



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



19 May 2009

SEC-OGC Opinion No. 09-10

Re: Reclassification of Shares; Required
Equity under the Financing Company
Act

COCHINGYAN & PERALTA LAW OFFICES

Twelfth Floor, 139 Corporate Center, 139 Valero Street,
Salcedo Village, Makati City 1227, Philippines.

Attention: Atty. Jose Cochingyan, III

Sir:

This refers to your letter of 5 August 2008 primarily requesting confirmation of your opinion that the proposed reclassification of shares of your client, Credit 24 Finance Company, Inc. ("Credit 24", for brevity), still complies with the required Filipino equity participation under Republic Act No. 5980, or the Financing Company Act of 1998, as amended¹ ("FCA").

A financing company, Credit 24 has, at present, an authorized capital stock of Forty Million Pesos (Php 40,000,000.00) divided into four hundred thousand (400,000) shares with each share having a par value of One Hundred Pesos (Php 100.00). Its subscribed and paid up capital stock amounts to Ten Million Five Hundred Thousand Pesos (Php 10,500,000.00) divided into one hundred five thousand (105,000) shares with a par value of One Hundred Pesos (Php 100.00) per share.²

You mentioned that Credit 24 intends to reclassify its shares of stock into common and preferred shares. Under the proposed reclassification, Credit 24 will have an authorized capital stock of One Hundred Eight Million Five Hundred Seventy – Six Thousand Pesos (Php 108,576,000.00) composed of two (2) classes of shares: Class A shares and Class B shares, broken down as follows:

The Class A shares will constitute forty percent (40%) of the authorized capital stock at two thousand eight hundred eighty (2,880) shares with each share having a par value of Two Hundred Pesos (Php 200.00). These shares will be issued to Filipino citizens only in order to ensure compliance with the citizenship requirements for financing companies under the FCA.

¹ By Republic Act No. 8556.

² See annexed Table A for illustration.

On the other hand, the Class B shares will constitute sixty percent (60%) of the authorized capital stock at four thousand three hundred twenty (4,320) shares with par value of Twenty-Five Thousand Pesos (Php 25,000.00) per share. These shares will be made available to Filipino citizens and foreigners alike.³

To implement the proposed (re)classification, the following shall be done:

1. The present shareholdings of the current stockholders will be reclassified into Class B shares. All one hundred five thousand (105,000) current outstanding shares with par value at the current One Hundred Pesos (Php 100.00) per share, or a total par value of Ten Million Five Hundred Thousand Pesos (Php 10,500,000.00), will be converted to four hundred twenty (420) Class B shares with par value of Twenty-Five Thousand Pesos (Php 25,000.00) per share.
2. The debts or advances from the current shareholders amounting to Sixteen Million Eight Hundred Seventy-Eight Thousand One Hundred Fifty-Four Pesos and Forty-Nine Centavos (Php 16,878,154.49) will be converted into equity and the said shareholders will be issued Class B shares corresponding to the amounts owed them by Credit 24.
3. The required twenty-five percent (25%) subscription for Class A shares will be coming from new investment of One Hundred Forty-Six Thousand Eight Hundred Pesos (Php 146,800.00) divided into seven hundred thirty-four (734) shares with par value of Two Hundred Pesos (Php 200.00) per share.

You also mentioned that in the event more Class B shares are issued, additional Class A shares will likewise be issued to maintain compliance with the required forty percent (40%) Filipino equity participation under the FCA.

There is neither a constitutional nor a statutory mandate for the classification of corporate shares into Class A and Class B shares. Such arrangement is only a device internally adopted by Philippine companies to facilitate monitoring of foreign equity in the company. This practice is recognized, but not mandated, by the Corporation Code which allows a corporation to classify its shares for the purpose of insuring compliance with constitutional or legal requirements. Each class of shares may be assigned varying par values, and likewise, one class of shares may be more than the others.⁴

³ See annexed Table B for illustration.

⁴ De Leon, Hector S. The Corporation Code of the Philippines Annotated, 2002 Edition, p.66; DOJ Opinion No. 195, 3 October 1989.

To compute the required percentage of Filipino ownership of a corporation engaged in a particular industry, resort must be had to the 1987 Constitution and/or the statutes enacted by Congress pursuant to its power to determine which areas of investment may be opened to foreign participation and which ones which should be completely reserved to Filipino citizens, such as Republic Act No. 7042 or the Foreign Investments Act ("FIA") including the applicable Foreign Investment Negative List ("FINL")

It is now well settled in this jurisdiction that the ownership of the shares of stock of a corporation is based on the total outstanding or subscribed/issued capital stock regardless of whether they are classified as common voting shares or preferred shares without voting rights.⁵ It is further said that the test for compliance with the nationality requirement is based on the total outstanding capital stock irrespective of the amount of the par value of shares,⁶ and likewise without regard to whether or not such shares have been fully or partially paid.⁷ This rule was applied in a November 2007 opinion which explained that the term "*capital*" mentioned without qualification in Section 11, Article XII of the 1987 Constitution (which prescribes a specific equity participation/structure in a public utility) should be interpreted to refer to the sum total of the outstanding capital stock, irrespective of the nomenclature or classification as common, preferred, voting or non-voting.⁸

The above, however, appears to be the general rule and is not applicable to financing companies which are governed by a more specific or special, if not stringent, requirement under the FCA.⁹ The FCA expressly mandates that the nationality requirement **applies only to voting stocks**, to wit:

*"Sec. 6. Form of organization and capital requirements. -- Financing companies shall be organized in the form of stock corporations at least forty percent (40%) of the **voting stock** of which is owned by citizens of the Philippines and shall have a paid-up capital of not less than Ten million pesos (P10,000,000) in case the financing company is located in Metro Manila and other first class cities, Five million pesos (P5,000,000) in other classes of cities and Two million five hundred thousand pesos (P2,500,000) in municipalities: *Provided, however,* That no foreign national may be allowed to own stock in any financing company unless the country of which he is a national accords the same reciprocal rights to Filipinos in the ownership of financing companies or their counterpart entities in such a country. x x x."*

⁵ SEC Opinion No. 04-30 dated 28 April 2004 addressed to Ms. Marlene Caluya.

