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

February 8, 2006

SEC Opinion No. 06-09
Requisites for
Directors'/Stockholders' Meeting

ATTY. GAVINO R. REYES
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Dear Atty. Reyes:

This refers to your letter dated January 3, 2006 requesting opinion on the following queries:

1. Was such Joint Meeting by the interlocking directors and stockholders of the afore-said three (3) corporations and which was purportedly conducted outside of the Philippines permissible?
2. Was there no irregularity in such joint meeting of interlocking directors and stockholders where the concerns of all three (3) corporations were simultaneously discussed?
3. Assuming that, despite the presence of quorum, not all interlocking stockholders and directors were duly notified of the joint meeting, was such joint meeting valid?
4. In the case of OMC where only two (2) of its Directors were present, could it validly transact business by jointly meeting with VMC and GII where its two (2) Directors are also directors?

Vibelle Manufacturing Corp. (VMC), Genato Investment, Inc. (GII) and Oriana Manufacturing Corp. (OMC) are all domestic corporations. Their Articles of Incorporation similarly provide that they shall have five (5) directors.

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Prior to February 14, 2001, the Directors of these three (3) corporations, who were also stockholders thereof, were as follows:

VMC	GII	OMC
a. Belen K. Genato	a. Belen K. Genato	a. Amelita Genato
b. Francisco Ang	b. Francisco Ang	b. Eduardo Ang
c. Eduardo Ang	c. Eduardo Ang	c. Francisco Ang
d. Ernesto Genato	d. Ernesto Genato	d. Anita Ang
e. Anita Ang	e. Anita Ang	e. Manual Guese

You stated that Francisco Ang, Eduardo Ang and Anita Ang were common Directors of the three (3) corporations, while Belen K. Genato and Ernesto Genato were common Directors of only VMC and GII.

Sometime on February 14, 2001, a joint meeting of the directors and stockholders of all three corporations was purportedly held in New York, U.S.A. The Minutes of the Joint Meeting attached thereto indicate that an election of the members of the board of directors of the three corporations was held on that date. Six (6) instead of only five (5) directors were elected. Among the former members of the board, only the following were present during the said joint meeting:

VMC	GII	OMC
a. Belen K. Genato	a. Belen K. Genato	a. Eduardo Ang
b. Francisco Ang	b. Francisco Ang	b. Francisco Ang
c. Eduardo Ang	c. Eduardo Ang	

It was likewise noted that while quorums were obtained for both VMC and GII, there was none for OMC. And while Eduardo Ang was allegedly present in said joint meeting, his signature does not appear on the afore-said Minutes of the Joint Meeting.

Before answering your queries, we must first determine whether the three (3) corporations are ordinary corporations or close corporations.

Under Section 96[1] of the Corporation Code, a close corporation is one whose: 1) articles of incorporation provide that all of its issued stock, excluding treasury shares, shall be held of record by not more than a specified number, not exceeding twenty (20); 2) all issued shares shall be subject to transfer restrictions; and 3) the corporation shall

[1]"Section 96. **Sec. 96. *Definition and applicability of Title.*** - A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.

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not list in any stock exchange or make any public offering any of its stock of any class. If a corporation does not have any of these features, the corporation will not be classified as a close corporation and will not come within the purview of Title XII of the Code.[2]

Based on the above definition, VMC, OMC and GII cannot be classified as close corporations because their respective articles of incorporation and by-laws fail to expressly state the three (3) distinguishing features of a close corporation.

Having properly classified the involved corporations, we answer your queries as follows:

With regard to your **first query**, the pertinent provisions are Sections 50 and 51 of the Corporation Code quoted below:

> ***Sec. 50. Regular and special meetings of stockholders or members.*** *- Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws.*
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> *Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: Provided, however, That at least one (1) week written notice shall be sent to all stockholders or members, unless otherwise provided in the by-laws.*
>
> *Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member.*
>
> *Whenever, for any cause, there is no person authorized to call a meeting, the Secretaries and Exchange Commission, upon petition of a stockholder or member on a showing of good cause therefor, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen one of their number as presiding officer. (24, 26)*
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> *"**Section 51.** Place and time of meetings of stockholders or members. Stockholders' or members' meetings, whether regular of special, shall be held in the city or municipality where the principal office of the corporation is located, and if practicable, in the principal office of the corporation: Provided, That Metro Manila shall, for the purposes of this section, be considered a city or municipality."*

[2] Agpalo, Ruben E. COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES, 2001 ed., p. 399

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The following **requisites must be present for a stockholders' meeting to be considered valid**:

1. It must be held at the stated date and the appointed time or at a reasonable time thereafter.[3]

   To determine the date of the annual stockholder's meeting, reference must be made to the pertinent provision of the by-laws of the corporation.

2. There must be previous notice.[4]

   The notice must be in writing, given within the period fixed in the by-laws and sent by the proper officer authorized therein.[5]

3. It must be called by the proper person.[6]

   The person authorized to call the meeting is normally stated in the by-laws. If no person is designated in the by-laws, the authority to call a stockholders' meeting rests with the board of directors.

4. It must held at the proper place.[7]

   It is mandatory that stockholders' meetings be held in the city or municipality where the principal office of the corporation is located, and if practicable, in the principal office of the corporation.

5. There must be a quorum.[8]

The regular or special meetings of the board of directors may be held anywhere or outside of the Philippines, unless the by-laws provide otherwise. In addition, Section 53 of the Corporation Code prescribes that notice of every meeting, whether regular or special, stating the date, time and place of the meeting must be sent to every director at least one day prior to the scheduled meeting.

Anent your **second query**, there is no express provision of law or ruling prohibiting the holding of a joint meeting of stockholders and directors of different corporations. It is a sound practice, however, to prepare separate minutes of meetings for the different corporations. Hence, it cannot be said that holding of a joint meeting of

[3] Lopez, Rosario. THE CORPORATION CODE OF THE PHILIPPINES: ANNOTATED, Vol. 2 (1994), pp. 686-688.
[4] Supra, pp. 688-689.

[6] Supra, pp. 689.
[7] Supra,
[8] Supra, p. 697.

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stockholders and directors of different corporations is disallowed especially if there are no allegations that such joint meeting adversely affected the interests of the individual corporations and their stockholders.

With regard to your **third query**, Section 50 of the Corporation Code provides that written notice of meetings must be given to all stockholders or members of record either at least two weeks prior to the regular meeting or one week prior to the special meeting. On the other hand, Section 53 prescribes the giving of notice of every meeting to every director at least one day before the scheduled meeting. Generally speaking, every member or director of a corporation has the right to be present at every meeting thereof, and to be notified of the meeting. However, in the case of the directors, they may waive the required written notice either expressly or impliedly.

With respect to your **fourth query**, the Commission is of the opinion that any act of the members of the Board of Directors constituting a quorum may be considered valid and enforceable.[9] Corollary thereto, if there is no quorum, the meeting is void.[10] The pertinent provision of the Corporation Code regarding quorum in meetings of the members of the Board of Directors can be found in Section 25 which provides in part as follows:

> *"**Section 25**. xxx*
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> *The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board. xxx"*

It must be understood, however, that the above discussion is based solely on the facts disclosed in your letter and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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[9] Supra, Vol. 1, p. 445.
[10] Supra.

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