



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

OFFICE OF THE GENERAL COUNSEL

23 October 2009

SEC OGC Opinion No. 09-28
For: Lending Company Regulation;
Foreign equity threshold

DEGUZMAN CELIS & DIONISIO LAW OFFICES
Suite C, 15th Floor, Strata 2000 Building
F. Ortigas Jr. Road, Ortigas Center
1605 Pasig City

Attention: Atty. Jose Paolo I. Brillantes

Gentlemen:

This refers to your letter dated 27 July 2009 requesting confirmation that:

1. The restriction or prohibition imposed by Section 6 of R.A. No. 9474 also known as "Lending Company Regulation Act of 2007" is limited only to the increase in excess of 49% in foreign ownership of voting stocks in lending companies; and
2. The restriction or limitation on foreign ownership of stocks in lending companies is limited only to voting stocks of the lending companies.

You stated in your letter that:

1. PAGASA Philippines Lending Company, Inc. ("PPLCI") is a lending company organized and existing under and by virtue of the laws of the Philippines.
2. At the time of its incorporation on 07 June 2007, PPLCI was 100% foreign owned, with CMI, a foreign corporation registered in Mauritius, owning 100% of the issued and outstanding common stocks of PPLCI.

3. Subsequently, Republic Act No. 9474 otherwise known as the "Lending Company Regulation Act of 2007" was approved by the Philippine Congress on 22 May 2007.¹
4. On 18 July 2008, the Board of Directors and Stockholders of PPLCI amended its Articles of Incorporation increasing the authorized capital stock to Php430,000,000.00 divided into 100,000 common shares and 4,200,000 preferred redeemable shares, both with par value of Php100.00 per share.
5. Out of the capital stock of PPLCI, CMI currently owns 92,495 common shares and 1,050,000 preferred redeemable shares. Holders of common shares are granted voting rights while the preferred shareholders are not.
6. Other foreign entities wish to invest in PPLCI by either subscribing to, or acquiring interests, whether by legal or beneficial title, over the common voting shares or non-voting preferred redeemable shares of PPLCI. But before you undertake the proposed transaction, you would like to know if the same is allowed under R.A. No. 9474.

Thus, the instant query.

Anent your first request, this Office is of the opinion that the restriction or prohibition imposed by Section 6 of R.A. No. 9474 is limited only to the increase in foreign ownership of voting stock of lending companies existing prior to the effectivity of R.A. No. 9474, whose foreign owned voting stock is in excess of 49%. Such foreign lending companies, however, may opt for a reduction of the percentage of foreign ownership. Once reduced, it may no longer be increased.

R.A. No. 9474, Section 6, last paragraph provides:

"Sec. 6. Citizenship Requirements. – xxx The percentage of foreign-owned voting stocks in any lending company shall be determined by the citizenship of the individual stockholders. In the case of corporations owning shares in a lending company, the citizenship of the individual owners of voting stock in such corporations shall be the basis in the computation of the percentage." (Underscoring supplied)

The Articles of Incorporation of PPLCI reveals that CMI is a foreign corporation. It fails to disclose, however, the citizenship of the individual stockholders of CMI. Assuming, however, that CMI is a foreign corporation whose individual stockholders are foreign as well, then PPLCI may be considered 100% foreign-owned. In that case, there is no increase in the percentage of foreign ownership should CMI decide to subscribe to the unissued common voting stock of PPLCI or to any future increase thereto. Thus, it cannot be said that there is an

¹ R.A. No. 9474 was published in the Official Gazette, 24 September 2007, Vol. 103, Issue No. 39, p. 6121.

increase of percentage of foreign ownership in the event CMI decides to transfer, sell and/or assign part or all of its rights, interests or beneficial ownership over its common voting stock to another foreign entity.

With regard to the second item in your query, we confirm that the restriction on foreign ownership of stocks in lending companies is limited only to voting stocks of the lending companies. This is expressly stated in Section 6 of R.A. No. 9474, the pertinent portion of which is quoted as follows:

"xxx In the case of corporations owning shares in a lending company, the citizenship of the individual owners of **voting stock** in such corporations shall be the basis in the computation of the percentage xxx" (Emphasis supplied).

The Amended Articles of Incorporation of PPLCI also states that:

"c. The holders of Preferred Shares shall be entitled to pre-emptive rights of stockholders. However, the holders thereof shall *not be entitled to any voting rights* in the Company except those matters expressly specified by law."² (Italics supplied).

From the foregoing, the restriction on the increase of percentage of foreign ownership finds no application in the case of CMI insofar as non-voting preferred redeemable shares are concerned. Consequently, other foreign entity may legally subscribe to and own the remaining unissued non-voting preferred redeemable shares of PPLCI or any future increase of the non-voting stock.

In sum, (1) the restriction or prohibition imposed by Section 6 of R.A. No. 9474 is limited only to the increase in excess of 49% in foreign ownership of voting stocks in lending companies; and (2) the restriction or limitation on foreign ownership of stocks in lending companies is limited only to voting stocks of the lending companies.

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.³ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.



VERNETTE G. UMALI-PACO
General Counsel

² See Amended Articles of Incorporation of PPLCI, SEVENTH Article.

³ S.E.C Memorandum Circular No. 15 dated 16 December 2003.

Copy furnished:

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