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

OFFICE OF THE GENERAL COUNSEL

22 December 2010

SEC-OGC Opinion 10-34
Re: Creation of Additional Paid in Capital

MR. MELQUIADES T. MALABANAN
Managing Partner
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219 Salcedo Street, Legaspi Village
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Sir:

This refers to your query dated 20 September 2010 requesting an opinion on whether the "creation of additional paid in capital (APIC) wherein no shares of stocks are issued" is an internal matter of the corporation which need not be approved by the Commission. You have narrated the factual setting as follows:

> "XYZ Corporation, a corporation organized under the laws of the Philippines, is a wholly owned subsidiary of B Corporation, a non-resident foreign corporation. The authorized capital stock of XYZ Corporation has been fully issued and outstanding. The equity structure of XYZ Corporation shows a negative equity. Since the Corporation has capital deficiency and other liabilities, XYZ Corporation, through its board of directors, approved the creation of additional paid in capital of Php20,000,000.00 wherein no shares of stocks are issued. The purpose of the creation of the APIC is to eliminate its negative equity and to liquidate the Corporation's liabilities. B Corporation agrees to infuse additional capital contribution of Php20,000,000.00 to XYZ Corporation without any issuance of shares."

Your Queries:

1. What are the steps to be taken by XYZ Corporation for the creation of the additional paid-in capital (APIC) of Php20,000,000.00 without issuance of shares?

2. Can B Corporation infuse the additional capital contribution to its wholly owned subsidiary, XYZ Corporation, without the corresponding issuance of shares?

3. Does XYZ Corporation need the prior approval of the Securities and Exchange Commission before recognizing the APIC in its financial statements?

Our Reply

1. The Commission has adopted the policy of allowing corporations, ***at their option,*** to apply for the Commission's approval of the creation of APIC, subject to the payment of the filing fee applicable for such application.[1] Otherwise stated, it is not mandatory for the corporation to seek prior approval of the Commission. Should XYZ Corporation choose to apply for the Commission's approval, the requirements depend on the mode of payment of the APIC. These requirements may be obtained from the Commission's website.[2]

2. With regard to your second query, B Corporation can infuse the additional capital contribution to its wholly owned subsidiary, XYZ Corporation, without the corresponding issuance of shares.[3] More so, because the purpose of the creation of the APIC is to eliminate its negative equity and to liquidate the corporation's liabilities.

3. As mentioned in our reply to your first query, there is no need to obtain prior approval from the Commission before recognizing the APIC by B Corporation in XYZ Corporation's financial statements. We reiterate that the application for the Commission's approval of the creation of APIC is ***at the option*** of the corporation.[5]

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 void.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[1] SEC Resolution No. 94, series of 2006 (the Commission charges a minimal fee of Php 3,000.00 for equity restructuring by wiping out the deficit through the application of APIC).
[2] http://www.sec.gov.ph/ (Click Main; Click Guide to SEC Registration Click Corporation/Partnership).
[3] SEC Resolution No.27, series of 2006.
[5] SEC Resolution No. 94, series of 2006.