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

OFFICE OF THE GENERAL COUNSEL

02 June 2008

SEC-OGC Opinion No. 08-14
For: Nationality requirement; financing companies

**DONATO ZARATE RODRIGUEZ**
7th Floor, Electra House
115 Esteban Street
Legaspi Village
1229 Makati City

Attention: Atty. Demosthenes B. Donato

Gentlemen:

This refers to your letter dated 28 May 2007 requesting confirmation of your opinion that compliance with the required Filipino ownership of a financing company is based only on stocks which are entitled to vote in the election of directors for purposes of assuming management control; that this rule applies to ownership of stocks of a financing company so that the ownership of voting stocks is subject to nationality requirements, while the ownership of non-voting stocks is excluded and therefore open to foreign ownership without restriction.

You stated in your letter that Cooperative for Assistance and Relief Everywhere ("CARE, Inc.") is contemplating of investing in affiliate or subsidiary finance companies that will engage in micro financing for the marginalized sectors. With this, you would like to seek clarification of certain issues related to foreign investments in finance companies.

Having recognized the role of foreign investments in the advancement of the socio-economic development of the country, the Congress passed R.A. No. 7042 also known as the Foreign Investments Act of 1991, which was later amended by R.A. No. 8755. With the passage of R.A. No. 7042 as amended, certain industries were opened for equity ownership by foreign nationals. To identify the areas or activities which may be opened to foreign investors and/or reserved to Filipino nationals and the

allowable percentage of foreign ownership participation, the Foreign Investment Negative List (FINL) was formulated, which list is amended every two years.

For purposes of computing the required percentage of Filipino ownership for a particular industry, one needs to refer to the 1987 Philippine Constitution and the other statutes that pertain to such industry. Under the law, the Congress has the power to determine which areas of investment may be opened to foreign participation and which ones should be completely reserved to Filipino citizens. In other words, the Congress has an unlimited discretion on the regulation of the entry of foreign investments and of foreign investments already in place except those areas which are strictly reserved to Philippine nationals, which are enumerated in List A of the FINL.

An example would be the financing industry, which requires companies engaged in it to have at least sixty per centum (60%) of its voting capital stock to be owned by citizens of the Philippines. That was prior to the amendment of R.A. No. 5980 by R.A. No. 8556, which now only requires that forty percent (40%) of the voting stock of financing companies be owned by the citizens of the Philippines. As can be observed, the minimum Filipino ownership was lowered from 60% to 40% of the voting stock, an indication of the intent of the legislature to encourage foreign investments in financing companies located in the Philippines.

The instant query now centers on whether both voting and non-voting shares are included in the computation of the required percentage of Filipino equity. As a rule, the 1987 Constitution does not distinguish between voting and non-voting shares with regard to the computation of the percentage of interest by Filipinos and non-Filipinos in a company. In other words, non-voting shares should be included in the computation of the foreign ownership limit for domestic corporations.[1] This was the rule that was applied when this Commission issued its opinion addressed to Ms. Marlene Caluya of Kinoshita Pearls Philippines, Inc. It was opined therein that the ownership of the shares of stock of a corporation is based on the total outstanding or subscribed/issued capital stock regardless of whether they are classified as common voting shares or preferred shares without voting rights.[2] This is in line with the policy of the State to develop an independent national economy effectively controlled by Filipinos.[3] The Constitution encourages an independent and nationalist approach to economic development. Thus, there is a need to strike a balance between the encouragement of foreign investment in the country and the Filipinization of enterprises. The said rule, however, is not applicable to financing companies which are specifically governed by R.A. No. 5980 as amended. Under the said statute, it is expressly stated that the nationality requirement applies only to voting stocks, to wit:

> "Sec. 6. *Form of organization and capital requirements.* — Financing companies shall be organized in the form of stock corporations at least forty percent (40%) of the voting stock of which is owned by

1 De Leon, Hector S. THE CORPORATION CODE OF THE PHILIPPINES, 2002 ed., p. 67.
2 SEC Opinion No. 30-04 dated 28 April 2004.
3 1987 Philippine Constitution, Section 19.

citizens of the Philippines and shall have a paid-up capital of not less than Ten million pesos (P10,000,000) in case the financing company is located in Metro Manila and other first class cities, Five million pesos (P5,000,000) in other classes of cities and Two million five hundred thousand pesos (P2,500,000) in municipalities: *Provided, however,* That no foreign national may be allowed to own stock in any financing company unless the country of which he is a national accords the same reciprocal rights to Filipinos in the ownership of financing companies or their counterpart entities in such country xxx"

Based on that, it can be said that the Congress intends to give leeway for financing companies to increase or decrease foreign ownership of shares for as long as the minimum Filipino ownership of voting shares is complied with. This Office, thus, sees no legal obstacle in issuing all non-voting shares of a financing company to non-Philippine nationals for as long as the minimum requirements enumerated in Section 6 of R.A. No. 5980 as amended are complied with. In the case of CARE Inc., it is the opinion of this Office that it can own one hundred percent (100%) of the non-voting shares of CARE Philippines without violating the nationality requirement as provided for in the Constitution and R.A. No. 5980 as amended.

The foregoing opinion is based solely on the facts disclosed in the query and relevant solely to the particular issue raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases.[4]

Very truly yours,

**VERNETTE G. UMALI-PACO**
General Counsel

CARE Inc..odt

4 Paragraph 7 of SEC Memorandum Circular No. 15, Series of 2003.



(41)