⁶ SEC Opinion No. 04-49 dated 22 December 2004 addressed to Atty. Priscilla B. Valer of Romulo Mabanta Buenaventura Sayoc & De Los Angeles.

⁷ SEC Opinion No. 06-36 dated 21 September 2006 addressed to Atty. Tadeo F. Hilado of Angara Abello Concepcion Regala & Cruz Law Offices.

⁸ SEC-OGC Opinion No. 18-07 dated 28 November 2007 addressed to Mr. Rafael C. Bueno, Jr.

⁹ SEC-OGC Opinion No. 08-14 dated 2 June 2008 addressed to Atty. Demosthenes B. Donato of Donato Zarate Rodriguez.

Under the doctrine of equality of shares, in the absence of any provision in the articles of incorporation and in the certificates of stock to the contrary, all stocks, regardless of their nomenclature, enjoy the same rights and privileges, including general voting rights, and subject to the same liabilities.¹⁰ Thus, since you did not state the specific rights, privileges and liabilities, if any, that would attach to a common share and to a preferred share under the proposed reclassification, both classes of shares shall be considered herein as voting stocks.

Using the planned manner of implementation of the proposed reclassification, the outstanding capital stock of Credit 24 would be one thousand eight hundred twenty-nine (1,829) shares, broken down as follows:

<i>Number and Type of Share</i>	<i>Source/How Issued</i>
420 Class B shares	From the conversion of the present shareholdings of the current stockholders
675 Class B shares	From the conversion into equity of the debts or advances from the current shareholders amounting to Sixteen Million Eight Hundred Seventy-Eight Thousand One Hundred Fifty-Four Pesos and Forty-Nine Centavos (Php 16,878,154.49)
734 Class A shares	To be issued pursuant to new investments
Total: 1,829 shares	

We arrived at the figure "675 Class B shares" in Row 2 by dividing the total amount of advances to be converted to Class B shares, i.e. Sixteen Million Eight Hundred Seventy-Eight Thousand One Hundred Fifty-Four Pesos and Forty-Nine Centavos (Php 16,878,154.49) by the par value of one Class B share, i.e. Twenty-Five Thousand Pesos (Php 25,000.00). In this connection, please take note of the treatment under the law of fractional shares for voting purposes.

Forty percent (40%) of the total outstanding voting stock of one thousand eight hundred twenty-nine (1,829) shares is seven hundred thirty-two (732)¹¹ shares. Since Class A shares under the proposed reclassification will be issued only to Filipinos, the seven hundred thirty-four (734) Class A shares in Row 3 would be more than enough to meet the requirement under the FCA.

You also seek confirmation that in the proposed structure, the amount of dividends that may be declared and paid to Class A shareholders and Class B shareholders may vary, depending on the par value of shares held.

¹⁰ Section 6, paragraph 5, of the Corporation Code; De Leon, Hector S. The Corporation Code of the Philippines Annotated, 2002 Edition, pp .67-68, citing SEC Opinion, 16 July 1996, and SEC Opinion, 11 August 1988.

¹¹ Rounded off from 731.6.

We note, however, that while there would now be common and preferred shares, you failed to mention which between, and/or to what extent of, the Class A shares and Class B shares would be common on one hand and preferred on the other. At any rate, and corollary to the doctrine of equality of shares adverted to above, the dividends may vary, as long as such benefits, privileges and all other factors relative to distribution of dividends that may bring about such variance(s) are contained in the articles of incorporation and the certificates of stock and would not prejudice existing stockholders.

The entire opinion is based solely on the facts disclosed in the queries and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases.¹²

Please be guided accordingly.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel

¹² Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.

Table A

Present Classification of Shares

Present	Par Value (Php)	Number of Shares	Amount (Php)	Total %	Outstanding Capital Stock
Unsubscribed	100.00	295,000	29,500,000.00	73.75%	
Foreigner	100.00	31,500	3,150,000.00	7.88%	30.00%
Foreigner	100.00	31,500	3,150,000.00	7.88%	30.00%
Filipino	100.00	41,998	4,199,800.00	10.50%	40.00%
Filipino	100.00	1	100.00	0.00%	0.00%
Filipino	100.00	1	100.00	0.00%	0.00%
TOTAL		400,000	40,000,000.00	100%	100%

Table B

Proposed Reclassification of Shares

CLASS	PAR VALUE (Php)	NUMBER OF SHARES	AMOUNT (Php)	TOTAL %	OUTSTANDING CAPITAL STOCK
Class A	200.00	2,880	576,000.00	40.00%	0.53%
Class B	25,000.00	4,320	108,000,000.00	60.00%	99.47%
TOTAL		7,200	108,576,000.00	100.00%	100.00%