Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, City of Mandaluyong

14 July 2005

SEC Opinion No.05-11
Receivables as consideration for shares of stock

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Madam:

This is to acknowledge your letters dated 16 February 2005 and 9 May 2005 requesting opinion on whether the housing receivables of an affiliate company, A & P Exponents Builder's, Inc., involved in the development of subdivisions can be used as a "consideration " for shares of stock.

In order that shares of stock to be issued by a corporation can be exchanged for property such as "receivables," the requirements of Sec 62 of the Corporation Code must be complied with:

> Sec. 62. Consideration for stocks.- Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two or more of the following:
>
> xxx xxx xxx

(32)

(2) Property, tangible or intangible actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued:

xxx xxx xxx

The aforequoted provision, prescribes that the consideration for shares other than cash must be of such nature which can be lawfully acquired and used in furtherance of the legitimate purposes of the corporation as well as necessary and proper in carrying out the corporate business. The property whether tangible or intangible, must be capable of pecuniary estimation and should be transferable. Further, the use thereof as consideration for the shares will not result in watering of stocks.

Fletcher cautions that a corporation "cannot lawfully issue stock for property which its charter does not authorize to acquire , or for property acquired for an unauthorized purpose."[1] Said property must be of such character that it can be delivered to the corporation, instead of being merely communicated to its officers or employees and it must be actually transferred to the corporation and capable of being transferred to the corporation. It must also be such as is capable of being applied to the payment of debts and distribution among the stockholders."[2]

On several occasions, SEC ruled that :

Receivables may be treated as property payment subject to the following:

(a) Verification by the SEC of their existence and collectibility;

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[1] 11 Fletcher pp. 412-413

[2] Ibid. p. 413; 18 C.J.S. 241

(b) Since non-payment of the stocks may still be possible in the event that the creditors of the parent company fail to pay their obligations, the shares to be issued in consideration thereof shall be held in escrow until the actual payment of the amount.[3]

If the aforementioned standards are complied with in the intended exchange of property, then the housing receivables[4] of the affiliate company may be validly used as payment for the corporate shares.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[3] SEC Opinion No. 02-18-2002 addressed to Mr. Ruben De lara; SEC opinion dtd. December 17, 1993 ,Ms. Olimpia Limpe Aw.

[4] -*Particular kind of Property.* x x x or in any solvent credits it may lawfully acquire x x x .(18 CJS 241)

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