Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

26 April 2024

SEC OGC Opinion No. 24-11
Re: Annual Meeting via Remote Communication and Voting in Absentia

MR. ENRIQUE M. AGUS
General Manager
Pacific Plaza Towers Condominium Corporation
4th Avenue, West Crescent Park,
Bonifacio Global City, Taguig
gm@pacificplazatowers.com

Sir:

This refers to your letter[1] sent through e-mail, requesting the Commission's opinion on the interpretation and application of Sections 10 and 12 in relation to Section 16 of **SEC Memorandum Circular No. 6, Series of 2020**[2] ("SEC MC No. 6, s. 2020"), particularly on the requirement of amendment of By-Laws in connection with the conduct of membership meetings via remote communication and allowing voting in absentia.

In your letter, you mentioned that **Pacific Plaza Towers Condominium Corporation** ("PPTCC") is a non-stock, non-profit corporation formed pursuant to Republic Act (RA) No. 4726 or the Condominium Act of the Philippines. For its 2020 Annual General Membership Meeting ("2020 AGMM"), which was during the time of Covid-19 pandemic, PPTCC intended to conduct the meeting through remote communication, and to allow its members to *vote in absentia*. However, the amended By-Laws of PPTCC[3] does not provide for the conduct of membership meetings via remote communication and does not allow voting in absentia, to wit:

> "Section 2.6. Quorum – **The presence of members** representing a majority of the total number of voting rights in the Corporation and who are not delinquent in their dues and assessments shall constitute a quorum. The vote of the members representing a majority of the votes in a meeting at which there is a quorum shall be sufficient to approve any matter in the meeting of transact the business of the Corporation, except in matters or cases in which the Corporation Code or Condominium Act requires the affirmative vote of a greater proportion.
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In relation thereto, you discussed Sections 10 and 12 of SEC MC No. 6, s. of 2020, which allow members to participate in membership meetings via remote communication and to vote in absentia. You also noted Section 16 thereof which provides a transitory provision.

Given the foregoing, you seek opinion on: 1) whether PPTCC can conduct its annual meeting via remote communication and allow voting *in absentia* notwithstanding the silence of its By-Laws on the matter and without having to amend its by-laws, provided that the approval of at least majority of the board of directors is obtained; and 2) whether PPTCC, under Section 16, can only conduct a membership meeting via remote communication and allow voting *in absentia* for the sole purpose of approving the amendment to its By-Laws to allow remote communication and voting in absentia.

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[1] Letter dated 9 October 2020
[2] SEC MC No. 6, s. of 2020 or *Guidelines on the Attendance and Participation of Directors, Trustees, Stockholders, Members, and Other Persons of Corporations in Regular and Special Meetings through Teleconferencing, Video Conferencing and other Remote or Electronic Means of Communication.*
[3] Amended By-Laws of PPTCC dated 29 July 2011.

As regards your ***first query***, it is worthy to note the pertinent provisions of the Revised Corporation Code (RCC) on attendance and voting in meetings via remote communication.

Section 49 of the RCC provides:

Section 49. Regular and Special Meeting of Stockholders or Members. — xxx

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. *The Commission shall issue the rules and regulations governing participation and voting through remote communication or in absentia, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the protection and promotion of shareholders' or member's meetings.*" Xxx

Meanwhile, Section 57 of the RCC on the manner of voting provides:

Section 57. Manner of Voting; Proxies.— Stockholders and members may vote in person or by proxy in all meetings of stockholders or members.

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. x x x" *(Emphasis supplied)*

More specifically for election of directors or trustees, Section 23 provides:

"SECTION 23. Election of Directors or Trustees. —

"x x x...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:** 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.

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

Moreover, Section 88 on the right to vote of members states:

"Section 88. Right to Vote. -

"x x x...Unless otherwise provided in the articles of incorporation or the bylaws, a member may vote by proxy, in accordance with the provisions of this Code. **The bylaws <u>may</u> likewise authorize voting through remote communication and/or in absentia.**" *(Emphasis supplied)*

To implement the foregoing, the Commission issued SEC MC No. 6, s. of 2020, Sections 10, 12 and 16 of which provide:

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"Section 10. Participation in Stockholders' or Members' Meetings Through Remote Communication. When so provided in the bylaws or by majority of the board of directors, stockholders or members who cannot physically attend at stockholders' or members' meetings may participate in such meetings through remote communications or other alternative modes of communication.

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

"**Section 16. Transitory Provision.** - In order to immediately operationalize these guidelines, corporations, upon approval of this circular, may already conduct their board meetings and stockholders' and members' meetings through remote communication or other alternative modes of communication for the limited purpose of approving the provisions in their bylaws or internal procedures which will govern participation in board meetings and stockholders' and members' meetings by means of remote communication or other alternative modes of communication."

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Based on the foregoing, when the By-Laws expressly provides or allows meeting and/ or voting via remote communication or in absentia, the same can be done without limitations. On the other hand, when the By-Laws of the corporation does not have a provision which allows voting through remote communication, 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 PPTCC authorizing such mode of voting.[4] 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 the Circular.**[5] Hence, corporations are highly encouraged to amend their By-Laws, 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.[6]

Thus, we confirm that PPTCC can conduct its annual meeting via remote communication and allow voting in absentia notwithstanding the silence of the PPTCC By-Laws on the matter, and without having to amend the By-Laws, provided that the approval of at least a majority of the board of directors is obtained through a Resolution, which shall only be applicable for the purpose of conducting such meeting.

As to your ***second query***, you believe that the purpose of Section 16 is to immediately operationalize SEC MC No. 6, s. of 2020. As such, you argue that directors of corporations whose By-Laws does not provide for a provision for remote communication and voting in absentia, may now do so 1) for purposes of amending their By-Laws, or 2) for purposes of formulating internal procedures to serve as guideline in holding meetings via remote communication. You posit that said provision should not be construed to mean that directors/trustees and/or stockholders/members can only conduct meetings via remote communication for purposes of amending the By-Laws.

To be sure Section 16 is merely a Transitory Provision and does not in any way prohibit or restrict the tackling of other agenda in meetings conducted during normal times.

It must be noted that when SEC MC No. 6, s. of 2020 was formulated, the Covid 19 pandemic was at its height and conduct of face-face meetings were prohibited. Given such restrictions, the Commission found it necessary to provide an immediate recourse for corporations to conduct meetings for purposes of amending their By-Laws and adopting their internal procedures so that meetings via remote communication could already be institutionalized and regularly practiced during the pandemic and beyond.

However, with the pandemic over, corporations desiring to adopt meetings via remote communication should have already adopted internal guidelines for remote communications or should have already amended their By-Laws for remote communication. Otherwise, they must do such amendment or adoption following the existing procedure/ manner in their By-Laws.

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[4] SEC Opinion No. 09-21 addressed to Ms. Rosalyn A. Enriquez of Cyber One Condominium Corp., dated June 22, 2021.
[5] *Ibid.*
[6] *Ibid.*

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.[7] 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

Respectfully yours,

ROMUALD C. PADILLA
General Counsel

[7] Paragraph 7, SEC Memorandum *Circular* No. 15, Series of 2003.