Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

22 June 2021

SEC Opinion No. 21-09
Re: Annual Meeting via Remote Communication in Non-stock Corporations

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Madame:

This refers to the Letter attached to your electronic mail dated 29 July 2020 requesting the Commission's opinion as regards participation, quorum and voting in an annual meeting of a non-stock corporation via remote communication and/or *in absentia*.

In your Letter, you stated that Cyberone Condominium Corporation ("Cyberone" or "Corporation") is a non-stock corporation. You also mentioned that the management of Cyberone is uncertain as to the legal requirements on the valid conduct by the Corporation of an annual meeting through remote communication considering that its bylaws do not contain any provision that recognizes and/or allows remote communication as a valid means of conducting an annual members' meeting.

You posited that Section 88[1] of the Revised Corporation Code ("RCC") is clear that for non-stock corporations, voting through remote communication and/ or in absentia is only allowed as may be authorized under the bylaws.

In connection with Section 88 of the RCC, you also mentioned SEC Memorandum Circular No. 6, series of 2020[2] ("MC No. 6, s.2020"), which provides for the guidelines on participation of members in regular and special meetings through remote communication. You cited Sections 10 and 12 of MC No. 6, s.2020, to wit:

> *"Sec. 10 Participation in Stockholders' or Members' Meetings Through Remote Communication.* **When so provided in the bylaws or by**

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[1] Revised Corporation Code of the Philippines, Republic Act No. 11232, February 20, 2019; "SECTION 88. 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 bylaws. Unless so limited, broadened, or denied, each member, regardless of class, shall be entitled to one (1) vote.

Unless otherwise provided in the articles of incorporation or the bylaws, a member may vote by proxy, in accordance with the provisions of this Code. The bylaws may likewise authorize voting through remote communication and/or in absentia."

majority of the board of directors, stockholders or members who cannot physically attend at stockholders' or members' meetings may participate in such meetings through remote communications or other alternative modes of communication.

If a stockholder or member intends to participate in a meeting through remote communication, he/she shall notify in advance the Presiding Officer and the Corporate Secretary of his/her intention. The Corporate Secretary shall note such fact in the Minutes of the meeting." *(Emphasis supplied)*

"Section 12. Voting in the Election of Directors, Trustees and Officer Through Remote Communication. The right to vote of stockholders **or members may be exercised** in person, through a proxy, **or when so authorized in the bylaws, through remote communication or in absentia**.

The right to vote of stockholders or members may be **exercised also through remote communication or in absentia when authorized by a resolution of the majority of the board of directors;** Provided, That the resolution shall only be applicable for a particular meeting.

In the election of directors, trustees and officers of corporations vested with public interest, stockholders and members may vote through remote communication or in absentia, notwithstanding the absence of a provision in the bylaws of such corporations." *(Emphasis supplied)*

Based on your interpretation and understanding of Sections 10 and 12 of the MC No. 6, s.2020, the phrase **"When so provided in the bylaws or by a majority of the board of directors"** necessarily implies that if the corporation is a non-stock corporation, which you said has ***trustees*** and not directors in its board, a mere board resolution from the trustees does not allow for participation by remote communication.

Thus, you seek confirmation of your position that in a non-stock corporation, the members' participation and attendance for purposes of the quorum and voting in an annual meeting via remote communication and/or in absentia may be allowed only if authorized under the non-stock corporation's bylaws.

DISCUSSION

A. RCC Provisions on Attendance and Voting in Meetings via Remote Communication

1. **Section 49** of the RCC provides:

"SECTION 49. Regular and Special Meetings of Stockholders or Members.— Regular meetings of stockholders or members shall be held annually on a date fixed in the bylaws, or if not so fixed, on any date after April 15 of every year as determined by the board of directors or trustees:

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The right to vote of stockholders or members may be exercised in

rules and regulations governing participation and voting through remote communication or in absentia, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the protection and promotion of shareholders' or members' meetings." *(Emphasis supplied)*

2. Meanwhile, **Section 57** of the RCC on the Manner of Voting provides:

"**SECTION 57. Manner of Voting; Proxies.**— Stockholders and **members** may vote in person or by proxy in all meetings of stockholders or members.

When so authorized in the bylaws or by a majority of the board of directors, the stockholders or **members of corporations may also vote through remote communication or in absentia**: Provided, That the votes are received before the corporation finishes the tally of votes.

