



Republic of the Philippines
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Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

02 March 2022

SEC-OGC Opinion No. 22-02
Re: Quorum; Board of Trustees

MARIA LOURDES D. FAJARDO

President
De La Salle University – Parents of University
Students Organization – Manila, Inc. (DLSU-PUSO)
304 John Hall Bldg., DLSU Campus, 2401
Taft Avenue, Malate, Manila 1004

Dear Ms. Fajardo,

This refers to your letter dated 04 January 2022 requesting for an opinion from the Commission with respect to the election of the Board of Trustees (“Board”) of De La Salle University – Parents of University Organization – Manila, Inc. (DLSU-PUSO) and the validity of its authority to act and/or conduct business transactions as a corporate body.

Based on your letter, the relevant facts are as follows:

1. On 14 November 2021, the members of DLSU-PUSO elected only six (6) members of the Board of Trustees during its annual general assembly.
2. Being the currently elected President of the Board of Trustees, you would like to seek the Commission’s opinion on the following matters:

It is the position of the organization that the decision of the general membership to elect only six (6) trustees is valid notwithstanding the fact that the By-Laws of the DLSU-PUSO provides for a minimum and maximum number of trustees to sit in the Board. Consequently, you argue that the presence of four (4) trustees in a meeting may already suffice for the purpose of meeting the quorum requirement.

- a. For this purpose, you would like to confirm whether the general membership may validly elect only six (6) members in order to constitute a Board of Trustees who will thus validly convene and conduct business provided there is a quorum.
- b. In relation to No. 1, in its effort to comply with the maximum number of trustees as provided under the By-Laws of DLSU-PUSO, the six (6) member



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Board elected four (4) additional members to fill up the Board. You would like to confirm whether the 6-member Board can validly elect such additional members.

- c. The Board would like to amend DLSU-PUSO's By-Laws. You would like to confirm whether the Board, taking into consideration its current composition, may validly amend DLSU-PUSO's By-Laws. If so, how will the ratification be made? Is it during a special meeting of members of the organization called for such purpose or may it be done during the annual general assembly?

Discussion

Sections 23 of the Revised Corporation Code (RCC) provides for the rules with respect to the election of trustees, to wit:

"Section 23. Election of Directors or Trustees. – Except when the exclusive rights is reserved for holders of founder's shares under Section 7 of this Code, each stockholder or member shall have the right to nominate any director or trustee who possesses all of the qualifications and none of the disqualifications set forth in this Code.

At all elections of directors or trustees, there must be present, either in person or through a representative authorized to act by written proxy, the owners of majority of the outstanding capital stock or **if there be no capital stock, a majority of the members entitled to vote. When so authorized in the bylaws or by a majority of the board of directors, the stockholders or member may also vote through remote communication or *in absentia*: *Provided*, That the right to vote through such modes may be exercised in corporations vested with public interest, notwithstanding the absence of a provision in the bylaws of such corporations.**

x x x

x x x **Unless otherwise provided in the articles of incorporation or in the bylaws, members of nonstock corporations may cast as many votes as there are trustees to be elected but may not cast more than one (1) vote for one (1) candidate. Nominees for directors or trustees receiving the highest number of votes shall be declared elected.** x x x" (Emphasis and underscoring supplied)



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Meanwhile, Section 52 of the RCC provides for the quorum requirement during the meetings held by the board of trustees. It provides that a majority of the directors or trustees as stated in the articles of incorporation (AOI) shall constitute a quorum to transact corporate business, unless the AOI or the bylaws provides for a greater majority.

"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.

X X X

Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the bylaws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least two (2) days prior to the scheduled meeting, unless a longer time is provided in the bylaws. A director or trustee may waive this requirement, either expressly or impliedly.

xxx"

Under Section 13 of the RCC, all corporations shall file with the Commission an AOI, which shall include among other matters, the ***number of trustees who will constitute as the organization's board of trustees***. The board of trustees shall be authorized to exercise corporate powers, conduct business and control the assets of the organization.

