OFFICE OF THE GENERAL COUNSEL

15 January 2026

SEC-OGC Opinion No. 26-02
Re: Conversion of Common Shares into Redeemable Preferred Shares; Determination of Redemption Price

SYCIP GORRES VELAYO & CO. (SGV)
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Attention: **Mr. Gerardo C. Caiga**
Senior Director

Dear Mr. Caiga:

This refers to your email dated 30 October 2025 requesting for opinion on the conversion of common shares with related additional paid-in capital (APIC) to redeemable preferred shares (RPS) with APIC and the determination of the redemption price.

In your letter, you provided specific scenarios on the subject of your request, to wit:

I. Conversion of common shares with related APIC to RPS

Company A invested in Company B ₱500,000 for 50,000 common shares with par value of ₱10/share, and ₱1,000,000 APIC, issued at the original issue price of the common shares (issue price per share is ₱30/share). All came from the authorized capital stock.

Company C invested in Company B ₱500,000 for 50,000 common shares (no APIC).

Company B subsequently converted the same ₱500,000 par value common shares (50,000 shares) into 50,000 RPS with a par value per share of ₱10/share (total par value of the RPS is ₱500,000), while retaining the same ₱1,000,000 APIC balance in equity.

Your queries are:

1. When Company B converts the 50,000 common shares into 50,000 RPS, may the entire investment amount (₱500,000 par + ₱1,000,000 APIC -Common) be transferred together to the RPS accounts (RPS par value of ₱500,000 and APIC-RPS of ₱1,000,000)?
2. If yes, what procedural and documentary requirements (e.g., amendment of Articles of Incorporation (AOI), board and stockholders' resolution, updated capital schedule, or creditor clearance) must be filed to ensure compliance with the Trust Fund Doctrine and SEC procedural rules on capital restructuring? and
3. If the reclassification of APIC is not permitted, should Company B instead retain the ₱1,000,000 under "APIC-Common", even if the underlying common shares have already been converted into RPS?

Section 6 of the Revised Corporation Code of the Philippines (RCC)[1] provides that stock corporations are authorized to divide shares into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges, or restrictions as may be stated in the AOI. The classes and number of shares which a corporation shall issue are first determined by the incorporators as stated in the AOI filed with the Commission. After the corporation comes into existence, they may be altered by the board of directors and stockholders by amending the AOI.[2]

The Commission opined that **conversion of shares can only be effected if the shares have a convertibility feature expressly provided for in the corporation's AOI.** Thus, in the absence of an express provision in the AOI as to their convertibility feature, preferred shares cannot be converted into common shares. Further, although the shares may have a convertible feature in the AOI, their conversion is not automatic. **An amendment of the AOI is required to formalize the conversion which must not result in the watering of stock or issuance of stock in excess of the authorized capital stock of the corporation.**[3]

If the conversion or reclassification of shares has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, any stockholder of a corporation shall have the right to dissent and demand payment for the fair value of the shares. [4]

Based on the foregoing, the 50,000 common shares, together with the related APIC, may be reclassified into APIC-RPS as the reclassification does not alter APIC's nature as an investment of shareholders in excess of the par value and is not attributable to any specific shareholder. Regardless of the classification, the APIC remains part of the corporation's capital, which cannot be distributed to shareholders unless otherwise provided by law.

The above position is subject to the condition that the reclassification affects equity accounts only (e.g., the RPS feature is redeemable at the option of the issuer), because in such a case, the *trust fund doctrine* is not violated as it does not result in the distribution of corporate property and the total contributed capital of the corporation remains intact. On the other hand, if the RPS constitutes a financial liability (e.g., the option to redeem is with the holder), the *trust fund doctrine* may be violated because the issuer has an obligation to transfer financial assets to the holder of the share.

The Supreme Court in *Halley vs. Printwell, Inc.*[5], explained the trust fund doctrine in this wise:

> "The trust fund doctrine enunciates a — . . . rule **that property of a corporation is a trust fund for the payment of creditors**, but such property can be called a trust fund 'only by way of analogy or metaphor.' As between the corporation itself and its creditors it is a simple debtor, and as between its creditors and stockholders its assets are in equity a fund for the payment of its debts.
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> The trust fund doctrine, first enunciated in the *American case of Wood vs. Dummer*, was adopted in our jurisdiction in *Philippine Trust Co. vs. Rivera*, where this Court declared that:
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> It is an established doctrine that **subscriptions to the capital of corporation constitute a fund to which creditors have a right to look for satisfaction of their claims** and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. *(Velasco vs. Poizat, 37 Phil., 802)*
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> We clarify that the trust fund doctrine is not limited to reaching the stockholder's unpaid subscriptions. **The scope of the doctrine when the corporation is insolvent encompasses not only the capital stock, but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts.** All assets and property belonging to the corporation held in trust for the benefit of creditors that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of its claim."

