Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

26 November 2024

SEC OGC Opinion No. 24-39
Re: Definition and Composition of Paid-up Capital under the Retail Trade Liberalization Act of 2000, As Amended

SIGUION REYNA MONTECILLO & ONGSIAKO
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Makati City 1226, Philippines

Attention: **ATTYS. Nicanor N. Padilla, Elita Joy G. Pinga-Quicho, and Abigail V. Go.**

Re: **Request for Opinion**

Dear Attorneys:

This refers to your letter[1] requesting, on behalf of Electrolux Philippines Inc. ("Electrolux"), for an opinion on whether the definition of "paid-up capital" under Category B, Section 5 of Republic Act ("R.A.") No. 8762, otherwise known as the "Retail Trade Liberalization Act of 2000 ('2000 RTLA')," as amended,[2] includes additional paid-in capital ("APIC").

As disclosed, the Board of Investments ("BOI") issued Electrolux a Certificate of Compliance with Pre-qualification Requirements No. 001-2013 on 29 January 2013 (the "Certificate") for the purpose of allowing it to engage in retail trade. The Certificate was issued in the implementation of the 2000 RTLA[3] and its Implementing Rules and Regulations ("2000 IRR").[4]

Having secured the Certificate, Electrolux now intends to proceed before the Commission's Company Registration and Monitoring Department to file an application to amend its Articles of Incorporation to allow retail activities in its primary purpose.

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[1] Dated 28 February 2014.
[2] Amended by R.A. No. 11595, 10 December 2021. Hereafter, the "2021 RTLA."
[3] Section 8. *Qualification of Foreign Retailers.* - No foreign retailer shall be allowed to engage in retail trade in the Philippine unless all the following qualifications are met:

(a) A minimum of Two hundred million US dollars (US$200,000,000.00) net worth in its parent corporation for Categories B and C, and Fifty million US dollars (US$50,000,000.00) net worth in its parent corporation for category D;
(b) Retailing branches or franchises in operation anywhere around the word unless such retailer has at least one (1) store capitalized at a minimum of Twenty-five million US dollars (US$25,000,000.00);
(c) Five (5)-year track record in retailing; and
(d) Only nationals from, or juridical entities formed or incorporated in Countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.

The DTI is hereby authorized to pre-qualify all foreign retailers, subject to the provisions of this Act, before they are allowed to conduct business in the Philippines.

The DTI shall keep a record of Qualified foreign retailers who may, upon compliance with law, establish retail stores in the Philippines. It shall ensure that parent retail trading company of the foreign investor complies with the qualifications on capitalization and track record prescribed in this section. (Section 8, 2000 RTLA)

[4] Rule IV. Section 3. *Issuance of Certificate of Compliance with Prequalification* – The Board of Investments (BOI), shall issue, within ten (10) working days from submission of all necessary documents, after evaluation and verification, a Certification that the foreign retailer meets the qualifications prescribed by law. The Certificate of Compliance shall be valid for a period of one (1) year from the date of issuance. (2000 IRR)

The 2000 IRR was amended on 09 March 2022 and shall hereafter be referred to as the "2022 IRR."

According to you, Electrolux's General Information Sheet ("GIS") shows that it has an authorized capital stock of 102,000 shares, with a par value of ₱100.00 each, of which all 102,000 shares have been issued and fully paid. Also, Electrolux's Audited Financial Statements ("AFS") for the year ended 21 December 2012 reflects that it has a capital of ₱125,000,000.00, **inclusive of share premium**. The AFS reflects the amount of ₱10,200,000.00 as share capital and ₱114,800,000.00 as share premium.

You also stated that the share premium reflects the conversion of deposits for future capital subscriptions into APIC or paid-in surplus, pursuant to Bureau of Internal Revenue Ruling DA-560-04. The said ruling confirms that the share premium is in the nature of an additional price paid for shares of stock held by shareholders and is treated as an addition to and part of Electrolux's operating capital.

Relative thereto, it is your position that the definition of "paid-up capital" under the 2000 RTLA (*now* 2021 RTLA) should include share premium or the APIC for purposes of determining compliance with the minimum paid-up capital requirement thereto, considering that: (a) the par value, together with the share premium or APIC, comprises the **total investment** into the corporation, in accordance with the definition of paid-up capital in the 2000 IRR (*now* 2022 IRR) of the 2000 RTLA; and (b) the standard GIS prescribed by the Commission, on the page for "capital structure" and under the portion for "paid-up capital" contains two (2) **different** columns—both "par/stated value" and "amount," implying that share premium is considered as paid-up capital.

