Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 22-16

Re: Authority of the President of a Holding Company to Vote in a Subsidiary

28 October 2022

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Dear Sir:

This refers to your letter dated 2 June 2022 requesting for an opinion regarding the power of the President of a holding corporation to vote the shares of such corporation in a subsidiary corporation.

In your letter, you disclosed the following:

a) That your clients are stockholders of a holding corporation;
b) That the by-laws of the holding corporation gives its President the power of general supervision over the corporation's business affairs; and
c) That the by-laws does not contain an express provision conferring authority to vote at any stockholders' meeting of the subsidiary corporation.

You are now requesting for opinion on the following matters:

a) Whether or not the President has an inherent authority to vote the shares of the holding corporation in a stockholders' meeting of the subsidiary corporation;
b) Whether or not a special power of attorney or a written proxy, in the form of a certified board resolution, is mandatory before the President can vote the shares in the name of the holding corporation in a stockholders' meeting of the subsidiary corporation; and
c) Whether the doctrine of apparent authority can be used as a legal basis to support the President's action of voting the shares of the holding corporation in the subsidiary corporation.

<u>Discussion on the first and second queries</u>

Nature of a holding company

On the nature of a holding corporation, *SEC-OGC Opinion No. 15-15*[1] provides the following:

> A holding company has been defined by the Commission in several opinions. It has been aptly defined as "a corporation organized to hold the stock of another or other corporations". Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, ***having such an interest in another corporation, or power of control, that it may elect its directors and influence its management.*** A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system. (Emphasis supplied)

From the foregoing, it is clear that a holding company is one which holds stocks in other companies ***for purposes of control*** rather than for mere investment.[2]

A holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth. The mere presence of control and full ownership of a parent over a subsidiary is not itself sufficient ground for disregarding the separate corporate personality, or to pierce the veil of corporate fiction.[3]

Authority to Exercise Corporate Powers

A corporation exercises its powers and transacts its business through the board of directors or trustees. Thus, unless otherwise provided in the Revised Corporation Code of the Philippines (RCCP), the board of directors or trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation.[4]

In the absence of a specific provision of law, the corporate officers and other agents of the corporation cannot act for the corporation unless authorized by the Board through a board resolution expressly authorizing the agents[5] or by the By-Laws.[6]

Authority of the President

The corporate officers like the President are elected by the board of directors to manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors.[7] In connection with this, a corporate President is often given general supervision and control over corporate operations.[8]

There are several powers vested in the President provided in the RCCP. For instance, the President may perform the following acts even without a board resolution authorizing him or her to do so:

a) To call for a special meeting of the Board of Directors at any time or as provided in the by-laws[9];
b) To order the calling by the Secretary of a special meeting of stockholders or members of a corporation for the removal of directors and trustees[10];
c) In the absence of the Chairperson, to preside at all meetings of the directors or trustees as well as of the stockholders or members, unless the by-laws provide otherwise[11];
d) To sign the certificates of stock for the shares issued by the corporation[12];

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[1] SEC-OGC Opinion No. 15-15 addressed to Mr. Arsenio A. Alfiler Jr dated 3 November 2015.
[2] SEC Opinion addressed to Atty. Abas M. Basman dated 10 September 1980.
[3] *Emilio Montilla vs. G Holdings Inc.*, G.R. No. 194995, 18 November 2021.
[4] Section 22, Republic Act (R.A.) No. 11232, also known as the Revised Corporation Code (RCCP), 23 February 2019.
[5] *Colegio Medico-Farmaceutica de Filipnas Inc. vs. Lim and All Persons Claiming under Her*, G.R. No. 212034, 2 July 2018.
[6] *Engineering Geoscience Inc. vs. Philippine Savings Bank, Inc.*, G.R. No. 187262, 10 January 2019.
[7] Section 24, RCCP.
[8] *People's Aircargo and Warehousing Co. Inc. vs. Court of Appeals (CA) and Saño*, G.R. No. 117847, 7 October 1998.
[9] Section 52, RCCP.
[10] Section 27. RCCP.
[11] Section 53, RCCP.
[12] Section 62, RCCP.

e) To sign the Articles of Merger or Consolidation[13];
f) To sign the verification of a petition for voluntary dissolution of the corporation where creditors are affected[14]; and
g) To certify the financial statements of the corporation if the total assets or total liabilities of the corporation are less than six hundred thousand pesos (Php 600,000.00) or such other amounts as may be fixed by the Department of Finance (DOF).[15]

These powers do not include the power to vote which is an act of strict dominion. In *Cojuangco vs. Roxas*[16], the Court ruled that the right to vote, unlike the rights to receive dividends and liquidating distributions, is not a passive thing because management or administration is, under the Corporation Code, vested in the board of directors, with certain reserved powers residing in the stockholders directly. The Court likewise stated that voting is an act of dominion that should be exercised by the share owner. The right to vote is classified as the right to control.[17]

Thus, as to your first query, the corporate President has ***no inherent authority*** to vote the shares of the holding corporation in a stockholders' meeting of the subsidiary corporation.

