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

19 April 2007

SEC-OGC Opinion No. 07-06.
Transfer of Shares;
Documentary Requirements

ATTY. AUGUSTO G. PANLILIO
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Diamond Subd., Balibago
Angeles City, 2009

Sir:

We write in connection with your letter dated 31 October 2006, a copy of which we received on 9 January 2007, wherein you posed the following queries regarding the transfer of shares of stock not traded nor listed in the stock exchange:

1. What are the documentary requirements on the transfer of shares?

2. Is the payment of the capital gains tax on the part of the seller, assuming there was a gain in the sale, a requirement for the validity of the sale or assignment or transfer of the shares to the buyer?

The documentary requirements for the transfer of shares will depend on whether the stockholder is in possession of the stock certificates covering his shares. If the stockholder has custody of the stock certificates, Section 63 of the Corporation Code, partly quoted hereunder, prescribes the manner by which shares of stock may be transferred:

> ***Certificate of stock and transfer of shares.*** — xxx xxx xxx Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be

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> valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred. *(Emphasis supplied)*

Accordingly, for as long as the certificate of stock is duly indorsed in accordance with the above provision, the same may be considered a valid transfer of the shares covered by the certificate of stock, even without executing a "deed of assignment" of the shares.

A "deed of assignment" on the other hand is necessary only when no certificate of stock has yet been issued or where the same is not in the possession of the transferor.[1]

Note that for the transfer to be valid against third parties and the corporation, the same must be recorded in the corporate books. An unrecorded transfer, though valid as between the parties, cannot be effective as against the corporation. The rights of a stockholder accrues only upon entry of his name in the books of the corporation.

Anent your second query, non-payment of capital gains tax does not affect the validity of the transfer as between the seller and the buyer. However if the capital gains tax is not paid, the sale or the transfer of the shares shall not be registered in the books of the corporation by the transfer agent or secretary of the corporation pursuant to Revenue Regulation No. 2-82 of the Bureau of Internal Revenue (BIR). We advised you to further clarify this with the BIR which has jurisdiction on this matter.

It shall be understood that the opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular facts raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other case whether of similar or dissimilar circumstances.[2]

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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[1] SEC Opinion dated 24 November 1992 addressed to Fr. Pablo M. Salengua.
[2] SEC Memorandum Circular No. 15 (2003).

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