Hence, your request for confirmation of your position.

A. Definition of Paid-Up Capital under the relevant IRRs of the RTLA vis-a-vis the Corporation Code.

Section 5 of the 2000 RTLA provides paid-up capital requirements for foreign entities engaged in retail trade, viz:

> Section 5. *Foreign Equity Participation.* - Foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign owned single proprietorships, with the DTI, engage or invest in the retail trade business, subject to the following categories.
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> x x x
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> **Category B** - Enterprises with a **minimum paid-up capital** of the equivalent in Philippine Pesos of two million five hundred thousand US dollars (US$2,500,000.00) but less than Seven million five hundred thousand US dollars (US$7,500,000.00) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity.[5] x x x

For ease of reference, provided below is the definition of paid-up capital in both the 2000 IRR and the 2022 IRR, the latest IRR on the matter issued on 09 March 2022.

Section 1(l), 2000 IRR	Section 1(j), 2022 IRR
(l) "Paid-up Capital" shall mean the **total investment** in a business that has been **paid-in a corporation** or partnership or invested in a single proprietorship, which may be in cash or in property. It shall also refer to **assigned capital** in the case of foreign corporations.[6]	(j) "Paid-Up Capital" shall mean the **total investment** in a business that has been **paid-in** in a corporation; or **working capital** for partnerships and single proprietorships; or **assigned capital** in the case of foreign corporations or its branch offices.[7]

[5] Emphasis and underscoring supplied.
[6] Emphasis and underscoring supplied.
[7] Emphasis and underscoring supplied.

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On the other hand, Section 13 of the then Corporation Code ("Code")[8] provides for the paid-up capital requirement for all corporations, thus:

> Section 13. *Amount of capital stock to be subscribed and paid for the purposes of incorporation.* - At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and at least twenty-five (25%) per cent of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: *Provided*, however, That in no case shall the **paid-up capital** be less than five Thousand (₱5,000.00) pesos.[9]

The Supreme Court, in the case of *Central Textile Mills, Inc.., v. National Wages and Productivity Commission*,[10] discussed what constitutes paid-up capital, to wit:

> These payments cannot as yet be deemed part of petitioner's paid-up capital, technically speaking, because its capital stock has not yet been legally increased. Thus, its authorized capital stock in the year when exemption from WO No. NCR-02 was sought stood at P128,000,000.00, which was impaired by losses of nearly 50%. Such payments constitute deposits on future subscriptions, money which the corporation will hold in trust for the subscribers until it files a petition to increase its capitalization and a certificate of filing of increase of capital stock is approved and issued by the SEC.

The foregoing provision, however, was no longer reproduced in the Revised Corporation Code ("RCC") as the mandatory capitalization for corporations was removed for corporations in general, subject only to exceptions provided by law. While minimum paid-up capital is no longer required upon incorporation, the term and concept "paid-up capital" survives and is still applicable under the fourth (4th) paragraph of Section 37[11] of the RCC relative to increase of capital stock.

Thus, paid-up capital under the Code refers to that portion of the authorized capital stock which has been subscribed and paid.

On the other hand, APIC, previously referred to as additional paid-in capital surplus, had long gained a separate and distinct definition from paid-up capital.

In an Opinion dated April 15, 1991 issued to Mr. Salvador, Jr., the Commission opined that when shares with par value are sold, the proceeds should be credited to the capital stock accounts to the extent of the par value of the shares with any excess being reflected as additional paid-in capital.

In another Opinion dated April 23, 1991 issued to Bengzon Zarraga Narciso Cudala Pecson & Bengson, the Commission reiterated that "paid-in capital" should be construed as to include payments on subscriptions in excess of par.

From the foregoing, as to the definition of paid-up capital, there is a marked and fundamental difference between the 2000 and 2022 IRR of the RTLA, and the Code.

