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

July 11, 2006

SEC-OGC Opinion No. 06-28
Re: Voting Rights of Heirs of
deceased stockholder

Ms. Jessica Calfororo Salas
25 Magsaysay Village,
La Paz, Iloilo City

Madame:

This refers to your letter dated May 31, 2006 seeking opinion on the queries posed therein. In the said letter, you claim to be one of the heirs of the late Antonio S. Salas, who died last March 30, 2005. The estate of Antonio S. Salas, as you alleged, was subjected to an extrajudicial partition that was completed recently. Part of the subject estate are shares of stock of Western Institute of Technology Inc.

On these premises, you then ask the following queries:

1. If we (the heirs of Antonio S. Salas) can vote for his shares of stock listed in his name as of March 31, 2006, the cut-off date for stockholders of record of Western Institute of Technology Inc.?

2. Is it also possible for us (the heirs), to use a Special Power of Attorney to register a proxy on our behalf?

Please be advised that the Commission does not, as a matter of settled policy[1], render opinions on queries or transactions involving justiciable issues which may eventually be litigated in the future or which could only be clarified and determined in a proper proceeding, such as those presented in your letter. The opinion which may be rendered thereon would not be binding upon private parties who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it

[1] SEC Memorandum Circular 15, series of 2003

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before the Court. For this reason, the Commission refrains from giving opinions on these kinds of queries. However, **for purposes of information only**, the following may be imparted:

It is well-settled that [upon] the death of a stockholder, his executor or administrator becomes vested with the legal title to the stocks owned by the deceased stockholder who should hold them for the benefit of the legal heirs until a settlement and division of the estate of the deceased are effected. To transfer the shares of the stock in favor of the heirs of the deceased stockholder, a judicial or extra-judicial partition of his estate is necessary, if he died intestate. Otherwise, it will be necessary to wait for the termination of the testamentary proceedings and the final adjudication of the shares of stock in accordance with the will of the decedent.[2]

Pending determination of the legal heir(s), the "executors, administrators, receivers and other legal representatives duly appointed by the court may attend and vote in behalf of the stockholders or members without need of any written proxy." [3]

[T}o record changes in stockholdings resulting from the death of a stockholder, existing internal revenue laws require the presentation of proof of payment by the heirs of the inheritance and estate taxes before any transfer of stock in their favor can be recorded in the books of the corporation.[4]

Once the legal requirements for transfer of shares under existing laws have been complied with, it would be a ministerial duty on the part of the corporation to register the transfer in the corporate books in the name of the legal heir.[5]

Relative thereto, Section 24 and 63 of the Corporation Code expressly provides that:

> SECTION 24. Election of directors or trustees.
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> "xxx In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of **shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election**; xxx"
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> SECTION 63. Certificate of stock and transfer of shares. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the

[2] SEC Opinion addressed to T.J. Mulvany and Co. dated January 12, 1996 citing Section 55 of the Corporation Code
[3] supra
[4] SEC Opinion addressed to Mr. Francisco A. Azardon Jr. dated August 24, 1993
[5] supra

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secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. **No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. **(emphasis supplied)**

To further support the foregoing discussion, the Supreme Court in Republic of the Philippines vs. Sandiganbayan et. al.[6] clearly pronounced that:

> xxx Indeed, until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. **Thus, the unrecorded transferee . . . cannot vote nor be voted for. The purpose of registration, therefore, is two-fold: to enable the transferee to exercise all the rights of a stockholder, including the right to vote and to be voted for, and to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder.** Until challenged in a proper proceeding, a stockholder of record has a right to participate in any meeting; his vote can be properly counted to determine whether a stockholders' resolution was approved, despite the claim of the alleged transferee. On the other hand, a person who has purchased stock, and who desires to be recognized as a stockholder for the purpose of voting, must secure such a standing by having the transfer recorded on the corporate books. **Until the transfer is registered, the transferee is not a stockholder but an outsider.** xxx (emphasis supplied)

Thus, from the foregoing discussion, it can be deduced that unless the shares of stock of the decedent has been transferred in the name of his legal heirs before the stated meeting or at a certain cut off date[7] as provided in the by-laws, after complying with the above mentioned requirements (extrajudicial settlement [in case the decedent died intestate] and payment of the corresponding estate taxes) the heirs cannot vote the shares, since they cannot be considered stockholders of record as of the stated cut off date.

The Corporation Code has no specific provision on the form of proxies but instead leaves it to the corporation to provide for such form in its by-laws. In the absence of any provision in the by-laws, the SEC ruled that the proxy or authority shall be perceived in relation to its compliance with the requirements of Section 58 of the Corporation Code,[8] which reads, as follows:

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[6] G.R. Nos. 107789 and 147214 April 30, 2003 citing Batangas Laguna Tayabas Bus. Co. vs. Bitanga G.R. Nos. 137934 and 137936 August 10, 2001

[7] In this instance, the cut off date was set at March 31, 2006 as stated in the letter

[8] Lopez, Rosario, The Corporation Code of the Philippines 1994 edition p. 728

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SECTION 58. Proxies. – Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. **Proxies shall 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 is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. (n) (emphasis supplied)

Thus, the form of proxy is immaterial, unless the by-laws provide otherwise. All that is necessary is that the writing shall show an intention to empower the person to whom it is given to act as agent in voting the stock.[9] With regard to the capacity of the issuer of the proxy, it is clear from Section 58 that, in stock corporations, **proxies should be issued by a stockholder of record.**

Please be advised that this is merely an advisory opinion. It shall be understood that the foregoing discussion rendered is based solely on the facts disclosed in the query 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 in other cases whether of similar or dissimilar circumstances.[10]

Very truly yours,

VERNETTE G. UMALI-PACO, CESO II
General Counsel

[9] 5 Fletcher Cyc. Corp. Section 2056, 1967 edition p. 256
[10] SEC Memorandum Circular 15, series of 2003

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