws.[16]

Coming now to your ninth query, Section 11 of the Act provides:

"The ***term of a condominium corporation*** *shall be co-terminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding."*

In relation thereto, Sections 13 and 14 of the said Act provide:

Sec. 13. *Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common area is revoked, the corporation shall not be voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:*

(a) That three years after damage or destruction to the project in which the corporation owns or holds the common areas, which damage or destruction renders a material *part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or*
(b) That damage or destruction to the project has rendered one-half or more of the units therein untenantable and that more than thirty percent of the members of the corporation, if non-stock, or the shareholders representing more than thirty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project, or
(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that more than fifty percent of the members of the corporation, if non-stock, or the stockholders representing more than fifty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodeling or modernizing of the project; or
(d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the members holding in aggregate more than seventy percent interest in the corporation, if non-stock, or the stockholders representing more than seventy percent of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or
(e) That the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns of holds the common areas, have been met.

Sec. 14. *The condominium corporation may also be dissolved by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called*

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[16] Title VI, Sec. 50 (4) of the Corporation Code of the Philippines (BP Blg.68).

for the purpose: Provided, that all the requirements of Section sixty-two of the Corporation Law are complied with.

Lastly, with regard to your tenth query, the list of documents that should be submitted regularly to the Commission are the General Information Sheet and Audited Financial Statements. Please refer to the SEC website (*sec.gov.ph*), for the complete information regarding the reportorial requirement of corporations registered with the SEC.

We hope you find these information pertinent and useful.

Very truly yours,

CAMILO S. CORREA
General Counsel