



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



3 January 2008

SEC-OGC Opinion No. 08-02

Re: Intangible Property as Consideration for
Subscription of Shares

SUAREZ & NARVASA LAW FIRM
3/F CSJ Building, 105 Aguirre Street,
Legaspi Village, Makati City

Attention: Attys. Reynald R. Suarez, Aldrin R. Cabiles
and Marie Grace A. Santos

Sir/Madam:

This refers to your letter dated 19 October 2007 requesting opinion on the following:

1. whether a pro-indiviso interest in real property can be used as consideration for subscription of shares; and
2. whether the annotation of the said pro-indiviso interest on the transfer certificate of title (TCT) covering the real property is sufficient proof of ownership for purposes of the Commission's requirements.

Things, while generally understood as any corporeal object or property, has acquired in the law a meaning which extends beyond mere material objects and includes rights though these are relations and not objects.¹ However, only rights which are patrimonial in character, and not the right to liberty, right to honor, etc., can be considered as things in the concept of property.²

Rights are of two kinds: real rights and personal rights, which, pursuant to Article 415 (10) and Article 417 (1), respectively, of the Civil Code of the Philippines, are in themselves properties. A real right is the right or interest belonging to a person over a

¹ De Leon and De Leon Jr., Comments and Cases on Property, Third Edition (1998), page 82 citing 3 Manresa 11.

² Tolentino, Civil Code of the Philippines, Vol. II, 1999 Reprint, page 5, citing 7 Llerena 5-9.

specific thing without a definite passive subject against whom such right may be personally enforced.

Ownership of a pro-indiviso interest in land or any other real property is a real right and, at the same time, a real property which may be conveyed by the concerned co-owner to a third person.³

Section 62 of the Corporation Code provides:

“Sec. 62. Consideration for Stocks. - Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two or more of the following:

xxx

xxx

xxx

(2) Property, **tangible or intangible**, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued;

xxx

xxx

xxx

Where the consideration is other than actual cash, or consists of intangible property such as patents or copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.

xxx

xxx

xxx.”

It is now settled that corporations are allowed to receive intangible properties in exchange of capital stock provided that the property transferred in payment approximates the value of the stocks acquired, for which reason Section 62 requires that the valuation of the property paid shall be determined by the incorporators or the board, subject to the approval of the Commission.⁴

More specifically, 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:

³ Civil Code of the Philippines, Article 493.

⁴ SEC Opinion No. 39, 25 July 2003.

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 1620⁵ and 1623⁶ of the Civil Code.⁷

Hence, subject to the above conditions, the answer to your first query is in the affirmative.

As to your second query, we are of the opinion that an annotation by the Register of Deeds of a pro-indiviso interest in the name of the subscriber would be sufficient proof of ownership of such interest for purposes of the approval by the Commission of the subscription.

However, approval of the subscription by the proper operating department, i. e. the Company Registration and Monitoring Department, would not merely depend on such proof of ownership because, as adverted to above, there are certain conditions required that must be substantiated by documents or otherwise.

Please be guided accordingly.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel

⁵ Article 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. xxx.

⁶ Article 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. xxx.

⁷ SEC Opinion (addressed to Feria, Feria, Lugtu & Lao Law Offices) dated 6 November 1990.