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

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SEC Opinion No. 06-02
Delegation of the power to amend or repeal by-laws or adopt new by-laws

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RE: *Institute of Integrated Electrical Engineers of the Philippines, Inc.*

Sir:

This refers to your letter dated December 09, 2005 requesting opinion relative to delegation to the Board of Trustees of the power to amend or repeal any by-laws or adopt new by-laws.

Your queries are:

1. Whether there is a necessity to actually hold a meeting for the purpose of delegating to the board of trustees the power to amend or repeal any by-laws or adopt new by-laws?

2. What are the forms and/or documents that must be accomplished and/or executed in order to validly carry out the delegation to the board of trustees the power to amend or repeal any by-laws or adopt new by-laws?

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To effect a change or amendment in any provision in the by-laws, the corporation must comply with Section 48 of the Corporation Code, quoted hereunder:

> "Section 48. ***Amendments to by-laws***.- The board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of the members of a non-stock corporation, at a regular or special meeting duly called for the purpose, may amend or repeal any by-laws or adopt new by-laws. *The owners of two-thirds (2/3) of the outstanding capital stock or two-thirds (2/3) of the members in a non-stock corporation may delegate to the board of directors or trustees the power to amend or repeal any by-laws or adopt new by-laws*: Provided, That any power delegated to the board of directors or trustees to amend or repeal any by-laws or adopt new by-laws shall be considered as revoked whenever stockholders owning or representing a majority of the outstanding capital stock or a majority of the members in non-stock corporation, shall so vote at a regular or special meeting..."(Emphasis supplied)

The above-cited provision was explained by the Commission in an opinion addressed to *Mr. Abraham F. Briones dated July 22, 1992* which states:

> ... it seems that there is no requirement of stockholders' meeting for the "delegation" of the power to amend the by-laws and a meeting is required only in the "revocation" of such delegated power. However, it must be borne in mind that under the principle of statutory construction, the meaning of the law is not only to be extracted from any single part or portion or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the provision as a whole. Every part thereof must be interpreted with reference to the context. This means that every part of the provision must be considered together and kept subservient to the general intent of the whole provision, not separately and independently. The "doctrine of last antecedent" will not be adhered to where extension to a more remote antecedent is clearly required by a consideration of the entire provision. Thus, where a particular word or phrase in a statute is ambiguous in itself or is equally susceptible of various meanings, its true meaning may be made clear and specific by considering the company in which it is found or with which it is associated.
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> Furthermore, under the afore-cited provision, the vote required for the delegation is two-thirds which is greater than the vote required for the amendment or repeal of the

by-laws by the stockholders themselves which is only majority. The legislative intent appears to be that as the delegation of the power is an unusual act, the law has properly made it difficult to do so. It is noted further that the law makes it more difficult for the stockholders to delegate their power to amend or repeal by-laws than to revoke such a delegation which requires only a majority. The above provisions, therefore, should be construed strictly against delegation. Thus, if the revocation of the delegated power requires a stockholders meeting, we find no reason why a meeting is not also required in the delegation of such power. If we rule it otherwise, we would be making the delegation much easier than its revocation, which is inconsistent with the intent of the provision to make the delegation more difficult to obtain.[1]

As to your last query, the delegated power of the Board of Trustees to amend or repeal the by-laws is temporary in nature and may be revoked at anytime by a majority of the members at a regular or special meeting. Thus, the Commission has previously opined that a members' resolution delegating to the board of trustees the authority to amend the by-laws be submitted to the SEC, or if there is no such authority, the amendments must be approved by the members in accordance with Section 48 of the Corporation Code, which is a mandatory provision.[2]

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[1] Opinion dated July 22, 1992, addressed to Mr. Abraham F. Briones
[2] Opinion dated February 9, 1994, addressed to Mr. Benjamin V. Abela