[1] Republic Act (R.A) No. 11232
[2] SEC-OGC Opinion No.10-18 addressed to Nolledo Hermosura & Uriarte-Tan dated 12 April 2010.
[3] SEC-OGC Opinion No. 22-17 addressed to Padernal and Paras Law Offices dated 23 November 2022.
[4] *Ibid.*
[5] G.R. No. 157549, May 30, 2011, 664 Phil. 361-389.

Further, subject to the foregoing, the conversion of APIC-Common to APIC-RPS is essential to avoid confusion between the two different types of stock and the capital raised from each in the presentation in the financial statements, where accurate financial reporting, stockholders' information, and proper valuation, among others, are required.

Lastly, it must be noted that the conversion of shares is subject to the approval of the Commission's Financial Analysis and Audit Department (FAAD), and may only be effected upon compliance with all procedural requirements, among which are the following:

1. 1st Amendment of the AOI to provide for "convertibility feature" of common shares, in case it has none; and
2. 2nd Amendment of the AOI to formalize the conversion which must not result in the watering of stock or issuance of stock in excess of the authorized capital stock of the corporation.

You may coordinate with FAAD for the other procedural and documentary requirements or refer to the 2025 Citizen's Charter of the Commission.

II. Determination of Redemption Price

Company B intends to redeem the RPS held by Company A following the conversion at the original issue price of ₱30/share (₱10/par value per share and ₱20/APIC per share of ₱500,000 par value and ₱1,000,000 APIC-Common).

Your queries are:

1. May Company B set the redemption price of the RPS at their original issue price (₱500,000 + ₱1,000,000 APIC -Common), if such price basis is expressly authorized in the AOI? and
2. Alternatively, may Company B redeem the shares at a lower amount than their original issue price, if expressly allowed in the AOI, provided that such redemption does not impair creditors' rights and remains consistent with the Trust Fund Doctrine and Section 40 of the RCC?

Section 40 of the RCC states the *general rule* that there must be unrestricted retained earnings before a corporation can redeem, repurchase, or reacquire its own shares, to wit:

> "SECTION 40. Power to Acquire Own Shares. — **Provided that the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired, a stock corporation shall have the power to purchase or acquires its own shares for a legitimate corporate purpose or purposes**, including the following cases:
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> (a) To eliminate fractional shares arising out of stock dividends;
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> (b) To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and
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> (c) To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code." *(Emphasis supplied)*

An exception to the general rule provided in the afore-quoted provision is found in Section 8 of the RCC which defines and provides for the issuance of ***redeemable shares.*** *These are shares that may be issued by the corporation when expressly provided in the AOI and which may be purchased by the corporation from the holders thereof upon the expiration of a fixed period,* regardless of the existence of unrestricted retained earnings in the books of the corporation, to wit:

> **"Section 8. Redeemable shares. — Redeemable shares may be issued by the corporation when expressly provided in the articles of incorporation. They are shares which may be purchased by the corporation from the holders of such shares upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation,** and upon such other terms and conditions stated in the articles of incorporation and the certificate of stock representing said shares, subject to the rules and regulations issued by the Commission."

Redeemable shares are usually preferred shares, which by their terms are redeemable at a fixed date, or at the option of either issuing corporation, or the stockholder, or both at a certain redemption price. A redemption by the corporation of its stock is, in a sense, a repurchase of it for cancellation. The present Code allows redemption of shares even if there are no unrestricted retained earnings on the books of the corporation. This is a new provision which in effect qualifies the general rule that the corporation cannot purchase its own shares except out of current [unrestricted] retained earnings. However, while redeemable shares may be redeemed regardless of the existence of unrestricted retained earnings, ***this is subject to the condition that the corporation has, after such redemption, assets in its books to cover debts and liabilities inclusive of capital stock.*** Redemption, therefore, may not be made where the corporation is insolvent or if such redemption will cause insolvency or inability of the corporation to meet its debts as they mature. [6]

The condition that the corporation must have, after such redemption, assets in its books to cover debts and liabilities, inclusive of capital stock, is consistent with the *trust fund doctrine*.[7]

Based on the foregoing, we confirm that the RPS may be redeemed at or even below the original issue price, regardless of the existence of unrestricted retained earnings in the books of the corporation, provided that the corporation must have, after such redemption, sufficient assets to cover its debts and liabilities, inclusive of capital stock.[8]

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances, and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[9] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C. Padilla
General Counsel

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[6] *Republic Planters Bank, Inc. vs. Hon. Enrique Agana Sr.*, G.R. No. 51765, 03 March 1997; Section 5.4, of the SEC Rules Governing Redeemable and Treasury Rules Shares (SEC Rules) issued by the Commission on 26 April 1982 provides that a corporation that has issued redeemable shares shall set up and maintain a sinking fund to be deposited with a trustee bank which shall not be invested in risky and speculative ventures. A sinking fund refers to a fund set up by a corporation where cash is gradually set aside in order to accumulate the amount necessary to meet the redemption price of redeemable shares at specified dates in the future.
[7] Supra Note 5.
[8] Section 5 (5), SEC Rules.
[9] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.