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

OFFICE OF THE GENERAL COUNSEL

14 September 2009
SEC Opinion No. 09-26
Increase of Capital Stock and Consideration for Stock

Ms. NORMA C. PAPPAS
Baras, Canaman
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Madam:

We reply to your letter dated 21 April 2009 requesting an opinion on the ownership of the conjugal real properties assigned by your parents to ISMA Agricultural Enterprises, Inc. ("ISMA") as payment for the additional subscription to the recapitalization of the said corporation.

In your letter, you stated that on 14 September 1993, this Commission issued a Certificate of Filing of Amended Articles of Incorporation on an application to amend Article VII of ISMA's Articles of Incorporation and increasing its authorized capital stock from Php 1,000,000.00 to Php 10,000,000.00. A perusal of the attached photocopied documents shows that the increase of ISMA's capital stock was funded by the assignment[1] of several parcels of land by spouses Edmundo B. Cea and Gloria N. Cea. The corporation's records in the Commission confirm that a Certificate of Filing of Amended Articles of Incorporation and the corresponding Certificate of Filing of Certificate of Increase of Capital Stock were both approved on 14 September 1993.

Your letter further states that Edmundo Cea died on 30 December 1993 while Gloria Cea died in 2002 but to date, the titles over the parcels of land remain in their name and no stock certificates were issued by ISMA to the spouses. You submitted the following queries: a) whether the assigned real properties are now owned by the corporation or remain conjugal properties; and b) in the event that they are still conjugal properties, whether it is still possible to effectuate the assignment to ISMA.

The ownership of the subject parcels of land is a judicial question, the jurisdiction of which pertains to the regular courts. The Commission no longer has

[1] Attached Deed of Assignment dated 5 October 1992 executed by Edmundo and Gloria Cea, notarized by Danilo de la Torre.

any jurisdiction to determine the property and contractual rights of persons with the passing of Republic Act No. 8799 or the Securities Regulation Code in July 2000, thus, we cannot categorically answer your first query. However, the Commission's issuance of the aforementioned Certificate of Filing Amended Articles of Incorporation and Certificate of Filing of Certificate of Increase of Capital Stock in 1993 was primarily based on the Deed of Assignment executed by the Cea spouses, hence, a recognition that these documents appeared valid *prima facie* when they were submitted back then.

For your future guidance, however, we refer you to the *Guidelines Covering the Use of Properties that Require Ownership Registration as Paid-Up Capital of Corporations,*[2] which covers payments for the subscription of shares with property other than cash. Under the said Guidelines, which the Commission issued on 15 November 1994 and after the approval of the increase of ISMA's capital stock in 1993 and thus not applicable thereto, the following conditions are imposed:

1. Where the payment made is in the form of land, the corresponding shares of stock to be issued thereon shall be held in escrow by the SEC and shall be released only after proof of the transfer of the certificate of ownership thereon in the name of the transferee corporation is submitted to the SEC within ninety (90) days from the date of approval of the application extendible for justifiable reasons.

2. Where the payment made consists of a property other than land, the corresponding shares of stock to be issued thereon shall be held in escrow by the SEC and shall be released only after proof of the transfer of the registration thereon in the name of the transferee-corporation is submitted to the SEC within thirty (30) days from date of approval of the application extendible for justifiable reasons.

   That the non-submission of the documents as required above within the prescribed period, after due notice and hearing, shall be sufficient ground for the revocation of the related application approved by the SEC.

Considering the above discussion, a discussion of your second query is no longer necessary.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in your letter 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 of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please also be advised that the foregoing cited authorities do not restrain or preclude judicial interpretation and application of the law on the actual facts, should the issues raised herein be litigated in the proper court.

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[2] 15 November 1994

For your information and guidance.

VERNETTE G. UMALI-PACO
General Counsel