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

Office of the General Counsel

2 July 2015

SEC-OGC Opinion No. 15-02
Re: Conduct of Stockholders' Meeting in Metro Manila

POBLADOR BAUTISTA & REYES LAW OFFICES
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120 Rada corner Legaspi Streets
Legaspi Village, Makati City 1229

Attention: Atty. Marie Cecile Roque-Quintos &
Atty. Krizelle Marie P. Poblacion

Mesdames:

This is in relation to your letter dated 4 May 2015 on behalf of your client EEI Corporation ("EEI"), a public corporation, requesting for confirmation of your position that EEI can continue to hold its annual stockholders' meetings in Makati City, even if its principal office address, as reflected in its Amended Articles of Incorporation, is located in Quezon City. In support thereof, you presented the following justifications:

1. Pursuant to Section 51 of the Corporation Code, as long as the corporation's office is located in Metro Manila, the corporation should be able to hold its stockholders' meeting anywhere in the component cities or municipalities of Metro Manila upon compliance with the notice requirements provided under the law.
2. Based on the deliberations of the Batasang Pambansa, the intent of the first two (2) paragraphs of Section 51 is to give flexibility to a corporation in the conduct of its stockholders' meetings.
3. The amendment of EEI's Articles of Incorporation to reflect its address in compliance with SEC Memorandum Circular No. 6, Series of 2014, in relation to SEC Memorandum Circular No. 3, Series of 2006, should not bar EEI from holding the annual stockholders' meeting in Makati City. The purpose of said Circulars is to ensure proper service of processes and other communications to corporations. Moreover, the Memorandum Circular, being mere administrative issuance, cannot amend the Corporation Code, which is a statute.
4. The holding of the annual stockholders' meeting in Makati City would be more convenient for the stockholders, and there is no adequate space and facility in EEI's Quezon City office to accommodate all the stockholders.

The venue for the conduct of stockholders' meetings is governed by Section 51 of the Corporation Code, which provides:

> Section 51. *Place and time of meetings of stockholders of members.* – Stockholder's or member's meetings, whether regular or 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 purposes of this section, be considered a city or municipality.**
>
> Notice of meetings shall be in writing, and the time and place thereof stated therein. x x x (emphasis supplied)

As a general rule, stockholders' meetings ought to be conducted in the city or municipality where the principal office of the corporation is located pursuant to the above-quoted provision. Thus, the corporate by-laws cannot provide a venue for the conduct of stockholders' meetings of the corporation outside the municipality or city of its principal office.[1]

However, the Commission earlier opined that consistent with the proviso of the first paragraph of Section 51, a corporation, whose principal office is located in one of the component cities or municipalities of Metro Manila, may conduct its stockholders' meetings in another component city or municipality of Metro Manila, provided that notice of the time, date and particular place of the meeting is timely furnished all the stockholders.[2] In the same Opinion, the Commission pointed out that the Legislative intent in Section 51 is to give the corporation some flexibility with respect to the conduct of its stockholders' meetings, citing the following excerpt from the deliberations on the Corporation Code by the members of the Batasang Pambansa:[3]

> MR. MENDOZA. x x x **The reason, however, behind this is that it is felt that some flexibility may be desirable** because there are instances, in fact, where because of the nature of the business of a corporation, the locality shall we say, the situs of the main office is different from the principal place of business.
>
> MR. LEGASPI. YES
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> MR. MENDOZA. And sometimes it becomes desirable to hold the meeting at the particular place to give the stockholders an opportunity to see the operations of the business of the corporation, so, that is the purpose of this provision. (emphasis supplied)

In a later opinion, the Commission clarified that the proviso of the first paragraph of Section 51 applies only if the corporate by-laws are silent as to the venue of stockholders' meetings. Where the by-laws expressly provide for a specific place of stockholders meetings, the provisions of the by-laws shall prevail. It is well-settled that the by-laws are the private laws of the corporation and as such have substantially the same force and effect as laws of the corporation as have the provisions of its charter insofar as the corporation and the persons within it are concerned. They are in effect written into the charter and in this sense they become part of the fundamental law of the corporation. The corporation, its directors and officers are therefore bound by and must comply with them.[4]

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[1] SEC Opinion dated 7 April 1998, addressed to Mr. Ariel G. Palacios.
[2] SEC Opinion dated 26 May 1982, addressed to Atty. Jesulito A. Manalo.
[3] Deliberations held on 4 December 1979.
[4] SEC Opinion dated 23 February 1999 addressed to Benguet Corporation.

In summary, stockholders' meetings may be held outside the city or municipality of the corporation's principal office provided the following concur, consistent with Section 51 of the Corporation Code:

1. The principal office of the corporation is located in Metro Manila;
2. The venue of the stockholders' meeting is in any city or municipality of Metro Manila;
3. The notice of the time, date and particular place of the meeting is timely furnished all the stockholders; and
4. The corporate by-laws is silent on the place of stockholders' meetings or does not designate a specific venue.

With regard to EEI's circumstances represented in your letter, it appears that the above requisites are satisfied. The principal office of EEI is located in Quezon City, a city of Metro Manila. Per your representation, the intended venue of the meeting is in Makati, which is also a city of Metro Manila. You likewise manifested that the required notices and information statements will be sent to both EEI's stockholders and this Commission in accordance with the rules and regulations governing public corporations. Lastly, the By-Laws of EEI do not appear to specify a place as venue for its stockholders' meeting. As you mentioned in your letter, Article II, Section 1 of EEI's By-Laws provides:

> Section 1 – Annual Meeting
>
> The Annual Meeting of the Stockholders for the election of directors and transaction of any business of the corporation shall be held i**n any place in Metro Manila that the Board of Directors shall designate** x x x (emphasis supplied)

In view thereof, we confirm that EEI's plan to hold its stockholders' meeting in Makati is not contrary to Section 51 of the Corporation Code.

Lastly, SEC Memorandum Circular No. 6, Series of 2014 and SEC Memorandum Circular No. 3, series of 2006 are not applicable to the instant case. The said Memorandum Circulars pertain to the requirement of indicating the complete address of a corporation's principal office, the purpose of which was explained previously by the Commission:

> Show cause letters and the like issued by the Commission have to be addressed to the specific place where the principal office of the corporation is to be found so that these can be suitably received by the parties. Furthermore, facilitation of the addressee's receipt of any and all communications, as well as the proper service of court and any other processes, are sought. In addition, other government agencies, as well as the public, rely on the Commission to provide accurate and up-to-date information regarding corporations registered with it. It is in this light that the Memorandum Circular was issued by the Commission.[5]

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

[5] SEC-OGC Opinion No. 14-23, dated 26 August 2014, addressed to A&M Realty and Development Corporation.

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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[6]

Please be guided accordingly.

Very truly yours,

CARLOS S. CORREA
General Counsel

/mpb

[6] SEC Memorandum Cricular No. 15, Series of 2003.