As to your second query, the corporate President can vote the shares in the name of the holding corporation in a stockholders' meeting of the subsidiary corporation when he or she is so authorized by the board of directors through a board resolution.

Discussion on the third query

Please note that SEC Memorandum Circular No. 15, Series of 2003 provides that as a matter of policy, the Commission shall refrain from issuing opinions on the following: (1) queries which would necessitate the determination of factual issues[18]; (2) matters which clearly involve the exercise of business discretion or judgment which properly falls within the competence of the management of the entities concerned[19]; and (3) 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.[20]

As to your third query, we cannot categorically answer the same considering (1) that the determination of the application of the doctrine of apparent authority is judicial in nature; (2) that the presence of the foregoing circumstances requires the examination of factual matters (i.e. whether or not the President had been in the habit of acting in similar matters on behalf of the company and whether the company had authorized him or her to act as such and had recognized, approved and ratified his or her former and similar actions)[21]; and (3) that the foregoing matters involve the exercise of business discretion or judgment and 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[22].

However, ***for purposes of information only***, we impart the following:

Doctrine of apparent authority

The doctrine of apparent authority was discussed by the Court *in People's Aircargo and Warehousing Co. Inc. v. Court of Appeals (CA) and Saño*[23] where the Court stated the following:

> Apparent authority is derived not merely from practice. Its existence may be ascertained through
> (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or

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[13] Section 77, RCCP.
[14] Section 135, RCCP.
[15] Section 74, RCCP.
[16] *Eduardo Conjuanco Jr., et. al. vs. Antonio Roxas, et. al.*, G.R. No. 91925, 16 April 1991.
[17] *Philippine Coconut Producers Federation Inc., et. al. vs. Republic of the Philippines*, G.R. Nos. 177857-58. 17 September 2009; see also SEC Opinion addressed to Ms. Pura Almario dated 13 May 1991.
[18] Section 5.8, SEC Memorandum Circular No. 15, Series of 2003, 16 December 2003.
[19] Section 5.9, *ibid.*
[20] Section 5.2, *ibid.*
[21] Section 5.8, *ibid.*
[22] Section 5.2, *ibid.*
[23] *People's Aircargo and Warehousing Co. Inc. vs. Court of Appeals (CA) and Saño, supra.*

> (2) the acquiescence his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.
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> It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation. It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.
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> xxxxx
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> Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. (Emphasis and underscoring supplied)

The authority of the board of directors to delegate its corporate powers may either be actual or apparent.[24] Jurisprudence provides that there are two (2) types of authorities conferred upon a corporate officer or agent in dealing with third persons:

a) Actual authority which may be divided into the following:
   1. Express actual authority which refers to the power delegated to the agent by the corporation; and
   2. Implied actual authority which can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation[25]; and

b) Apparent authority which is based on the principle of estoppel.[26] Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[27]

Where similar acts have been approved by the board of directors as a matter of general practice, custom, and policy, a corporate officer may bind the company without formal authorization of the board of directors.[28] The existence of such authority is established, by ***proof of the course of business***, by the ***usages and practices of the company*** and by the ***knowledge which the board of directors has, or must be presumed to have, of acts and doings of its subordinates in and about the affairs of the corporation***.

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

Very truly yours,

ROMUALD C. PADILLA
General Counsel

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[24] *Terp Construction Corporation vs. Banco Filipino Savings and Mortgage Bank*, G.R. No. 221771, 18 September 2019.
[25] *Ibid.*
[26] *Calubad vs. Ricarcen Development Corporation*, G.R. No. 202364, 30 August 2017.
[27] Article 1431, the Civil Code of the Philippines, R.A. No. 386, 30 August 1950.
[28] *The Board of Liquidators vs. Heirs of Maximo M. Kalaw*, G.R. No. L-18805, 14 August 1967.
[29] Section 7, SEC Memorandum Circular No. 15, Series of 2003, *supra*.