
Issue

Can the by-laws of a non-stock corporation provide that a mere majority of three (3) original members of the Board of Trustees (i.e. two (2) members) may constitute a quorum, when there is in fact five (5) members of Board of Trustees, the two (2) others being nominated and appointed by the three (3) original members?

Background

As a general rule, the quorum in board meetings is the majority of the number of directors or trustees. However, under Section 25 of the Code, the articles of incorporation or by-laws of the corporation may fix a greater number than the majority of the number of board members to constitute the quorum necessary for the valid transaction of business.

The formula in determining the “majority of the number of directors” as quorum would be one-half plus one of the number of directors as fixed in the articles of incorporation notwithstanding the existence of vacancies in the board at the time.

Opinion

The Commission answers the query in the negative. To be valid, the by-laws of a corporation must be consistent with the Corporation Code and other laws of the land. The issue presented is inconsistent with the provisions of the Corporation Code, particularly Sections 25 and 92.

In the case provided, the by-laws provide that only a majority of the three (3) original members of the BOT may constitute a quorum notwithstanding the fact that there are other two (2) nominated/appointed trustees. This provision in the by-laws provides a lesser number than the majority in constituting the quorum and, therefore, inconsistent with the law.

In addition if the provision of the Code is followed, majority of the five (5) trustees, that means three (3) of them, shall constitute a quorum and majority of that quorum, that means two (2) among the three (3), shall be necessary that a corporate act may be valid. Following the by-laws in this case, majority of the three (3) original members, which means two of them, will constitute a quorum. This is a lesser number than the majority of the five trustees that must constitute the quorum.

Lastly, the case presented is inconsistent with Section 92 of the Code because it implies that the three (3) original members of the BOT shall have an unlimited or lifetime term as members of the board of the corporation. This is unlawful because it deprives the other members of the opportunity to participate in the management of the corporation.