Relative thereto, Section 28 of the RCC provides for the rule when there are vacancies in the board of trustees, to wit:

"Section 28. Vacancies in the Office of Director or Trustee; Emergency Board. - Any vacancy occurring in the board of directors or trustees other than by removal or by expiration of term may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum;



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otherwise, said vacancies must be filled by the stockholders or members in a regular or special meeting called for that purpose.

When the vacancy is due to term expiration, the election shall be held no later than the day of such expiration at a meeting called for that purpose. When the vacancy arises as a result of removal by the stockholders or members, the election may be held on the same day of the meeting authorizing the removal and this fact must be so stated in the agenda and notice of said meeting. **In all other cases, the election must be held no later than forty-five (45) days from the time the vacancy arose.** A director or trustee elected to fill a vacancy shall be referred to as replacement director or trustee and shall serve only for the unexpired term of the predecessor in office.

x x x

In all elections to fill vacancies under this section the procedure set forth in Sections 23 and 25 of this Code shall apply". (Emphasis and underscoring supplied)

Article 7 of DLSU-PUSO's AOI states that the number of trustees of the organization shall be twenty-five (25), *subject to increase or decrease depending upon the enrollment in different colleges in the University*. Article III of its By-Laws provides the pertinent provisions with respect to the qualifications of members sitting in the Board of Trustees and what constitutes quorum, to wit:

**"ARTICLE III
The Board of Trustees**

Section 1 – Qualification and Election

- A. **The general management of the organization shall be vested in a board of twenty-five (25) trustees** who shall be members and who shall be elected annually by the members and who serve until the election and qualification of their successors. Any vacancy in the Board of Trustees shall be filled by a majority vote of the Board of Trustees at a meeting specially called for that purpose, and shall serve for the unexpired term, provided that the new trustee shall be a representative of the college represented by the former trustee so replaced. Unless otherwise provided by the general membership, the members



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of the board shall be elected on the basis of student population of De La Salle University, Manila, as follows:

Business	- 4 trustees
Economics	- 2 trustees
Engineering	- 4 trustees
Liberal Arts	- 4 trustees
Computer Studies	- 3 trustees
Science	- 2 trustees
Education	- 2 trustees
STC	- 4 trustees

- B. **The election of the members of the board of trustees shall be held in the annual general meeting of members** within thirty (30) days from the opening of the first term of the school year. The term of office of the trustees shall be for one (1) year and shall commence on October 1st of the said school year.
- a) Any trustee, whose child ceases or terminates his/her enrollment with the school for whatever reason, shall automatically be deemed resigned.
- b) The parent who garnered the next highest vote will be invited to serve in place of the resigned board member.

XXX XXX XXX

Section 3 – Quorum

- A. The trustees shall act only as a Board, and the individual trustee shall have no power as such. **A majority of the total membership of the voting¹ [t]rustees shall be necessary at all meetings to constitute a quorum for the transaction of any business, and every decision of a majority of the quorum duly assembled as a Board shall be valid as a corporate act,** unless waived by the Chairman, that the immediate past

¹ Based on Section 4, Article III of DLSU-PUSO's bylaws, there are "non-voting members" of the Board, to wit: "C. The following shall be the non-voting members of the board of directors (*sic*) and shall be called upon to attend any meetings. A) Advisory Council – shall be nominated from past presidents only. They shall be called upon to advise and provide guidance to the incumbent board of trustees things its acts (*sic*) as reflected in the minutes and resolution on record. B) General Legal Counsel must be a member of the Philippine Bar and shall be nominated from existing members of PUSO. xxx c) External Auditor – is a non-voting member of the board responsible for auditing the financial transaction of the PUSO for the year." Thus, in relation to Section 1 of the same article in DLSU-PUSO's bylaws, only the twenty-five trustees which are elected annually are considered "voting" hence the qualification in Section 3 on Quorum.



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President (IPP) shall automatically sit in the succeeding Board but only in non-voting capacity.

In view of the foregoing provisions, we resolve the following issues:

Anent the **first issue**, particularly whether the general membership may validly elect only six (6) members in order to constitute a Board of Trustees to validly conduct business, we rule in the negative.