B. Legislative History of the RTLA and the Intent of the Legislature.

We note that the RTLA was enacted in 2000 with the end in view of attracting and promoting investments in the Philippines that would bring down the price of goods or services for Filipinos by means of allowing foreign participation and encouraging market competition, thus:

> Section 2. *Declaration of Policy.* - It is the policy of the State to promote consumer welfare in attracting promoting and welcoming productive investment that will bring down price for the Filipino consumer, create more

[8] Batasang Pambansa Blg. 68.
[9] Emphasis and underscoring supplied.
[10] G.R. No. 104102, 7 August 1996.
[11] x x x *Provided*, That the Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by a sworn statement of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty-five percent (25%) of the increase in capital stock has been subscribed and that at least twenty-five percent (25%) of the amount subscribed has been paid in actual cash to the corporation or that property, the valuation of which is equal to twenty-five percent (25%) of the subscription, has been transferred to the corporation. x x x

jobs, promote tourism, assist small manufacturers, stimulate economic growth and enable Philippine goods and services to become globally competitive through the liberalization of the retail trade sector.

Pursuant to this policy, the Philippine retail industry is hereby liberalized to encourage Filipino and competitive retail trade sector in the interest of empowering the Filipino consumer through lower prices, higher quality goods, better services and wider choices.[12]

In order to implement Section 5 of the 2000 RTLA, the Department of Trade and Industry ("DTI") collaborated and coordinated with the Commission, Bangko Sentral ng Pilipinas ("BSP") and the National Economic and Development Authority ("NEDA") to define paid-up capital in the 2000 IRR as the ***total investment*** in a corporation or partnership or invested in a single proprietorship, which may be made in cash or property.[13]

A cursory review of the 2000 RTLA and its 2000 IRR reveals the intent of the Legislature to invite investment and participation of foreign entities in retail trade. Accordingly, the interpretation and implementation of the law must then be consistent with the policies that are being set.[14]

To illustrate, the Explanatory Note to House Bill ("H.B.") No. 23, which subsequently became the 2000 RTLA, clearly demonstrates the aforementioned legislative intent as it encourages and bolsters economic competitiveness, thereby enhancing economic efficiency, all the while protecting Filipino businesses:

> "x x x ***The thrust of the Philippine government is to adopt economic reforms that are attuned to liberalization and economic competitiveness.*** It has pursued liberalization and deregulation in the areas of banking, power, foreign exchange, insurance, infrastructure, telecommunications and transportation. The outcome so far, has been quite encouraging. Competition has contributed to enhancing economic efficiency while benefitting the consumers in the form of better quality of goods and services at lower prices."[15]

Complementary to the foregoing, in the Session Proceedings of the Senate, then Senator Sergio R. Osmeña III, the principal sponsor of the Senate Bill ("S.B.") No. 153, highlighted the abovementioned intent of the 2000 RTLA and the effect that it sought to bring about, thus:

> SEN. OSMEÑA: x x x The passage of this bill, Mr. President, ***will therefore send strong signals to foreign investors that our country is serious about liberalizing our economy.*** It will also fulfill the commitment made by Pres. Joseph E. Estrada in the ASEAN Summit in Hanoi in November last year. ***The liberalization of the retail sector was the only bold measure that our President could offer.***[16]

Subsequently, during the Bicameral Conference Committee on the Disagreeing Provisions of the House and Senate Bills to amend the 2000 RTLA, the Committee reiterated the policy of the law when they lowered the barrier of entry for foreign equity participation even further:

> CHAIRPERSON TIANCO. x x x And the rationale behind that is all the foreign retailers when they come here, I don't think... of course, from the beginning testing muna sila ng market, puwedeng isang store. Pero, eventually, they'll want to put up more stores and we want that for more employment, more investments.
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> x x x x x x x x x
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> MR LOPEZ. x x x We believe that the medium can, more or less face competition, with due respect Boss Senator Migz. Kasi iyong ating mga franchise actually they are exporting already eh, the concepts as we know they're penetrating active markets. So we believe po that they are... ***and it will be good, the more investors, the more employment.*** x x x[17]

The legislative intent to encourage and allow foreign participation was made all the more certain when the 2000 RTLA and the 2000 IRR were amended in 2021 and 2022, respectively, and the Legislature ***made no change to the definition of paid-up capital*** within the context of the RTLA as the relevant IRRs

[12] Italics and underscoring supplied.
[13] Rule I, Section 1 (l) of the 2000 IRR.
[14] *Philippine International Trading Corporation v. Commission on Audit.* G.R. No. 183517, 22 June 2010.
[15] Emphasis and italics supplied.
[16] Emphasis and italics supplied.
[17] Emphasis and italics supplied.

still expressly and unequivocally state ***total investment***. Verily, in what is now Section 1 (j) of the 2022 IRR of the RTLA, paid-up capital still encapsulates the ***total investment*** in a business that has been paid-in in a corporation.