A stockholder or member who participates through remote communication or in absentia shall be deemed present for purposes of quorum.

The corporation shall establish the appropriate requirements and procedures for voting through remote communication and in absentia, taking into account the company's scale, number of shareholders or members, structure and other factors consistent with the basic right of corporate suffrage.

x x x" *(Emphasis supplied)*

3. More specifically for election of directors or **trustees**, **Section 23** provides:

"**SECTION 23. Election of Directors or Trustees.** — Except when the exclusive right is reserved for holders of founders' shares under Section 7 of this Code, each stockholder or member shall have the right to nominate any director or trustee who possesses all of the qualifications and none of the disqualifications set forth in this Code.

At all elections of directors or trustees, there must be present, either in person or through a representative authorized to act by written proxy, the owners of majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. **When so authorized in the bylaws or by a majority of the board of directors**, the stockholders **or members may also vote through remote communication or in absentia**: Provided, That the right to vote through such modes may be exercised in corporations vested with public interest, notwithstanding the absence of a provision in the bylaws of such corporations.

A stockholder or member who participates through remote communication or in absentia,shall be deemed present for purposes of quorum.

x x x"

4. **Section 88** on the right to vote of members states:

"**SECTION 88. 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 bylaws. Unless so limited, broadened, or denied, each member, regardless of class, shall be entitled to one (1) vote.

> Unless otherwise provided in the articles of incorporation or the bylaws, a member may vote by proxy, in accordance with the provisions of this Code. **The bylaws <u>may</u> likewise authorize voting through remote communication and/or in absentia.**" *(Emphasis supplied)*

B. SEC MC No. 6, s.2020

To implement the above provisions, the Commission issued SEC MC No. 6, s.2020. The objective of this issuance is to provide corporations guidance in formulating their internal procedures and bylaws which will allow their directors, trustees, stockholders, members and other persons to participate and vote *in absentia* or through remote or electronic means of communication in regular or special meetings of the corporation, as defined in the said guidelines, pursuant to the RCC.

The guidelines also operationalized the objectives of Republic Act No. 8792[3], otherwise known as the Electronic Commerce Act, to facilitate domestic and international dealings, transactions, arrangements, agreements **through the utilization of electronic, optical and similar medium, mode, instrumentality and technology and to promote the *universal use* of electronic transaction.**

C. Issue: Can members of a non-stock corporation exercise their right to vote via remote communication <u>only</u> when so authorized in the bylaws?

In your Letter, you cited Section 86 of the RCC which states: *"The provisions governing stock corporations, when pertinent, shall be applicable to nonstock corporations, <u>except as may be covered by specific provisions of this Title</u>".*

It is your position that Section 88 of the RCC which pertains specifically to non-stock corporations, prevails over Sections 23, 49 and 57 of the RCC, upon which Section 12 of MC No. 6, s.2020 is based.

In Sections 23 and 57 of the RCC, the stockholders or **<u>members of corporations may also vote through remote communication or in absentia when so authorized in the bylaws or by a majority of the board of directors</u>.** Meanwhile, Section 88 provides that the bylaws of a non-stock corporation **<u>may</u> likewise authorize voting through remote communication and/or in absentia.**

To reiterate, Paragraph 2 of Section 57 of the RCC provides:

> ***SEC. 57. Manner of Voting; Proxies.*** – Stockholders and members may vote in person or by proxy in all meetings of stockholders or members.
>
> **When so authorized in the bylaws or by a majority of the board of directors, the stockholders or member of corporations may also vote through remote communication or *in absentia*:** *Provided,* That the votes are received before the corporation finishes the tally of votes. *(emphasis supplied)*
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> **xxx**

From the wordings of Section 57, it can be inferred that the intention of the law is to cover both stock and non-stock corporations. This can be deduced from the inclusion of the word "members" in the same sentence which necessarily refers to non-stock corporations.

One of the rules in statutory construction is *"Quando verba statute sunt speciali, ratio autem generalia, statum generaliter est intelligendum"*[4]. This translates to "when the words used in a statute are special, but the *purpose* of the law is general, it should be read as the general expression". Thus, while Section 57 states "or by a majority of the board of ***directors***", a reading of the entire provision will show that the same is applicable to both stock and non-stock corporations. The omission of the phrase **"or board of trustees"** can be treated as an inadvertence rather than an intentional act to exclude the applicability to non-stock corporations of the voting via remote communication by virtue of the authority from the "board".

