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

OFFICE OF THE GENERAL COUNSEL

19 April 2011

SEC-OGC Opinion No. 11-24
Assignment of real property as consideration for stock subscription

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ATTENTION: ATTYS. ALMA GRACIA J. SANTOS and MARICON Z. MARALIT

Mesdames:

This refers to your letter dated 19 January 2011, written on behalf of your client Brown Resources Corporation concerning confirmation documents from the SEC that the Bureau of Internal Revenue requires for the process of transferring a land title from one corporation to another, in this case from A Brown Company, Inc. *("ABCI")* to Brown Resources Corporation *("BRC")*, formerly Brown Apartelle Corporation *("BAC")*.

Your letter states that on 27 September 1999, ABCI executed a Deed of Assignment transferring condominium units to BAC, for and in consideration of its subscription of twenty two million five hundred ninety nine thousand six hundred (22,599,600) shares of stock of BAC.

It was the intention of both parties to include in the transfer the parcel of land on which the condominium building stood, however, the Deed of Assignment only transferred all condominium units in Antonia Center, 94 Kamuning Road, Quezon City. The parcel of land covered by TCT No. 100816 registered under the name of ABCI was not included in the Deed of Assignment. The valuation however of the properties assigned in the Deed of Assignment also included the value of the parcel of land on which the condominium building is erected.

Thus, only the titles to the condominium units were transferred from ABCI to BAC. Because of its non-inclusion in the Deed of Assignment, the title to the land was not transferred.

BAC changed its name to BRC in 2002. Afterwards, BRC and ABCI executed a Memorandum of Clarification in 2008 to rectify the error in the Deed of Assignment. The Memorandum of Clarification stated that it was the intention of both parties to include the parcel of land covered by TCT No. 100816 as one of the properties in exchange for BAC stocks.

In a letter dated 22 March 2011, we requested clarification regarding the ownership of the subject parcel of land, and whether some units in the condominium building are owned by other entities, because based on records, it appears that some units in Antonia Center are owned by East Pacific Investors Corp., Geoex Farms, Inc., and Geoex Holding Corporation.

You stated in your response dated 28 March 2011 that the parcel of land covered by TCT No. 100816 is registered under the name of ABCI. You also clarified that other than ABCI, some units were, indeed, owned by East Pacific Investors Corp., Geoex Farms, Inc., and Geoex Holding Corp., and that the ownership of these four corporations comprised 100% of the units in Antonia Center. You also stated that all four of these corporations have executed their respective Deeds of Assignment dated 27 September 1999 in favor of BAC. However, these Deeds of Assignment all contained the error omitting the parcel of land covered by TCT No. 100816, even though the valuation of the properties assigned in the Deeds of Assignment included the value of their interest over the parcel of land.

East Pacific Investors Corp. and Geoex Farms, Inc. merged with ABCI in 1999. The Memorandum of Clarification executed in 2002 was only between BRC and ABCI. No such Memorandum of Clarification exists regarding the interests of Geoex Holding Corp., which, according to your letter, has merged with PBJ Corporation, with the latter as the surviving entity.

It is our opinion that there should be no legal impediment to the assignment of the parcel of land covered by TCT No. 100816 from ABCI to BRC, **provided** that a similar Memorandum of Clarification be executed between BRC and PBJ Corporation.

The Civil Code allows for reformation of contracts when the instrument does not reflect the true intention of the parties.[1] Specifically for instances of mutual mistake like in the instant case, Article 1361 of the Civil Code is applicable.[2]

The Supreme Court has stated in *Ernesto Veluz vs. Socorro Veluz, et al.* that "[r]eformation of instrument presupposes a valid, existing contract, in which there had been a meeting of the minds of the parties but the instrument drawn up and

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[1] Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

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[2] Art. 1361. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.

signed by them does not correctly express the terms of their agreement."[3] This case, citing *Conde, et al. vs. Cuenca and Malaga*[4], also defined reformation as "that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when some error or mistake has been committed." (53 C.J. 906, cited in Padilla's Civil Code Annotated, Vol. II, p. 431.1)"

In the Conde case, the Supreme Court sets a ten-year prescription period for the reformation of instruments. It held: "As an action for reformation, plaintiff had 10 years within which to bring it from the time the right of action accrued."[5]

In the case at bar, the Deed of Assignment was executed on 27 September 1999. The Memorandum of Clarification, which intended to correct the error in the 1999 Deed, was entered into on 14 February 2008, well within the prescribed period within which to reform an instrument.

As to the confirmation you are seeking from the Commission, SEC records show that BRC was registered on 10 March 2000 with authorized capital stock of fifty million pesos (P50,000,000), with subscribed and paid-up capital of forty million eight hundred ninety nine thousand pesos (P40,899,000).

Based on records with the Commission, one of the primary considerations for the approval of the application of BAC/BRC for registration with the Commission was an Examiners and Appraisers Department memorandum dated 14 December 1999, written by Mr. Ruperto del Rosario, disclosing that:

"1. The paid-up capital was in three hundred pesos (P300) in cash and forty million eight hundred ninety eight thousand seven hundred pesos (P40,898,700) via assignment of the Antonia Center condominium units;

2. The transfer value of forty million eight hundred ninety eight thousand seven hundred pesos (P40,898,700), that happens to be the zonal value, may be considered fair and reasonable. This transfer value was computed by multiplying the zonal value of P30,000/square meter by the total area of the condominium units, which is 1363.29 square meters.

If it was, indeed, the intention of the parties to include the lot on which the condominium building is erected, then the transfer value of forty million eight hundred ninety eight thousand seven hundred pesos (P40,898,700) indeed includes the value of the land. Thus, the transfer of the parcel of land covered by TCT No. 100816 will not result in the issuance of additional shares."[6]

This Opinion is based solely on the facts disclosed in the query 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

[3] G.R. No. L-23261, 31 July 1968.
[4] G. R. No. L-9405, 31 July 1956.
[5] *Ibid.*
[6] Memorandum from the Company Registration and Monitoring Department dated 08 March 2011.

Commission in other cases or upon the courts. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VESPER JULIUS B. GARCIA
Officer-in-Charge