The Legislative Branch intended to lower the barrier for entry in retail trade as seen in Section 2 of the 2021 RTLA, where it ***lowered the minimum paid-up capital*** needed for foreign-owned retail enterprises and correspondingly ***removed the categories for pre-qualification***, *viz:*

> **Section 2.** Section 5 of Republic Act No. 8762 is hereby amended to read as follows:
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> "Section 5. *Foreign Equity Participation.* – Foreign-owned partnerships, associations, and corporations may, upon registration with the Securities and Exchange Commission (SEC), or in case of foreign-owned single proprietorships, upon registration with the Department of Trade and Industry (DTI), engage or invest in the retail trade business, under the following conditions:
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> "(a) A foreign retailer shall have a minimum paid-up capital of Twenty-five million pesos (₱25,000,000.00);
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> "(b) The foreign retailer's country of origin does not prohibit the entry of Filipino retailers; and
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> "(c) In the case of foreign retailers engaged in retail trade through more than one (1) physical store, the minimum investment per store must be at least Ten million pesos (₱10,000,000.00): *Provided,* That this requirement shall not apply to foreign investors and foreign retailers who are legitimately engaged in retail trade and were not required to comply with the minimum investment per store at the time of the effectivity of this Act: *Provided,* further, That proof of qualification to engage in retail trade under Republic Act No. 8762 and its implementing rules and regulations is submitted to the DTI."
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> "The foreign retailer shall be required to maintain in the Philippines at all times the paid-up capital of Twenty-five million pesos (₱25,000,000.00), unless the foreign retailer has notified the SEC or the DTI, whichever is appropriate, of its intention to repatriate its capital and cease operations in the Philippines. The actual use in Philippine operations of the minimum paid-up capital shall be monitored by the SEC, or by the DTI, whichever is appropriate.
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> "Failure to maintain in the Philippines the paid-up capital required in the preceding paragraph, prior to notification of the SEC or the DTI, whichever is appropriate, shall subject the foreign retailer to penalties or restrictions on any future trading activities/business in the Philippines.
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> "For purposes of registration with the SEC or DTI, the foreign retailer shall submit a certification from the Bangko Sentral ng Pilipinas (BSP) of the inward remittance of its capital investment, or in lieu thereof, such other proof certifying that is capital investment is deposited and maintained in a bank in the Philippines."

C. Interpretation of Paid-Up Capital under the context of the RTLA.

The Commission previously clarified[18] that paid-up capital as defined under Section 13 of the Code has a settled technical meaning, citing a 1997 case decided by the Supreme Court, *MSCI-Nacusip Local Chapter v. National Wages and Productivity Commission et al.,*[19] *viz*:

> By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P1 million and the total subscription amounts to ₱250,000.00, at least 25% of this amount, namely, ₱62,500.00 must be paid up per Section 13. The latter, ₱62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."
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> x x x x x x x x x
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> Not all funds or assets received by the corporation can be considered paid-up capital, for this term has a technical signification in Corporation Law. Such must form part of the authorized capital stock of the corporation, subscribed and then actually paid.

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[18] SEC-OGC Opinion No. 19-40 dated 16 September 2019, addressed to Mr. Jose Ma. L. Quiaoit.

[19] G.R. No. 125198, 03 March 1997 citing Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1984 ed., p.153.

On the other hand, as previously discussed, paid-in capital has its own meaning which was subsequently reiterated under Section 2 of SEC Memorandum Circular No. 11, Series of 2008,[20] to *wit:*

> *Paid-In Capital* - the amount of outstanding capital stock and additional paid-in capital or premium or premium over the par value of shares.

