



Republic of the Philippines
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City

10 January 2011

SEC-OGC Opinion No. 11-02
Proxy ballots; Required vote to
confirm acts of the board

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Madam:

This is in response to your letter dated 02 August 2010¹ requesting an opinion on the: 1) the validity of the period of the proxy ballots issued by the members; and 2) percentage vote of the general membership needed to confirm the acts of the board.²

Please be advised that the Commission does not, as a matter of settled policy, render opinions on queries or transactions involving justiciable issues that may eventually be litigated in the future or that could only be clarified and determined in a proper proceeding, such as those presented in your letter. The opinion that may be rendered thereon would not be binding upon private parties, who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it before the Court. For this reason, the Commission refrains from giving opinions on these kinds of queries.

However, **for purposes of information only**, based on the facts you provided, the following may be imparted:

A "proxy may fix the period during which it may be used, but it cannot exceed five (5) years, renewable for not more than five (5) years for each renewal. Where the proxy does not fix any period, then it expires after the meeting for which

1 The letter was received by this Office on 3 August 2010 and a letter dated 01 September 2010 was received by this Office requesting acknowledgment of the payment of the opinion fee on 01 September 2010.

2 As stated in the letter dated 02 August 2010.

it was given."³ Specifically, the law provides that "Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at (any)⁴ one time."⁵

Regarding your second question, quorum has been defined as "that number of members of the body which, when legally assembled in their proper places, will enable the body to transact its proper business, or, in other words, that number that makes a lawful body and gives it power to pass a law or ordinance or do any other valid corporate act."⁶

Section 52 in relation to Section 47(3)⁷ of the Corporation Code⁸ reads as follows:

"Section 52. 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 corporations."
(emphasis supplied)

Article XIII, Section 4 of your organization's by-laws⁹ specifically provides that: "The physical presence of four hundred (400) members in good standing shall constitute a quorum for purposes of a regular or special meeting."

As a rule, a majority of members or stockholders is a quorum for the transaction of a corporation's business and other corporate acts. A careful reading of the above cited provisions, however, would show that corporations or non-stock corporations are authorized to define what constitutes a quorum based on its by-laws. The Commission has opined that any corporation whether stock or non-stock is authorized to provide in its by-laws a specific number of stockholders or members necessary to constitute a quorum for the transaction of a corporate business.¹⁰

3 Campos and Campos, *The Corporation Code, Notes, Comments and Selected Cases*, p. 516 (1990).

Also see SEC Opinion, 20 September 1994, XXIX SEC Quarterly Bulletin 20 (No.1, March 1995)

4 Section 58 of the Corporation Code of the Philippines (1980) and Sec. 20.3 of the Securities Regulation Code (2000) are nearly identical except for the omission of this word from the latter provision of the law.

5 Republic Act No. 8799, Section 20.3.

6 *Javellana vs. Tayo* G.R. No. 18919 (1962) citing 4 *McQuillin, Municipal Corporation* [3rd Ed 478]; see also *State vs. Wilkesville Tp.*, 20 Ohio St. 288.

7 Section 47(3). Contents of By-Laws. The required quorum in meetings of stockholders or members and the manner of voting therein; xx

8 *Batas Pambansa Blg. 68* (1980).

9 Certificate of Filing Amended By-Laws and Amended By-Laws dated 07 March 2006.

10 S.E.C. Summary of Advisory Opinions (1982-1994), p. 194, citing Letter dated 04 March 1986 addressed to Fernando Ma. Alberto, SQB March and June 1986, p. 34.

However, as you correctly pointed out, it is worth noting that regardless of the provision in the by-laws on quorum, when the Corporation Code explicitly requires a specific number of stockholders or members necessary to resolve or carry out a particular corporate proposal the Corporation Code prevails. Some of these instances are:

1. Amendment to the Articles of Incorporation¹³
2. Removal of directors or trustees¹⁴
3. Extension or shortening of corporate term¹⁵
4. Sale, lease, exchange, mortgage, pledge or any disposition of all or substantially all of the corporate assets¹⁶.

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission.¹⁷


VERNETTE G. UMALI-PACO
General Counsel

12 Jan. 11
6:20 P.M.

¹³ Corporation Code of the Philippines, Section 16.

¹⁴ Ibid, Section 28.

¹⁵ Ibid, Section 37.

¹⁶ Ibid, Section 40.

¹⁷ SEC Memorandum Circular No. 15, series of 2003.