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

OFFICE OF THE GENERAL COUNSEL

13 August 2007
SEC-OGC Opinion No. 07-16
Re: Requirements for Proxy

MR. JOAQUIN M. GONZALEZ IV
Administrator/Unit Owner
The Midland Plaza Condominium
M. Adriatico St., Ermita,
Manila, Philippines

Dear Mr. Gonzalez:

This refers to your request for opinion relative to the validity of certain formal requirements apparently imposed by the Board of Trustees of the Midland Plaza Condominium Corporation ("MPCC", for brevity) for proxies to be used in MPCC's annual general membership meeting scheduled on 15 August 2007, during which members of the Board of Trustees shall be elected.

You mentioned that for the current year, the said general membership meeting was originally set on 15 June 2007 but was postponed by the Board for fifteen (15) days allegedly to validate faxed proxies. No meeting was held after the fifteen (15)-day recess period; instead the Board decided that it be held on 15 August 2007, as afore-said. The notice of the said meeting, as re-set, prescribed two (2) entirely new requirements for proxies, to wit:

1. The proxy must be under oath; and

2. For corporate members, a board resolution authorizing the signatory to the proxy should be submitted.

You thus seek clarification as to whether these two (2) new requirements are valid, considering that they were imposed for the first time without reasonable notice and that they are not so required under your present By-Laws.

Please be informed that under Section 5 of SEC Memorandum Circular No. 5, Series of 2003 ("Memo No. 5"), it is provided that:

"5. As a matter of policy, the Commission shall refrain from rendering opinion on the following:

(13)

xxx xxx xxx;

*5.2 Matters which involve the **substantive and contractual rights of private parties** who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest;*

*5.3 Matters **which would necessarily require a review and interpretation of contracts** or an opinion on the validity of contracts **since interpretation of contract is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal isues;***

xxx xxx xxx."

Considering that your query affects substantive and contractual rights of private parties, i.e. proxy requirements vis-a-vis voting rights of members in your corporation, and thus, would entail interpretation of your Articles of Incorporation and/or By-Laws[1] and the provisions of the Corporation Code ("the Code") pertinent thereto[2], the same falls within the ambit of the afore-quoted provisions of Memo No. 5.

Accordingly, we refrain from answering your query.

However, for purposes of information, the following are imparted:

Relative to the notarization requirement, the Commission, in a long line of opinions[3], 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 Corporation Code ("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.

Section 58 of the Code reads:

"Section 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 for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time."

Accordingly, unless expressly so provided in the articles of incorporation or by-laws, a written proxy even if not notarized, or is without documentary stamps, or is

[1] Essentially, the articles of incorporation, the by-laws and proxies are, in themselves, contracts.
[2] Such provisions are deemed written into the articles of incorporation, the by-laws and the proxies, as the case may be.
[3] SEC Opinion, 14 June 1995, XXIX SEC Quarterly Bulletin 36 (No. 4, Dec. 1995); SEC Opinion, 4 October 1987.

unattested by witness, will suffice as long as it authorizes the person to whom it is given to act as agent for and in behalf of the stockholder or member executing the same.[4]

In view of the above, the provisions of MPCC's Articles of Incorporation and By-Laws relative to proxies must be consulted. The Articles of Incorporation has no pertinent provision but the By-Laws[5] has, to wit:

> *"Section 6. Proxy. Any member of the corporation may be represented by a proxy in all meetings of the corporation. The designation of any such proxy must be in writing, signed by the member and delivered to the Secretary before or during the meeting wherein such proxy is to attend."*

Anent the board resolution requirement, it must not be forgotten that a person acting as proxy for a stockholder or member, whether a natural person or a juridical entity, is in the eyes of the law, the latter's agent and a mere fiduciary who has the duty to act strictly in accordance with the principal's instruction or intentions, the violation of which shall be governed by the pertinent laws on Agency, not by the Corporation Code.[6]

A corporation being merely a juridical person, it can only act and contract, as in the appointment of a proxy in the corporation's behalf, through the aid and by means of a group of individuals, generally its Board of Directors/Trustees.[7] Accordingly, Fletcher said that in the case of corporation held stocks, it would be in order to adopt a resolution authorizing the proxy, and to execute it in a formal corporate manner.[8]

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

---

[4] SEC Opinion, 11 August 1972.
[5] Article I, Section 6 of MPCCI's By-Laws.
[6] SEC Opinion, 15 July 1997, XXXII SEC Quarterly Bulletin 4 (No. 2, Dec. 1997).
[7] See Section 23 of the Corporation Code.
[8] Fletcher Cyclopedia Corporations, Permanent Edition, Volume 5, p. 244.