Pursuant to the rules on statutory construction, words that have been used in a technical sense must be interpreted according to the meaning which has been previously used.[21] ***An exception to this is if there is a qualification or intention to the contrary by the Legislature.***[22]

Here, the 2000 and 2021 RTLA are both bereft of any definition on paid-up capital. It is only in the 2000 IRR (and subsequently in the 2022 IRR) where there exists a definition of paid-up capital, which includes share premium or APIC in order to comply with the requirements for foreign investors to engage in retail trade.

To reiterate, even under the 2021 RTLA, there was no attempt by the Legislature to define the same for the purposes of achieving the policies of the law. Thus, it is to be presumed that the Legislature saw no inconsistency between the 2000 RTLA and the 2000 IRR that would make it necessary to define paid-up capital in the 2021 RTLA.

As such, it allows leeway for a definition that permits a lower barrier of entry for competition to participate in retail trade and thereby allowing Filipinos more options of products as well as favorable prices therefor.[23]

Apropos to the foregoing, the Supreme Court, in *Rodrigo Jr. et al. v. Sandiganbayan, Ombudsman, and People,*[24] illuminated on the principle regarding the action of the Legislature to delegate matters that require technical expertise to administrative agencies, *viz*:

> The reason Congress delegated the administration of the System to the DBM is precisely to relieve itself of this cumbersome task, leaving to the DBM the preparation of the Index of powers by the legislature to administrative agencies. ***With their specialized knowledge, administrative agencies are more up to tasks involving their expertise.***
>
> ... To *[sic]* many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from it delegates, who are supposed to be experts in the particular fields assigned to them. ***With this power, administrative bodies may implement the broad policies laid down in a statue by "filling in" the details which the Congress may not have the opportunity or competence to provide.***[25]

As applied, the 2000 and 2022 IRR were drafted by the DTI in collaboration with the Commission, BSP and the NEDA. To reiterate for emphasis, the intent of the law is to ease the restrictions in the allowance of foreign participation in retail trade in the Philippines. This intent was also reinforced when the Legislature sought to lower the amount of paid-up capital in the 2021 RTLA. **Hence, while the term paid-**

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[20] Guidelines on the Determination of Retained Earnings Available for Dividend Declaration, 05 December 2008.
[21] *Krivenko v. Register of Deeds.* G.R. No. L-630, 15 November 1947.
[22] *Munoz & Co. v. Hord.* G.R. No. L-4832, 28 January 1909.
[23] *See* Sections 2 and 11 of the 2000 RTLA. Section 2. *Declaration of Policy.* - It is the policy of the State to promote consumer welfare in attracting promoting and welcoming productive investment that will bring down price for the Filipino consumer, create more jobs, promote tourism, assist small manufacturers, stimulate economic growth and enable Philippine goods and services to become globally competitive through the liberalization of the retail trade sector.
Pursuant to this policy, the Philippine retail industry is hereby liberalized to encourage Filipino and competitive retail trade sector in the interest of empowering the Filipino consumer through lower prices, higher quality goods, better services and wider choices.

Section 11. *Implementing Agency: Rule and Regulations.* - The monitoring and regulation of foreign sole proprietorships, partnerships, associations or corporations allowed to engage in retail trade shall be the responsibility of the DTI. This shall include resolution of conflicts.

The DTI, in coordination with the SEC, the NEDA and the BSP, shall formulate and issue the implementing rules and regulations necessary to implement this Act within ninety (90) days after its approval.
[24] G.R. No. 125498, 02 July 1999.
[25] Emphasis and italics supplied.

up capital has been used to have a technical meaning in the context of retail trade, the technical meaning of the word no longer obtains in order to achieve the policy set out by the Legislature as earlier discussed. In short, the definition of paid-up capital in the IRR's is less restrictive and thus in keeping with the intent of the law.

Further, guidance in interpretation can also be found by using extraneous aids in construction as held by the Supreme Court in *Gamboa v. Teves,*[26] to *wit:*

> When the seeming ambiguity on the meaning of "capital" cannot be threshed out by looking at the language of the Constitution, then resort to extraneous aids has become imperative. The Court can utilize the following extraneous aids, to wit: (1) proceedings of the convention; (2) changes in phraseology; (3) history or realities existing at the time of the adoption of the Constitution; **(4) prior laws and judicial decisions;** (5) contemporaneous construction; and (6) consequences of alternative interpretations. x x x [27]

In this connection, it is significant to note that from a perusal of other economic statutes, such as R.A. No. 8556, otherwise known as the "Financing Companies Act of 1998 ('FCA')" and R.A. No. 7042, otherwise known as the "Foreign Investments Act of 1991 ('FIA')," as amended,[28] their IRRs follow the same definition of paid-up capital as in the 2000 and 2022 IRR of the RTLA.