In *SEC Opinion dated 10 June 1992 addressed to Mr. Geminiano R. Pineda*, the Commission had the occasion to discuss the effect of an election of less than the required number of directors in a corporation, to wit:

"The number of directors that a corporation can legally have is that which is fixed in the articles of incorporation. Any decrease thereof can be effected only by amending the articles of incorporation pursuant to Section 16 of the Corporation Code. As to the effect of an election of less than the required number of directors, cited hereunder is a previous ruling which establishes a precedent on the matter:

"An election of a less number of directors than the number which the meeting was called to elect is valid as to those actually elected." (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)

Thus the stockholders or members of a corporation may opt to elect a number of directors less than the number of directors as fixed in the articles of incorporation. Such a situation would merely give rise to vacancy in the board, which may be filled up in a subsequent special meeting duly called for the purpose. "The general rule is well-settled that the power of the board is not suspended by vacancies in the board unless the number is reduced below a quorum." (Fletcher, sec. 421, citing Porter v. Lassen Country Land & Cattle Co., 127 Cal 261, 59 p. 563).² In a similar case, the Court likewise held that "if a certain number of directors is provided for by statute or the articles of incorporation, the failure of the stockholders to fill all the directorship does not invalidate the title of the directors who are elected or prevent

² Also cited in SEC-OGC Opinion No. 14-09 dated 2 June 2014 addressed to Mr. Karl Michael Koa



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them from legally representing the corporation so long as they constitute a quorum. (*Great Falls & T.C.R. Co. v. Ganong, 48 Mont. 54, 136 p. 390 cited in Fletcher, sec. 421, p. 270*)

Thus, while the members of DLSU-PUSO may opt to elect only six (6) members to sit in the Board of Trustees which is less than the number provided in its AOI and By-Laws thereby creating vacancy in the board, which may be filled up in a subsequent special meeting duly called for the purpose, we are of the opinion that it may not validly act as a corporate body for the reason that it failed to satisfy the required number of trustees to constitute a *quorum*.

Based on DLSU-PUSO's AOI and By-Laws, the number of trustees of the corporation shall be **twenty-five (25) trustees**, and a **majority of the total membership of the voting trustees is needed in all meetings to constitute a quorum.**

In *SEC-OGC Opinion No. 16-07 dated 04 April 2016*³, the Commission opined that the formula in determining what constitutes "majority of the directors/trustees" as quorum would be **one-half plus one of the number of directors/trustees as fixed in the AOI notwithstanding the existence of vacancies in the board at the time.**⁴

In this regard, in order for the Board to validly act as a corporate body, it is required to have at least fourteen (14) trustees to be able to constitute a quorum.

With respect to the **second** and **third issues** as to whether the currently elected six (6) member Board may validly elect additional trustees and amend the organization's bylaws, we answer in the *negative*.

Following the foregoing discussions above, the currently elected six (6) member Board cannot act as a corporate body, and as such, cannot validly transact business for the organization.

As a consequence, the Board is not authorized to fill in the vacancies for the reason that it failed to constitute a valid quorum in relation to the above-quoted Section 28 of the RCC. In addition, the Board cannot be authorized to fill in the vacancies since a vacancy due to expiration of term must be filled by the general membership in a regular or special meeting called for that purpose.

Meanwhile, Section 47 of the RCC provides that *a majority of the board of trustees*, and the owners of at least a majority of the outstanding capital stock, or at least a majority of the members of a nonstock corporation, at a regular or special meeting duly called for

³ Addressed to Calderon Davide Trinidad Tolentino & Castillo

⁴ Citing SEC Opinion dated 20 February 1987 addressed to Asian Brothers Corporation



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the purpose, may amend or repeal the bylaws or adopt new bylaws. Similar to the above, since the current members of the Board failed to constitute a valid quorum, it cannot validly approve the amendment of the corporation's bylaws.

In which case, the DLSU-PUSO may call a special meeting wherein members of the organization have to nominate and elect new members to sit in the Board of Trustees in order to fill in the required vacancies for the Board to be able to constitute a quorum.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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 circumstances⁵. 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.

Respectfully yours,


ROMUALD C. PADILLA
General Counsel

⁵ SEC Memorandum Circular No. 15 series of 2003 dated 16 December 2003