Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 March 2019

SEC-OGC Opinion No. 19-09
RE: Assignment of Shares of Stock between Husband and Wife

MR. EMMANUEL H. SANTIANIO
151 Bunga St., Ayala Alabang
Muntinlupa City, 1780

Dear Mr. Santiano:

This refers to your request for an opinion regarding the validity and registrability of shares of stock assigned by a husband to his wife.

In your letter, you stated that as Corporate Secretary you received a Deed of Assignment whereby Michael Angelo H. Santiago ("Michael"), a registered owner of four thousand (4000) shares of stock in Hersan Realty Corporation ("HRC"), assigned, ceded, transferred, and conveyed in favor of his wife, Karen B. Santiago ("Karen"), two thousand (2000) of the said 4000 shares of stock, for the purpose of jointly administering their community property pursuant to Article 96[1] of the Family Code.

In view thereof, you raised the following queries considering the proscriptions contained in Article 87 of the Family Code and Article 1490 of the Civil Code:

1. Is the assignment of the 2000 shares of stock between Michael and Karen valid?

2. Is the said assignment of the 2000 shares of stock registrable in the corporation's Stock and Transfer Book?

At the outset, it bears stressing that the Commission, as a matter of policy, refrains from rendering categorical opinions on issues which may potentially be litigated in the future in an intra-corporate and/or civil case such as matters involving the substantive and contractual rights of private parties who would, in all probability,

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[1] **Article 96.** The administration and enjoyment of the **community property** shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance without authority of the court or the written consent of the spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

contest the same in court if the opinion turns out to be adverse to their interest[2], and on matters which would necessarily require a review and interpretation of contracts or an opinion on the validity of contracts since interpretation of contract is justiciable in nature and contract review calls for legal examination on a general basis and not on specific legal issues.[3]

The validity of the assignment of shares of stock between Michael and Karen is an issue that could be resolved by applying the pertinent provisions of the Family Code and the Civil Code. Since the issue raised may be the subject of litigation in the future the Commission shall refrain from categorically rendering an opinion on the issues presented.

Nevertheless, for purposes of information only, the following may be imparted:

It is well-settled that shares of stock in a corporation are personal property and the owner thereof has an inherent right as an incident of his ownership, to transfer the same at will. As such, the facility of transferring them must not be unduly hampered by imposing restrictions as would amount to restraint on free alienation of property.[4]

In a previous opinion[5], the Commission explained the effects of the Family Code on the provisions of the Corporation Code relative to ownership and transfer of shares of stock of spouses, to wit:

> "In our jurisdiction, the property relation of husband and wife is governed by the Family Code. By virtue of Article 75[6] thereof, spouses are given the freedom to choose which property regime may govern them during the marriage. xxx.
>
> Thus, unless a different system of property relation is agreed upon by the spouses, the property relation between the husband and the wife shall be governed by the system of absolute community of property. **"Assuming therefore, that the husband and wife failed to agree on what property regime to adopt, the shares they used to own individually would have to be deemed as community property and shall be governed by the rules on co-ownership xxx.**
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> **Accordingly, the spouses, being the co-owners thereof, may at their option, request the Corporate Secretary to issue the certificate in the name of Mr. and Mrs. Santiano. This is true even if the stock certificates are still in their respective names."**

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[2] SEC Memorandum No. 15 Series of 2003 as cited in SEC-OGC Opinion 15-09 dated 27 August 2015.
[3] Ibid.
[4] SEC Opinion dated 8 August 1995, SEC Opinion dated 20 February 1995, SEC Opinion dated 13 January 1994, SEC Opinion dated 13 October 1964.
[5] SEC Opinion dated 4 September 1990 addressed to Mr. Arsenio L. Sebastian III.
[6] Art 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime, In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

Under the system of absolute community of property, the selling of property between the spouses is prohibited by law.[7] In the same vein, donations between them during marriage are prohibited.[8] This is so because if transfers or conveyances between spouses were allowed during marriage, that would destroy the system of conjugal partnership (or absolute community), a basic policy in civil law.[9] It was also designed to prevent the exercise of undue influence by one spouse over the other, as well as to protect the institution of marriage, which is the cornerstone of family law.[10]

Be that as it may, if the shares are among the excluded properties under Section 92 of the Family Code,[11] or where the spouses have chosen a marriage settlement other than a system of absolute community of property, the sale and assignment of shares between husband and wife shall be recorded in the stock and transfer book only upon compliance with Section 63[12] of the Corporation Code.[13]

As to registrability of the assignment, the duty of the corporate secretary to record a transfer of stock is ministerial, except when the transferee's title to said shares has no prima facie validity or is uncertain.[14]

Assuming the assignment is valid, the said shares shall be transferred in accordance with Section 63 of the Corporation Code, the pertinent provision of which reads:

> "Sec. 63. xxx Shares of Stock so issued are personal property and may be transferred by delivery of the certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred xxx."

In a previous opinion,[15] the Commission opined that a deed of assignment is necessary only when no certificate of stock has yet been issued or where the same is not in the possession of the transferor. On the assumption that the subject shares are not yet covered by stock certificates, the execution of the deed of assignment is in order.

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[7] Civil Code, Art. 1490. The husband and the wife cannot sell property to each other, except:
(1) When a separation of property was agreed upon in the marriage settlements; or
(2) When there has been a judicial separation or property under Article 191.

[8] Family Code, Art. 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage.

[9] Maria B. Ching vs Joseph C. Goyamko, Jr. etc. G.R. No. 165879, 10 November 2006.

[10] Ibid.

[11] Art 92 the following shall be excluded from the community property:
(1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property.
(2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property.
(3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property.

[12] Now Sec 62 of the RA 11232 on the "Revised Corporation Code of the Philippines.

[13] SEC Opinion dated 4 September 1990 addressed to Mr. Arsenio L. Sebastian III.

[14] Hector S. De Leon and Hector M. De Leon, Jr., the Corporation Code of the Philippines Annotated, Ninth Edition, page 560 citing Lim Tay vs Court of Appeals, GR No. 126891, 5 August 1998.

[15] SEC Opinion dated 19 April 2007 addressed to Atty. Augusto Panlilio

To reiterate, the transfer, to be valid against third parties and the corporation, the same must be recorded in the corporate books[16] indicating the names of the parties to the transaction, the date of the transfer, and the number of shares transferred.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

[16] SEC Opinion No. 07-06 dated 19 April 2007.