SEC MEMORANDUM CIRCULAR NO. 6
Series of 2020

TO : ALL CONCERNED

SUBJECT : 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

WHEREAS, Section 52 of Republic Act No. 11232, or the Revised Corporation Code of the Philippines authorizes directors or trustees who cannot physically attend or vote at board meetings to participate and vote through remote communication;

WHEREAS, Section 49 of the Revised Corporation Code provides that written notice of regular meetings may be sent to all stockholders or members of record through electronic mail or such other manner as the Commission shall allow under its guidelines;

WHEREAS, Section 49 of the Revised Corporation Code, provides that 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*;

WHEREAS, Section 50 of the Revised Corporation Code provides that when attendance, participation, and voting are allowed by remote communication or *in absentia*, the requirements and procedures to be followed when a stockholder or member elects either option shall accompany each notice of meeting; and

WHEREAS, the Commission is mandated to continuously enhance the regulatory frameworks to improve the country's competitiveness and ease of doing business consistent with the SEC SuperVision 2025;

WHEREFORE, in view of the foregoing, the Commission hereby adopts the following guidelines:

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OBJECTIVES, COVERAGE AND DEFINITION

Section 1. Objectives. These guidelines provide corporations guidance in formulating their internal procedures and bylaws which will allow their directors, trustees, stockholders, members and other persons to participate and vote in meetings *in absentia* or through remote modes of communication as defined in these guidelines, pursuant to the Revised Corporation Code.

These guidelines also operationalize the objectives of Republic Act No. 8792, otherwise known as the Electronic Commerce Act, to facilitate domestic and international dealings, transactions, arrangements, agreements through the utilization of electronic, optical and similar medium, mode, instrumentality and technology and to promote the universal use of electronic transaction.

Section 2. Application. These guidelines shall apply to all corporations registered with the Commission.

Section 3. Definition of Terms. Except as otherwise defined herein, all terms used shall have the same meaning as those terms that are defined in the Revised Corporation Code and other related laws, as well as in issuances by the Commission.

a. ***Remote Communication*** means the transfer of data between two or more devices not located at the same site.[1]

b. ***Teleconferencing*** is the holding of a conference among people remote from one another by means of telecommunication devices such as telephone or computer terminals.[2]

   It refers to an interactive group communication (three or more people in two or more locations) through an electronic medium. In general terms, teleconferencing can bring people together under one roof even though they are separated by hundred miles.[3]

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[1] *https://www.computerhope.com/jargon/r/remocomm.htm*

[2] *SEC INTERNAL GUIDELINES ON THE ATTENDANCE AND PARTICIPATION OF COMMISSIONERS, DIRECTORS, HEADS OF SPECIAL OFFICES, AND OTHER RESOURCE PERSONS, IN COMMISSION AND EXECUTIVE SESSION MEETINGS THROUGH TELECONFERENCING, WEB CONFERENCING, VIDEOCONFERENCING AND OTHER REMOTE OR ELECTRONIC MEANS, February 17, 2016, citing http://beta.merriam-webster.com/dictionary/teleconferencing*

[3] *Expertravel & Tours vs. Court of Appeals, G.R. No. 152392, 26 May 2005, citing J. Carroll, Teleconferencing, CIX Duns Business Month, 1 (1982), pp. 130-34.*

c. ***Videoconferencing*** is the holding of a conference among people in remote locations by means of transmitted audio and video signals.[4]

d. ***Computer Conferencing*** is teleconferencing supported by one or more computers.[5]

e. ***Audio Conferencing*** is a conference in which people at different locations speak to each other via telephone or Internet connections.[6]

BOARD MEETINGS OF DIRECTORS OR TRUSTEES

Section 4. Participation in Board Meetings Through Remote Communication; Internal Procedures. Directors or trustees who cannot physically attend or vote at board meetings can participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate. However, directors or trustees cannot attend or vote by proxy at board meetings. *[RCC-52, par. 5]*

If a director or trustee intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the meeting.

Corporations may issue their own **internal procedures** for the conduct of board meetings through remote communication or other alternative modes of communication to address administrative, technical and logistical issues.

Section 5. Quorum. Unless the Revised Corporation Code or the articles of incorporation or bylaws of a corporation provide for a greater majority, a majority of the directors or trustees as stated in the articles of incorporation shall constitute a quorum. *[RCC-52]*

A director or trustee who participates through remote communication, shall be deemed present for the purpose of attaining quorum.

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[4] *http://beta.merriam-webster.com/dictionary/videoconferencing*
[5] *What is Computer Conferencing. Retrieved March 11, 2020, from https://www.igi-global.com/dictionary/efficacy- continuing education -technology-public/5031.*
[6] *Audioconference. Retrieved March 11, 2020, from https://www.merriam-webster.com/dictionary/audioconference.*

Section 6. Notice of the Meeting. The Corporate Secretary shall send the notice of the meeting to all directors or trustees in accordance with the manner of giving notice as provided in the bylaws or by board resolution.

Notice of meetings may be sent to all directors or trustees through electronic mail, messaging service or such other manner as may be provided in the bylaws or by board resolution.

Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least two (2) days prior to the scheduled meeting, unless a longer time is provided in the bylaws. A director or trustee may waive this requirement, either expressly or impliedly. *[RCC-52, par. 4]*

The notice of meetings shall include the following information:

a. The date, time and place of the meeting;
b. The agenda of the meeting;
c. All pertinent materials for discussion which shall be numbered and marked in such manner that the director or trustee can easily follow and participate in the meeting;
d. That a Director or trustee may participate via remote communication;
e. Contact information of the Corporate Secretary or office staff whom the director or trustee may communicate;
f. When the meeting is for the election of directors or trustees or officers, the requirements and procedure for nomination and election;
g. The fact that there will be a visual and/or audio recording of the meeting; and
h. Other instructions to facilitate participation in the meeting through remote communications.

Section 7. Roll Call. At the start of the meeting, the Presiding Officer shall instruct the Corporate Secretary to make a roll call. Every attendee shall state for the record the following:

1. Full name and position;
2. Location;
3. Confirmation that he/she can clearly hear and/or see the other attendees;
4. Confirmation that he/she received the Notice of the Meeting including the agenda and materials; and

5. Specify the device being used (ie., smartphone, tablet, laptop, desktop, television, etc.)

Thereafter, the Corporate Secretary shall confirm and note the participants and certify the existence of quorum.

Section 8. Voting. In case of a need to vote in any item or matter in the agenda, the Presiding Officer shall direct the Corporate Secretary to note the vote of each director or trustee.

The director or trustee participating in the meeting via remote communication may cast his vote through electronic mail, messaging service or such other manner as may be provided in the internal procedures. The vote shall be sent to the Presiding Officer and the Corporate Secretary for notation.

Section 9. Other Duties of the Corporate Secretary. The Corporate Secretary shall also assume the following responsibilities:

1. Ensure that suitable equipment and facilities are available for the conduct of meeting by remote communication (i.e. reliable internet connection, high bandwidth availability capable of supporting numerous simultaneous connections, etc.);

2. Ensure that the attendees are able to hear and see the other participants clearly during the course of the meeting and that attendees should be able to communicate and understood by the other party;

3. Ensure that the visual and audio recordings of the meeting are secured;

4. Ensure that the visual and audio recordings of the election/meeting are current and on-going and that there is no stoppage or interruption. Should an interruption or stoppage occur, the recording shall restart from the point where it was stopped or interrupted with proper statement of points in time;

5. Ensure to safe-keep and perpetuate in updated data storage equipment or facility the visual and audio recordings; and

6. Require those who attended the meeting through remote communication, to sign the minutes of the meeting whenever the act of signing is practicable, on a reasonable time after the meeting.

MEETINGS OF STOCKHOLDERS OR MEMBERS

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.

If a stockholder or member intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the meeting.

Section 11. Quorum in Meetings. Unless otherwise provided in the Revised Corporation Code or in the bylaws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of nonstock corporations. *[RCC-51]*

A stockholder or member who participates through remote communication or *in absentia* shall be deemed present for purposes of quorum. *[RCC-23 & 57]*

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. *[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]*

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; and
e. Mechanism in making the record of the meeting, either video or audio recording, available to the stockholders or members.[7]
f. Other matters to address administrative, technical and logistical issues.

Section 14. Notices. The Secretary shall send out the notices of the election/meeting to all stockholders or members in accordance with the manner of giving notice as stated in the bylaws.

Written notice of regular meetings may be sent to all stockholders or members through electronic mail or such other similar manner as may be stated in the bylaws.

Notice of regular meetings which should state the date, time and place of the meeting must be sent to every stockholders or members at least twenty one (21) days prior to the scheduled meeting, unless a longer time is provided in the bylaws. *[RCC- 49]*

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[7] *Fairfax, Lisa M. "Virtual Shareholder Meetings Reconsidered." Seton Hall L. Rev. 40 (2010): 1357*

Notice of special meetings which should state the date, time and place of the meeting must be sent to every stockholders or members at least one (1) week prior to the scheduled meeting, unless a longer time is provided in the bylaws.

In case of postponement of stockholders' or members' regular meetings, written notice shall be sent to all stockholders or members of record at least two (2) weeks prior to the date of the meeting. *[RCC-49]*

The notice shall further be accompanied by other relevant matters such as the following:

a. The agenda of the meeting;
b. When attendance, participation, and voting by remote communication or *in absentia*, are authorized, the requirements and procedures to be followed when a stockholder or member elects either option;
c. Manner of casting of votes and the period during which vote by remote communication or in absentia will be accepted;
d. Contact information of the Secretary or office staff whom the stockholder or member may notify about his or her option;
e. When the meeting is for the election of directors or trustees, the requirements and procedure for nomination and election; and
f. The fact that there will be visual and audio recording of the meetings (for future reference).

In case the election or meeting was conducted through teleconferencing or any other similar means, a visual and audio recording of the election or meeting should be secured. The Secretary is duty-bound to safe-keep and perpetuate in updated data storage equipment or facility the visual and audio recordings.

All pertinent materials for discussion shall be numbered and marked by the Secretary in such manner that the stockholder or member participating through remote communication can easily follow and participate.

Section 15. Place of Meetings of Stockholders or Members. The presiding officer shall call and preside the stockholders' or members' meetings, whether regular or special, at the principal office of the corporation as provided in the articles of incorporation, or, if not practicable, in the city or municipality where the principal office of the corporation is located. *[RCC-50]*

FINAL PROVISIONS

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.

Section 17. Repealing Clause. - All other circulars, rules and regulations or parts thereof which are inconsistent with the provisions of this Memorandum Circular are hereby repealed, amended or modified accordingly.

Section 18. Effectivity. This Memorandum Circular shall take effect upon its approval.

Issued on 12 March 2020, Pasay City.

For the Commission:

EMILIO B. AQUINO
Chairperson