Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

SEC-OGC Opinion No. 13-10
25 October 2013
Re: Notice of Stockholders'/Directors'/Members' Meeting Thru E-mail

Ms. Elizabeth S. Fructuoso
Corporate Secretary
STELSEN CORPORATION
Unit 41 Legaspi Suites, 178 Salcedo St.,
Legaspi Village, Makati City

Dear Madam;

This refers to your letter of 01 July 2011 inquiring about the practice of sending notices of stockholders' and board of directors' meetings through electronic mail (e-mail) and the validity of resolutions passed by the corporation in meetings held wherein only email notices were sent, albeit acknowledged by the recipients.

Please note that the Corporation Code of the Philippines, Batas Pambansa Blg. 68 (hereinafter, the "Corporation Code"), provides that written notice of regular meetings of the stockholders or members of the corporation shall be sent two (2) weeks prior to the meeting unless stated otherwise in the corporation's by-laws. On the other hand, in the event of a special meeting of the stockholders or members, **written notice** at least one (1) week prior to the schedule of the meeting is required.[1]

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[1] **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.

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 been chosen one of their number as presiding officer. (24, 26)

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Further, it is specifically provided in Section 51 of the Corporation Code that the "Notice of meetings **shall be in writing**, and the time and place thereof stated therein." (emphasis ours)

For meetings of the board of directors or trustees, the Corporation Code requires that regular meetings be held on a monthly basis except when the by-laws of the corporation provides otherwise. Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided by the by-laws. Whether regular of special, notice to each director or trustee must be given at least one (1) day prior to the scheduled meeting.[2]

SEC Opinion dated 13 March 1996[3] interpreting Sections 50 and 51 of the Corporation Code states that:

> "The use of the words (sic) "shall" in the aforecited provisions indicates (sic) that "written" notice of meeting is mandatory and therefore an essential requisite for validity of stockholders' meeting. Accordingly, notice in writing to each of the stockholders of records cannot be dispensed with. In the absence of information, from the stockholders concerned of the transfer of their post office address, the corporation is duty bound to send them written notice of all meetings to their last known post office address as shown in the stock and transfer book of the Corporation."

Notably, in the above preceding paragraph, "post office address" was mentioned as the place where the written notice of meeting should be sent.

As regards the notice requirement for the meetings of the board of directors, SEC-OGC Opinion No. 09-06 states as follows:

> "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,

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[2] **Sec. 53.** ***Regular and special meetings of directors or trustees.*** - Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise.

Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the by-laws.

Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise. 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 one (1) day prior to the scheduled meeting, unless otherwise provided by the by-laws. **A director or trustee may waive this requirement, either expressly or impliedly.** (n)

[3] SEC Opinion dated 13 May 1996 addressed to Atty. Cristina G. Ngo.

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.[4]"

Hence, generally, and as a default rule, written notice of the meeting, sent through regular postal mail, must be given to stockholders/directors/trustees in relation to the holding of meetings within the periods provided in the Corporation Code. However, Section 47(1), (2) and (6) allows the corporation to provide a different mode of notice in its by-laws.

In this connection, since the Corporation Code merely requires notice of the meeting "in writing," an e-mail notice may be included as a mode of notice in the by-laws of a corporation, since an e-mail is considered to be "in writing."[5] In such a case, the by-laws must, likewise, provide for the mechanics of such sending of notices through e-mail, including the indication, recording, changing and recognition of e-mail addresses of each stockholder/director. However, it must be stressed that absent such specific provisions on notice requirements in a corporation's current and standing by-laws, the general/default rule – written notice sent through regular postal mail - applies.

Be that as it may, it should also be noted that the Corporation Code allows the express or implied waiver of the notice requirement by stockholders, members, directors or trustees.[6] In this wise, it may be conjectured that a signature of a stockholder/director/trustee acknowledging receipt of a notice of meeting sent through e-mail may be considered such a waiver.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely 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 or upon the courts whether of similar or dissimilar circumstances.[7] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[4] SEC-OGC Opinion No. 09-06 dated 08 February 2006 addressed to Atty. Gavino R. Reyes.
[5] In fact, for evidentiary purposes, an electronic document is considered to be equivalent to a "written" document under Section 7(c)(2) of "The Electronic Commerce Act of 2000", R.A.8972.
[6] Par. 3 Sec. 50; Par. 3 Sec. 53.
[7] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.

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