Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

29 April 2008
SEC-OGC Opinion No. 08-12
Required Number of Votes in Amendments

MS. SUSAN P. TRINIDAD
General Manager and COO
TSPI Mutual Benefit Association, Inc.
Unit B, Basement, Padilla Building
F. Ortigas, Jr. Rd, Ortigas Center
Pasig City

Dear MS. TRINIDAD:

This pertains to your letter filed with this Commission on April 11, 2008. In your letter, you stated:

x x x

"We would like to request for a legal opinion if the number of membership votes in case of amendments could instead be lowered to a minimum of 25% only."

Please be advised that in cases of amendments of the articles of incorporation, the applicable provisions in the Corporation Code are Section 16 and Section 37. Section 16 pertains to amendments in general,[1] i.e., to other matters, including a change in the corporate name.[2] Section 37 refers to the extension or shortening of the corporate term. In case of amendments of the by-laws, the applicable provision is Section 48 of the Code.

Section 16 provides that the amended articles or incorporation must be approved by the required vote of the board of directors or trustees and the members, i.e., by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of the Code, or the vote or written assent of two-thirds (2/3) of the members if it be a non-stock corporation.

Section 48 provides that the by-laws may be amended in two ways. The first is by a majority vote of the board of directors or trustees and at least a majority of the outstanding capital stock or

1 Lopez, Rosario N. The Corporation Code of the Philippines Annotated, p. 217.
2 De Leon, Hector. The Corporation Code of the Philippines Annotated, p. 173.

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members of a non-stock corporation. The second is by delegating this power to the board of directors or trustees by the vote of 2/3 of the outstanding capital stock or of members in a non-stock corporation.

It is a general rule that when the constitution or the by-laws of a corporation specifies the mode of amendment, this prescribed mode shall be followed in substance in order for the amendments to be valid and binding.[3] If the charter or statute prescribes the manner in which the by-laws may be amended, an attempt to amend them in a different manner will fail.[4] However, although the constitution or the by-laws may provide for a different quorum, it must still be in accordance with the provisions of the Corporation Code which specifically provide for the minimum requirements of membership votes in case of amendments. These minimum requirements cannot be lowered to a mere vote of 25% or one-fourth (¼) of the members. The by-laws may, however, provide for a greater number of votes[5] but a unanimous vote is never required.[6]

Please be reminded that the foregoing opinion is based solely on the facts and circumstances disclosed in your request and relevant only to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

For your information and guidance.

VERNETTE G. UMALI-PACO
General Counsel

3 8 Fletcher § 4179.
4 Ibid.
5 De Leon, pp. 464-465.
6 Campos, Jose, Jr. and Campos, Maria Clara L., The Corporation Code Comments, Notes and Selected Cases, p.488.

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