Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

24 October 2005

SEC Opinion No. 05-12
Re: Voting by Proxy in a
Non-stock Corporation

LIBRA LAW (Libarios Jalandoni
Dimayuga and Magtanong)
10th Floor, Strata 2000 Bldg.,
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Attention: Atty. Rodel R. Grimaldo

Sir:

This refers to your letter dated 13 October 2005 requesting opinion on the query posed therein relative to the right of members of a non-stock corporation to vote by proxy in a general membership meeting for the purpose of amending the corporation's by-laws.

You mentioned that this request is necessitated by the difficulty for the members of the Institute of Integrated Electrical Engineers of the Philippines, Inc. ("IIEE" for brevity) to convene a general membership meeting for the aforesaid purpose, the corporation's membership being spread all over the country and even abroad. Hence, you posed the query, to wit:

WHETHER PROXIES MAY VALIDLY AMEND THE BY-LAWS OF A NON-STOCK CORPORATION?

Section 58 of the Corporation Code provides:

> " *Sec. 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 was intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time."

Also pertinent to your case is Section 87 of the Corporation Code which provides:

> *" Sec. 87. **Definition-** xxx.The provisions governing stock corporations, when pertinent shall be applicable to non-stock corporations, **except as may be covered by specific provisions of this title."***

One such provision specifically applying to non-stock corporations relative to proxy voting is Section 89 of the Corporation Code, to wit:

> *"Sec. 89. **Right to vote.**-The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.*
>
> ***Unless otherwise provided by the articles of incorporation or the by-laws**, a member may vote by proxy in accordance with the provisions of this Code."*

The SEC has opined that under Section 89, the right of members to vote by proxy may be denied entirely by appropriate provisions in the articles of incorporation or by-laws of a non-stock corporation (**SEC Opinion, 20 September 1994, XXIX SEC Quarterly Bulletin 20**). If the law allows proxy voting to be denied in the articles of incorporation or by-laws of non-stock corporations, it follows that qualifications or limitations on the appointment of proxies may also be provided therein (**Ltr. To Mr. Perprtuo G. Paner dtd. 9/20/94 p. 766**). Thus, unless proxy voting is denied in the articles of incorporation or by-laws, a member of a non-stock corporation who cannot attend in person may appoint a proxy to represent him/her in the membership meeting. For all intents and purposes, a proxy holder is an agent of the member clothed with the authority to exercise the latter's rights in the membership meeting as if the member was personally present (**Ltr. To Ms. Ma. Pelita B. Dotado-Viliran dtd. 8/4/98 p. 910**).

In statutory construction, basic is the rule that a statute must be read or construed as a whole or in its entirety, its parts, provisions or sections considered together and with respect to all the others, in harmony with the whole. This is a method of construction which aims to discover the meaning of a statute thru the comparison of its several parts with one another.

Further, under the statutory construction rule "Generalia specialibus non derogant", when there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control. The general provision must be taken to effect only such cases within its general language as are not within the provisions of the particular provision (**Martin, Statutory Construction, p. 148**).

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A perusal of the above-quoted provisions of the Corporation Code reveals that Section 58 is the general provision and Section 89 is the specific one as far as proxy voting is concerned. By mentioning that stockholders and members have the right to vote by proxy in all their meetings, Section 58 is applicable to both stock and non-stock corporations. Section 89, however, is considered a specific provision on proxy voting specially intended to apply to non-stock corporations, pursuant to Section 87.

Pursuant to Section 89, IIEE's articles of incorporation and by-laws must be consulted to answer your query. A perusal thereof yields no provision whatsoever denying its members the right to vote by proxy. Neither are there provisions therein which qualify or limit the appointment of proxies. As such, the pertinent provisions of Section 58 governing stock corporations which is equally applicable to non-stock corporations shall apply to the case of IIEE.

Accordingly, in the absence of an express provision denying the right to vote by proxy in the articles of incorporation or by-laws of IIEE, proxies may validly amend the corporation's by-laws.

For your information and guidance.

VERNETTE G. UMALI-PACO
General Counsel