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

OFFICE OF THE GENERAL COUNSEL

13 October 2008

SEC-OGC Opinion No. 08-22
For: Prospective application of
R.A. No. 9474

DE GUZMAN CELIS & DIONISIO LAW OFFICES
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Attention : Atty. Mariano L. Celis II
Atty. Joseph Paolo I. Brillantes

Gentlemen:

This refers to your letter dated 04 August 2008 requesting confirmation on the prospective application of Section 6 of Republic Act No. 9474 also known as the "Lending Company Regulation Act of 2007" (R.A. No. 9474).

As a background, PAGASA Philippines Lending Company, Inc. ("PAGASA") was incorporated as a 100% foreign owned lending corporation on 07 June 2007. On 13 June 2008, PAGASA filed its application for a Certificate of Authority to operate as a lending company. Meanwhile, or on 22 May 2007, R.A. No. 9474 was passed into law.

You are now asking for confirmation on the prospective application of the statute, in particular Section 6 of R.A. No. 9474, which affects the application of PAGASA for a Certificate of Authority.

Section 6 of R. A. No. 9474 provides as follows:

> "Sec. 6. Citizenship Requirements. - Upon the effectivity of this Act, at least a majority of the voting capital stock shall be owned by citizens of the Philippines.
>
> The percentage of foreign-owned voting stock in any lending company existing prior to the effectivity of this Act, if such percentage is in excess of forty-nine percent (49%) of the voting stock, shall not be increased but may be reduced and, once reduced, shall not be increased thereafter beyond

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forty-nine percent (49%) of the voting stock of the lending company. The percentage of foreign-owned voting stocks in any lending company shall be determined by the citizenship of the individual stockholders. In the case of corporations owning shares in a lending company, the citizenship of the individual owners of voting stock in such corporations shall be the basis in the computation of the percentage.

No foreign national may be allowed to own stock unless the country of which he is a national accords reciprocal rights to Filipinos."

Pertinent to your query is the provision of Article 4 of the Civil Code of the Philippines thus:

> "Article 4. Laws shall have no retroactive effect, unless the contrary is provided."

Basic is the rule of statutory construction that statutes are to be construed as having only prospective operation, unless the intendment of the legislature to give them a retroactive effect is expressly declared or is necessarily implied from the language used.[1] The reason for the general rule is that "a law is a rule established to guide actions with no binding effect until it is enacted; hence, it has no application to past but only to future times. This is why it is said that the law looks to the future only, and has no retroactive effect unless the legislature may have formally given that effect to the law."[2]

Corollarily, retroactive application of statutes are frowned upon, the rationale of which is that it divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[3] There are exceptions, however, to non-retroactivity application of statutes especially if equity and social justice will warrant a retroactive application to temper the harshness of statutory law.[4] In the words of the Supreme Court:

> "Since the retroactive application of a law usually divests rights that have already become vested (*Benzonan vs. Court of Appeals*, 205 SCRA 515 [1992]), the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used (*Balatbat vs. Court of Appeals*, 205 SCRA 419 [1992])."[5]

In the present query, R.A. No. 9474 is silent on the retroactive effect of its provisions. It is thus presumed that the law operates prospectively absent clear

1 Agpalo, Ruben E. Statutory Construction 352 (2003). Citations omitted.
2 Agpalo, Ruben E. Statutory Construction 353 (2003). Citation omitted.
3 Chavez v. Public Estates Authority & Amari Coastal Bay Development Corporation, G.R. No. 133250, 06 May 2003.
4 Agpalo, p. 353.
5 People v. Patalin, G.R. No. 125539. July 27, 1999.

contrary language in the text, and in case of doubt, the doubt will be resolved against the retroactive operation of the law.[6]

Applying the foregoing principles in the instant query, this Office opines that R.A. No. 9474 shall be applied prospectively. Further, there are no weighty consideration or special circumstances that would warrant the retroactive application of Section 6 of R.A. No. 9474.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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6 PCGG v. Sandiganbayan, G.R. No. 151809-12, 12 April 2005.

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