



Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

17 December 2010

SEC-OGC Opinion No. 10-33
Re: Securities; Exemption From
Section 8 of the Securities
Regulation Code

Mr. Teodoro G. Rolluqui
President
Pinoy Migrant Workers Holdings Corporation
707-5 Sta. Ana Street, Plainview
Mandaluyong City, Metro Manila

Sir:

This refers to your query dated 14 May 2008 on whether or not Pinoy Migrant Workers Holdings Corporation ("PMWHC") should register its securities with the Commission as required by Section 8 of the Securities Regulation Code ("SRC").¹ As you have written, the Commission's reply will be your reference "regarding the sale or issuance of stock certificates to existing incorporators and new investors whether at price of par value or above."

PMWHC was incorporated on 18 January 2008, with Registration No. CS200800580. Its primary purpose is:

"To acquire, hold, sell, exchange, deal and invest in the stocks, bonds, or securities of any government or any subdivision thereof or any public or private corporation, and in real or personal property of all kinds in the same manner and to the same extent as natural person, might could or would do, to exercise all the rights, powers and privileges [sic] or ownership, including the right to vote therein, or consent in respect thereof, for any and all purposes without however managing securities, portfolio or funds of the managed entity or firm nor the corporation shall act as stock broker or dealer in securities."²

The authorized capital stock of PMWHC is four million two hundred thousand pesos (Php 4.2M), divided into forty two thousand (42,000) common shares with a par value of one hundred pesos (Php 100.00) per share.

¹ Republic Act 8799 (2000).

² Reproduced as it appears in the Articles of Incorporation of PMWHC.

The PMWHC stock certificates are "securities" within the meaning of Section 3.1 of the SRC, which reads:

"SEC. 3. *Definition of Terms.* –

3.1. "*Securities*" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

- a) **Shares of stock**, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;"

xxx" (Emphasis supplied)

In general, Section 8 of the SRC requires the registration of securities:

"SEC. 8. *Requirement of Registration of Securities.* 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

xxx"

But there are securities exempt from registration:

"SEC. 9. *Exempt Securities.* 9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

- a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.
- b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: Provided, That the Commission may require compliance with the form and content of disclosures the Commission may prescribe.
- c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.
- d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.
- e) Any security issued by a bank except its own shares of stock.

xxx"

In view of the foregoing, it appears that the PMWHC stock certificates are not exempt securities. Nevertheless, the SRC provides for exempt transactions in which case the requirement of registration under subsection 8.1 of the SRC does not apply:

"SEC. 10. *Exempt Transactions.* 10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

b) By or for the account of a pledge holder, or mortgagee or any other similar lien holder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this Code, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt.

c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

d) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.

e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: *Provided*, That the security so surrendered has been registered under this Code or was, when sold, exempt from the provisions of this Code, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Code. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

h) Broker's transactions, executed upon customer's orders, on any registered Exchange or other trading market.

i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

j) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.

l) The sale of securities to any number of the following qualified buyers:

(i) Bank;

(ii) Registered investment house;

(iii) Insurance company;

(iv) Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the *Bangko Sentral* to engage in trust functions;

(v) Investment company; or

(vi) Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

In addition to the enumeration of qualified buyers under Section 10.1(l) above, any sale or offer for sale or distribution of securities to qualified buyers⁴ as

⁴ SECTION 1. A "qualified individual buyer" shall be a natural person who, at the time of his or her registration with a Self Regulatory Organization, or such other entities that the Commission may authorize to make the registration, possesses the following qualifications:

a) Has a minimum annual gross income of Twenty Five Million Pesos (PhP25,000,000) for at least two years prior to registration; or a total portfolio investment in securities registered with the Commission of at least Ten Million Pesos (PhP10,000,000); or a personal net worth of not less than Thirty Million Pesos (PhP30,000,000);

AND

defined in the Commission's Memorandum Circular No. 6, Series of 2007 shall likewise be exempt from the registration requirements of the SRC.⁵

Thus, if PMWHC engages in the sale of its stock certificates in any manner, which is in the nature of transactions enumerated above, there will be no need to register the PMWHC stock certificates with the Commission.

In sum, before PMWHC issues or sells its shares of stock, it should comply with the registration requirements of Section 8 of the SRC, unless said sale or issuance thereof is an exempt transaction under Section 10 of the SRC except Sec. 10.1 (i) of the SRC which needs registration of the securities if such subscription entails expenses. Note however, that notice of exemption on SEC Form 10-1 is required in an offering or distribution of securities under Section 10.1 (k) and (1) of the SRC.⁶

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. 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.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel

b) Has been engaged in securities trading, in his personal capacity or through a fund manager, for a period of one year; or held for at least two years a position of responsibility in any professional or business entity that requires knowledge or expertise in securities trading, such as, legal consultant; financial adviser; sales person or associated person of a broker-dealer; or finance, treasury or trust officer of a bank or other executive positions with related responsibilities.

SECTION 2. A juridical person shall be considered a "qualified institutional buyer" if it possesses any of the following qualifications at the time of its registration in the same manner described above:

- a) Has a minimum annual gross income of at least One Hundred Million Pesos (Php100,000,000) for at least two years prior to registration;
- b) A total portfolio investment in securities registered with the Commission of at least Sixty Million Pesos (Php60,000,000);
- c) A net worth of not less than One Hundred Million (Php100,000,000).

⁵ Memorandum dated 22 September 2008 of Director Justina F. Callangan of the Corporation Finance Department to the Office of the General Counsel of the Commission.

⁶ Amended Implementing Rules and Regulations of the SRC, Rule 10.1.