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

21 July 2015

SEC-OGC Opinion No. 15-05
Re: Voting Rights of Members in a Non-stock Corporations

COMMO EDUARDO T. DOMINGO AFP (RET)
Acting Chairman of the Board
Philippine Navy Savings and Loan Association, Inc.
Molave St. Naval Station Jose Francisco,
Taguig City, 1634

Sir:

This is in response to your letter dated 29 September 2014, requesting our opinion on whether Philippine Navy Savings and Loan Association (PNSLAI) can amend its Articles of Incorporation (AOI) and By-laws (BL) based on 2/3 of the voting rights of the members instead of on the 2/3 of the number of members pursuant to the one vote per member rule.

You stated that the nine (9) members of the Board of Trustees (BOT) of PNSLAI proposed to amend the AOI and BL, whereby the nine (9) members of the BOT will be increased to twelve (12) and given delegated authority. The proposed amendments were duly approved and ratified by the members of PNSLAI, exercising 2/3 voting rights.

Through a letter, dated 18 October 2013, you forwarded to the Bangko Sentral ng Pilipinas (BSP) for approval the proposed amendments, however, the BSP expressed its reservation that the required 2/3 votes for the amendments of the AOI and BL provided in the Corporation Code, were not complied. In particular, the BSP expressed its opinion that PNSLAI should have used 2/3 votes of the members in the amendment of the AOI and BL instead of 2/3 voting rights of the members.

In its letter dated 18 September 2014, the BSP directed PNSLAI to seek clarification from the SEC whether or not PNSLAI can amend its AOI and BL using 2/3 rights of the members instead of 2/3 votes of the members. Thus, this request for opinion is brought before the Commission.

The issue is premised on BSP's reservation that the required 2/3 votes of the amendments of the AOI and BL requires 2/3 votes of the members instead of 2/3 voting rights of the members.

Please be advised that based on SEC Memorandum Circular No. 15, Series of 2003, it has been the policy of the Commission not to render **categorical** opinions on matters which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest, as well as those which would require an examination and review of the acts and rulings of another government agency since the Commission does not review acts and ruling of other government agencies.

Considering that your query affects substantive and contractual rights of private parties, i.e. voting rights of members in a corporation, as well as review of the act of BSP[1] when it expressed its reservation that the required 2/3 votes for the amendments of the AOI and BL in the Corporation Code were not met, the same falls within the ambit of the aforementioned policy. Hence, we refrain from **categorically** answering your query.

However, for purposes of information only, the following may be imparted.

Section 89 of the Corporation Code provides:

> "***Section 89.*** *Right to vote. – The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws.* ***Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.***" (Emphasis ours.)

Thus, in a non-stock corporation, the general or default rule is that each member shall be entitled to one vote, regardless of the amount of contribution.[2] The exception is when the right of members of any class to vote is limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws.[3]

An example of this exception is when a non-stock condominium corporation, pursuant to Section 89 of the Corporation Code, may provide in its by-laws that the voting rights of the members shall be in proportion to the area of the ownership in the building,[4] or that the members or unit owners be entitled to one vote per unit.[5]

It has also been previously opined that if the corporate by-laws specifically provides for a formula in determining the number of votes of which a member is entitled, such by-law provision should be the basis of determining how many votes can a member cast to each candidate. Giving a member a different voting right, other than one (1) vote for each member, is allowed under Section 89 of the Corporation Code.[6]

Section 1 of Article V of your Amended By-laws, to wit:

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[1] Par. 4 of PNSLAI letter dated 29 September 2014
[2] Tan v. Sycip&Lim, G.R. No. 153468, August 17, 2006; SEC Opinion dated August 17, 1998 addressed to Atty. Edilberto S. Gaddi; SEC Opinion dated July 3, 1992 addressed to Ms. Myrna Yao & Ms. Patricia M. Alvarez.
[3] Ibid.
[4] SEC Opinion dated February 8, 1990 addressed to Ms. Evelyn R. San Buenaventura
[5] SEC Opinion No. 05-16, dated December 5, 2005 addressed to Mr. Pacifico Sanchez Jr.
[6] SEC Opinion dated May 9, 2000 addressed to A&T Condominium Corporation)

> *"Sec. 1. At all meetings of the Association, every member shall be entitled to have a voting right equivalent to one (1) for every one thousand pesos (P1,000.00) of his total capital contribution."*

Thus, it appears that the voting rights of PNSLAI's members had been broadened in that one member may have more than one vote if he has a capital contribution of Php2,000.00 or more.

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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[7]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[7] SEC Memorandum Circular No. 15, Series of 2003.