Securities and Exchange Commission
PHILIPPINES

BACONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

8 May 2024

SEC OGC Opinion No. 24-12
Re: Voting by Remote Communication Based on a Board Resolution

MR. NELSON P. MAGLANA
Deco Machine Shop Inc.
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Dear Sir:

This refers to your letter[1] requesting for the Commission's opinion on whether or not the Philippine Society of Mechanical Engineers, Inc. (PSME) can conduct the election of its national board of directors via online on the sole basis of a duly passed board resolution authorizing voting via remote communication, when its By-Laws only provide for manual voting system.

In your letter, you mentioned that PSME's By-Laws only allows manual voting system for purposes of election of the board of directors, to wit:

> Section 8.5 – The Comelec shall promulgate such rules and regulations governing all conduct of the elections subject to the approval of the Board and decide on any and all protest pertinent to such election, and whose decision in such matters shall be final. The Comelec shall designate **a board of canvassers** to canvass valid votes. Each candidate may appoint an **official watcher**.
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You also cited SEC OGC Opinion No. 09-21 which discusses rules on meetings by remote communication and is interested to know whether the same can be applicable to PSME.

Section 23 of the Revised Corporation Code (RCC) specifically provides for the rules on election of directors or trustees, to wit:

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> 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 members may also vote through remote communication or in absentia.***
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> A stockholder or member who participates through remote communication or in absentia, shall be deemed present for purposes of quorum.
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This is complemented by Section 57 of the RCC which states:

> "Stockholders and members may vote in person or by proxy in all meetings of stockholders or members.

[1] Letter addressed to Atty. Romuald C. Padilla dated 5 June 2023.

When so authorized in the bylaws or ***by a majority of the board of directors****, the stockholders or members of corporations may also vote through remote communication or in absentia:* Provided, That the votes are received before the corporation finishes the tally of votes.

A stockholder or member who participates through remote communication or in absentia shall be deemed present for purposes of quorum.

The corporation shall establish the appropriate requirements and procedures for voting through remote communication and in absentia, taking into account the company's scale, number of shareholders or members, structure and other factors consistent with the basic right of corporate suffrage."*(Emphasis supplied)*

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To implement the above provisions, the Commission issued **SEC Memorandum Circular No. 6, s.2020 (SEC MC 6 s.2020)** which provides for guidelines on the attendance and participation of directors, trustees, stockholders, members and other persons of corporations during meetings and elections conducted through remote communication. Section 12 of SEC MC 6, s. of 2020 provides:

"Section 12. Voting in the Election of Directors, Trustees and Officer Through Remote Communication.

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The right to vote of stockholders or members may be exercised in person, through a proxy, or when so authorized in the bylaws, through remote communication or in absentia. [RCC-49, last par.]

The right to vote of stockholders or members may be exercised also through remote communication or in absentia when authorized by a resolution of the majority of the board of directors; Provided, That the resolution shall only be applicable for a particular meeting. [RCC-23,49, 57];

In the election of directors, trustees and officers of corporations vested with public interest, stockholders and members may vote through remote communication or in absentia, notwithstanding the absence of a provision in the bylaws of such corporations. [RCC-23]"

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Thus, in **SEC-OGC Opinion No. 09-21,** the Commission opined that:

"*When the bylaws of the corporation does not have a provision which allows voting through remote communication, as in the case of Cyber One,* ***the members may still validly vote through remote communication on the basis of a resolution issued by the majority of the board of trustees of Cyber One authorizing such mode of voting which is recognized and allowed by the above mentioned provisions of the RCC. However, it should be noted that, in this case, voting through remote communication is only applicable for the particular meeting stated in the said resolution, as clarified by Section 12 of MC No. 6, s. 2020.*** [2] *xxx.." (emphasis ours)*

As such, we confirm that both the conduct of meeting and election of board of directors may be done through remote communication upon the issuance of a board resolution authorizing the same, subject to the condition that such resolution shall only be applicable for that particular meeting/ election and that internal procedures or controls[3] are adopted for the conduct of the same.

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[2] SEC-OGC Opinion No. 09-21 addressed to Ms. Rosalyn A. Enriquez, dated 22 June 2021.

[3] SEC MC No. 6, s. of 2020- xxx...

Section 13. Internal Procedures. For the convenience of their stockholders and members, corporations shall issue their own internal procedures embodying the mechanisms for participation in meetings and voting through remote communication or in absentia.
The internal procedures may take into account the corporation's number of stockholders or and members, location of stockholders or members, importance of the matters to be discussed and voted upon in the meeting, promotion of minority rights and other factors consistent with the protection and promotion of stockholders' or member's rights.
The internal procedures may provide for the following:
a. Mechanism to verify the identity of the stockholders or members and who among them have the right to vote during the meeting;
b. Measures to ensure that all stockholders or members have the opportunity to participate in the meeting including an opportunity to read or hear the discussion substantially;
c. Mechanism to enable stockholders or members to vote during the meeting including ensuring that the integrity and secrecy of the votes are protected;
d. Procedures for documenting the meeting and any process/motion which may be done afterwards;

However, as emphasized in SEC-OGC Opinion No. 09-21, the Commission still highly encourages corporations to amend their bylaws, if attendance and voting via remote communication is not yet specifically provided therein, to allow corporations to be more adaptive to technological changes, and more importantly, to ensure that the right of stockholders/members to participate in meetings and to vote on matters presented therein are recognized and protected.

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 circumstances.[4] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

e. Mechanism in making the record of the meeting, either video or audio recording, available to the stockholders or members; and
f. Other matters to address administrative, technical and logistical issues.

[4] Section 7, SEC MC No. 03-15.

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