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

OFFICE OF THE GENERAL COUNSEL

26 May 2010

SEC-OGC Opinion No.10-21
Interest in Co-ownership as Consideration for Shares of Stock

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ATTENTION: Atty. Perpetuo M. Lotilla, Jr.

Gentlemen:

This refers to your letter dated 16 December 2009 addressed to the Company Registration and Monitoring Department ("CRMD") of this Commission and transmitted to this Office on 27 January 2010.

As disclosed in your letter, Osomreh Corporation ("Osomreh") applied for registration with the Commission. However, upon review of the documents you submitted pursuant to the said application, you were informed by the Financial Analysis and Audit Division of the CRMD that a letter of consent of the other co-owners of the real properties must also be submitted.

It can be implied from your letter that the proportionate interest of two co-owners in a co-ownership of real properties was exchanged for shares of stock in Osomreh and it is for this reason that CRMD required you to submit the said letter of consent.

Nonetheless, you advanced the position that the consent of the other co-owners is not necessary considering that the interest to be exchanged for shares of stock pertains only to the proportionate interest of the two co-owners. In support of your position, you quoted Article 493 of the Civil Code of the Philippines ("Civil Code") which reads:

"***Art. 493.*** *Each co-owner shall have the full ownership of*

his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)"

This Office agrees with your position that an interest in a co-ownership may be validly alienated as provided in the aforesaid provision and that no consent of the other co-owners is necessary for such alienation.[1] However, we are of the opinion also that the said alienation is still subject to the conditions set forth in Articles 1620 and 1623 of the Civil Code[2] which read:

*"**Art. 1620.** A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.*

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common. (1522a)"

*"**Art. 1623.** The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.*

The right of redemption of co-owners excludes that of

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[1] *See* Paulmitan, et al. v. Court of Appeals, G.R. No. 61584, November 25, 1992. *See also* 2 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 175 (1987 ed.).

[2] SEC-OGC Opinion No. 02-08 dated 03 January 2008 addressed to Suarez & Narvasa Law Firm provides that:

"xxx the Commission has opined that interest in a co-ownership can be alienated by way of subscription to shares of stock, subject to the following conditions:

1. *that the property must be something which the corporation may acquire and hold in carrying out its purpose or reasonably necessary or convenient in the pursuit of its business;*
2. *that interest in the co-ownership must have a pecuniary value capable of ascertainment (at a fair valuation equal to the par or issued value of the stock issued);*
3. *that the right over the property must actually be transferred to the corporation and no creditors of the property held in common shall be prejudiced by the transfer; and*
4. ***that the transfer shall be subject to Articles 1620 and 1623 of the Civil Code."*** (emphasis supplied).

adjoining owners. (1524a)"

Although the aforesaid provisions refer to sale to third persons, the "exchange" of an interest in a co-ownership for shares of stock in a corporation is included therein since the said exchange also involves a transmission of ownership by onerous title.[3] Consequently, the same is subject to the right of redemption or pre-emption of the other co-owners pursuant to Articles 1620 and 1623 of the Civil Code.[4]

Nonetheless, whenever a property or an interest therein is used as consideration for the issuance of shares of stock, the said property or interest should be free from any right of redemption or pre-emption of the other co-owners considering that the transfer to the corporation must be in such a manner that the property or an interest therein is capable of being applied to the payment of the corporation's debts or can be subject to levy and sale on execution for the satisfaction of any judgment or decree against the corporation.[5]

Thus, to free the property or an interest therein from any right of redemption or pre-emption of the other co-owners, this Office deems it necessary that either of the following should be submitted in applications for registration where the payment for subscription is an interest in a co-ownership of property:

1. A Waiver of Rights signed by all possible co-owners/redemptioners stating that they are waiving their right of redemption or pre-emption in relation to the said transfer; or

2. An Affidavit, executed by the co-owner who exchanged his interest for the shares of stock, stating the following:

   a. that he has given written notice thereof to all possible co-owners/redemptioners;
   b. that the same was received by them; and
   c. that the 30-day period of redemption has already expired.

   The said Affidavit must be accompanied by a copy of the actual Written Notice to all possible co-owners/redemptioners and the Proof of Receipt by them.

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.[6] If,

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[3] *See* Art. 1619 of the Civil Code of the Philippines, *Cf.* 5 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINE ANNOTATED 281-282 (14th ed. 2000).
[4] SEC Opinion dated 06 November 1990 addressed to Mr. Jose Luis R. Gomez. *Cf.*, Carvajal v. Court of Appeals, G.R. No. L-44426, February 25, 1982.
[5] *See* §5188, 14 FLETCHER CYCLOPEDIA CORPORATIONS 413 (Permanent Ed.)
[6] SEC Memorandum Circular No. 15-03, 16 December 2003.

upon further inquiry, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel