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

OFFICE OF THE GENERAL COUNSEL

27 January 2010

SEC-OGC Opinion No. 10-04

Investment of corporate funds in corporate notes

PNOC Development and Management Corporation
5/F PNOC Bldg. VI Energy Center,
Merritt Road, Fort Bonifacio,
Makati City, Philippines

ATTENTION: Mr. Peter Anthony A. Abaya
President and CEO

Gentlemen:

This refers to your letter dated September 4, 2009 requesting opinion on whether there are legal impediments or existing SEC rules and regulations applicable to PNOC Development and Management Corporation ("PDMC," for brevity) proposed investment of its idle corporate funds in corporate notes issued by private corporations and/or government-owned and controlled corporations (GOCCs) with a credit classification/rating of double 'A'.

By express provision of Section 36 of the Corporate Code, [1] every corporation formed under the law has the implied or incidental power to purchase, receive, take or grant, hold xxx and otherwise deal with such real and personal property, including securities and bonds of other corporations, **as the**

[1] BATAS PAMBANSA bilang 68.

transaction of the lawful business of the corporation may reasonably and necessarily require.

In relation thereto, Section 42 of the Corporation Code provides:

> "Sec.42. Power to invest corporate funds in another corporation or business or for any other purposes. Subject to the provision of this Code, **a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized** when approved by a majority of the board of the directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stocks... at a stockholders' or members' meeting duly called for purpose. Provided, that any dissenting stockholders shall have appraisal right as provided in this Code: **Provided, however, That where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary."**[2]

It appears from your representation that the investment in high quality fixed-income corporate notes issued by private corporation and/or GOCCs is contemplated to avail of higher yields than the usual interest it would obtain from depositing its funds in a bank. Moreover, you alleged that the proposed investment is in accordance with the company's secondary purpose stated in its Articles of Incorporation or enhance the value of, or render profitable any of its property or rights.

We are of the opinion that PDMC may make such investment of its idle funds in corporate note issuance. Corporations are expressly authorized to invest their corporate funds as a means of obtaining the best return of their investible funds. However, considering that the investment is in furtherance of the corporation's secondary purpose, the approval of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a stockholders' meeting duly called for the purpose is necessary, pursuant to Section 42.

Likewise, the transaction is reportable under the Securities Regulation Code.[3] SRC Rule 20 mandates the distribution of an Information Statement (SEC Form 20-IS) that is pre-approved by the Commission, to the stockholders at least fifteen (15) business days prior to the stockholders' meeting. Form 20-IS specifies the information that is required to be furnished by the company, including among others, a summary of the material features and the nature and effect of the proposed transaction, any other material contract/transaction or

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[2] *Emphasis supplied.*
[3] REPUBLIC ACT NO. 8799 (2000).

relationship between the parties, financial information as to both contracting parties, relating to investment in corporate notes of other company.

Similarly, change in material contract which may have financial, technological or administrative impact on the company is reportable event pursuant to SRC Rule 17.1 (A) (iii). The proposed investment could have a material financial impact on the company and hence, should be reported to the Commission on SEC Form 17-C within five (5) days after occurrence.

This *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.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel