



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

OFFICE OF THE GENERAL COUNSEL

25 February 2010

SEC-OGC Opinion No. 09-21-A
Redemption of Preferred
Shares; Treasury shares

KEPCO PHILIPPINES CORPORATION

18th Floor, Citibank Tower
8741 Paseo De Roxas
Makati City 1227

Attention: Atty. Ricardo A. Galano III
Corporate Counsel

Gentlemen:

This refers to your letter dated 02 September 2009 requesting an amendment of SEC-OGC Opinion No. 09-21 dated 13 August 2009, which states in part as follows:

"Treasury shares can still be reissued or sold by a corporation. It is only upon retirement of these treasury shares that they lose their status, either as outstanding or unissued authorized capital stock, and the number of authorized shares of capital stock of the corporation is reduced accordingly. As the Acting General Accountant of this Commission opined, the redemption of the preferred shares will not result in the decrease of the subscribed capital stock since the purchased shares remain as subscribed capital stock.¹

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Based on the evaluation of the 2007 Audited Financial Statements of KEPHILCO, the following are the findings of the Office of the General Accountant of the Commission:

1. It appears that the redemption of the P127,875,000 worth of preferred shares has already been made. The issued capital stock per the *Statement of Changes in Equity* as of December 31, 2007, only pertains to the 103,825,000 common shares;
2. The redemption was not made in accordance with the KEPHILCO's Articles of Incorporation xxx due to the following findings:

¹ SEC Opinion dated 25 June 1991 addressed to Mr. Jess G. Tabora.

- a. The P127,875,000 worth of preferred shares was eliminated from the issued capital stock, making it appear that the said shares were retired which is not consistent with the articles of KEPHILCO;
- b. There is no recognition of the total cost of treasury preferred shares as a deduction from the equity; xxx"

The opinion then concluded as follows:

"...[W]e could not confirm that the redemption of preferred shares issued by KEPHILCO did not result in the partial liquidation of the corporation. The lack of recognition of treasury shares in the equity of KEPHILCO deviates from the requirement that would allow us to opine otherwise."

In your letter, you claimed that KEPCO Philippines Corporation ("KEPHILCO") had not yet undertaken the redemption process of the preferred shares, and as such no such recognition of the treasury shares can be indicated in the Audited Financial Statements of KEPHILCO. The redeemable preferred shares were, however, classified as a liability under the company's Audited Financial Statement.

To clarify certain matters, the 02 September 2009 letter was referred to the Office of the General Accountant ("OGA") of the Commission. During the conference with KEPHILCO on 06 November 2009, KEPHILCO undertook to submit a copy of a board resolution stating that a fund has been appropriated to cover the redemption of the 127,875,000 preferred shares at par value of P10.00 per share or a total of Php1.279 Billion.

In compliance with its undertaking, KEPHILCO submitted a letter dated 26 November 2009 together with a Secretary's Certificate notarized on 25 November 2009. The OGA noticed, however, that the amount appropriated is more than the Php1.279 Billion worth of preferred shares recognized in KEPHILCO's financial statements. KEPHILCO went on to explain that it has not yet determined the actual redemption price of the redeemable preferred shares, and as such deemed it proper to allot a higher amount.

Having complied with the requirements of redeeming preferred shares, this Office is of the opinion that the redemption of the preferred shares by KEPCO H.K., which would be classified as treasury shares, would not result in the partial liquidation of KEPHILCO. Treasury shares are regarded as property acquired by the corporation which may be reissued or sold by the corporation at a price to be fixed by the Board of Directors.² At the same time, the fact that KEPHILCO diverted the purpose of the remaining 2005 and a portion of the 2006 appropriation of retained earnings to expenses that may be incurred in the redemption of preferred shares

² Corporation Code of the Philippines No. 1, Rules Governing Redeemable and Treasury Shares (1982).

should be disclosed in the 2009 Audited Financial Statements of the company pursuant to Philippine Accounting Standard No. 1, par. 76-B.³

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.⁴ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.



VERNETTE G. UMALI-PACO
General Counsel

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³ Memorandum from the OGA dated 02 February 2010.

⁴S.E.C. Memorandum Circular No. 15 dated 16 December 2003.