This intention to apply Section 57 to both stock and non-stock corporations is also evident in Section 23 of the RCC which specifically provides for the voting in the election of directors and trustees. Section 23 deliberately mentions "*trustees*" in its heading and "members" in paragraph 2 thereof.

The law would not have been intended to favor stock corporations, without any substantial distinction, by allowing therein voting by remote communication/*in absentia* in two (2) instances in the case of stock corporations, but only one (1) instance in the case of non-stock corporations. Another rule in statutory construction is *"Verba intentioni, non e contra, debent inservice"*[5] which means that *words ought to be more subservient to the intent and not the intent to the words.*

More importantly, it should be emphasized that the right to vote of the members of a non-stock corporation is exercised during a regular or special meeting which is specifically covered by Section 49 of the RCC. In the case of *Tan vs Sycip*[6], the Supreme Court explained the purpose of general or special meeting of stock and non-stock corporations, to wit:

> *"Conformably with the foregoing principles,* ***one of the most important rights of a qualified*** *shareholder or* ***member is the right to vote -- either personally or by proxy -- for the directors or trustees who are to manage the corporate affairs. The right to choose the persons who will direct, manage and operate the corporation is significant, because it is the main way*** *in which a stockholder can have a voice in the management of corporate affairs, or* ***in which a member in a nonstock corporation can have a say on how the purposes and goals of the corporation may be achieved****. Once the directors or trustees are elected, the stockholders or members relinquish corporate powers to the board in accordance with law.*
>
> ***In the absence of an express charter or statutory provision to the contrary, the general rule is that every member of a nonstock corporation****, and every legal owner of shares in a stock corporation,* ***has a right to be present and to vote in all corporate meetings****. Conversely, those who are not stockholders or members have no right to vote. Voting may be expressed personally, or through proxies who vote in their representative capacities. Generally, the right to be present and to vote in a meeting is determined by the time in which the meeting is held."* (Emphasis supplied)

It is in the context of the afore-quoted doctrinal pronouncement that Section 49 in relation to Sections 23 and 57 of the RCC, **which recognize and allow members of non-stock corporations to participate and attend in a members'**

meeting through remote communication or *in absentia* when so authorized in the bylaws or by a majority of the board of trustees, should be interpreted and implemented.

While Section 88 is indeed a provision specifically pertaining to non-stock corporations, the same is not inconsistent with Sections 23 and 57. To reiterate, Section 88 is a provision on the exercise of the "right to vote" of members of non-stock corporations which may be defined in the by-laws, thus: "the bylaws ***may*** likewise authorize voting through remote communication and/or in absentia". Absent any limiting term or phrase therein such as "only" or "exclusively", Section 88 does not, in any way, restrict or negate the applicability of the phrase ***"by a majority of the board of directors"*** to non-stock corporations under Sections 23 and 57 of the RCC. It is a principle in statutory construction that the seemingly *conflicting provisions of a law* or of two laws *must be harmonized to render each effective*. It is only when harmonization is impossible that resort must be made to choosing which law to apply.[7]

Based on the foregoing, when the bylaws of the corporation does not have a provision which allows voting through remote communication, as in the case of Cyber One, the members may still validly vote through remote communication on the basis of a resolution issued by the majority of the board of trustees of Cyber One authorizing such mode of voting which is recognized and allowed by the above mentioned provisions of the RCC. However, it should be noted that, in this case, **voting through remote communication is only applicable <u>for the particular meeting stated in the said resolution</u>, as clarified by Section 12 of MC No. 6, s.2020**. Hence, corporations are highly encouraged to amend their bylaws, if attendance and voting via remote communication is not yet specifically provided therein, to allow corporations to be more adaptive to technological changes, and more importantly, to ensure that the right of stockholders/members to participate in meetings and to vote on matters presented therein are recognized and protected.

It shall be understood, however, that the foregoing opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue raised therein. This opinion shall not be considered and 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[8]. If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Respectfully yours,

ROMUALD C. PADILLA
General Counsel

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[7] BPI Employees Union-Davao City-FUBU v. Bank of the Philippine Islands, G.R. No. 174912, [July 24,