Under the FIA, the policy being put forward is the invitation of foreign investors to the Philippines in order to boost the economy. Here, the IRR of the FIA in keeping with the policy of liberalization, required the following for compliance:

> Section 1 x x x hh) Paid-in equity capital ***shall mean the total investment in a business that has been paid-in in a corporation or partnership or invested in a sole proprietor*** which may be in cash or in property. It shall also refer to inward remittance or assigned capital in the case of foreign corporations.[29]
>
> Section 1 x x x z) Investment shall mean the ***paid in equity participation*** in any enterprise organized or existing under the laws of the Philippines and duly recorded in the enterprise's stock and transfer book, or any equivalent registry of ownership; ***it includes both original and additional investment***, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another as in stock purchase. x x x[30]

More on point is the case of the FCA. Similar to the RTLA, the FCA shows that while the law may require paid-up capital, its IRR may define the same as the total investment in a business. Section 6 of the FCA provides to wit,[31]:

> *Form of Organization.* Financing companies shall be organized in the form of stock corporations or general partnerships at least sixty per centum of the capital of which is owned by citizens of the Philippines and shall have a **paid-up capital** of not less than five hundred thousand pesos: *Provided, however,* That financing companies duly existing and operating before the approval of this Act shall comply with the requirement that sixty (60%) per centum of the capital be owned by citizens of the Philippines within one year from the date of said approval.[32]

However, the IRR of the FCA provides that paid-up capital should constitute the total investment made in a business, thus:

> Section 1 x x x. k) "Paid-up capital" refers to the amount of the subscription of stock in a corporation ***including the amount paid in excess of par value.***"[33]

Therefore, while "paid-up capital" is used in the law, the implementation thereof can encapsulate a definition in the IRR which includes share premium or APIC.

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[26] G.R. No. 176579, 09 October 2012.
[27] Emphasis and underscoring supplied.
[28] Amended by R.A. No. 11647. Approved on 02 March 2022.
[29] Emphasis, italics, and underscoring supplied.
[30] Emphasis, italics, and underscoring supplied.
[31] Section 6 of the FCA.
[32] Emphasis supplied.
[33] Emphasis, italics, and underscoring supplied.

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It is also emphasized that once infused into the corporation, APIC by its nature as the amount in excess of the par of issued shares, forms part of capital. Illustrative is the Commission's Opinion stating that APIC, once received by the corporation, forms part of the capital, to wit,[34]:

> With regard to your third query, the Commission previously opined that:
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> x x x Applying the above corporate principle on the present case, the subscribers of the proposed corporation may, in their own personal capacity and acting in good faith, borrow money for payment of their subscriptions. The loan agreement between the borrowers and the creditor Bank is a private contract between them of which the proposed corporation is not a party. What the SEC requires for purposes of registration is that the statutory paid up capital requirement must be actually paid. As to where the amount used for payment comes from, the SEC normally does not inquire into it. The moment the borrowed money is contributed as payment to subscriptions and upon incorporation, the ownership thereof is transferred to the new corporation. Accordingly, upon the issuance by the SEC of the certificate of registration, the corporation, being now the owner of the funds, can already withdraw and disburse the same for the operation of its business; xxx [35]
>
> Based on the foregoing, from the moment the corporation receives the premium paid, ownership thereof is transferred to the corporation, and the corporation, being now the owner of the funds, can disburse the same for the operation of its business, such as for acquisition of land x x x

Lastly, it bears stressing that the RTLA IRR has the force and effect of law unless judicially held otherwise or nullified. This was highlighted by the Supreme Court in the case of *Robinsons Appliances Corp. v. Secretary of the Department of Trade and Industry*,[36] where it ruled that IRRs have the force and effect of law unless set aside, to wit:

> At any rate, the IRR of DAO No. 4-2008 having the force and effect of law, enjoys the presumption of constitutionality and legality until it is set aside with finality in an appropriate case by a competent court. As such, the validity and constitutionality thereof cannot be collaterally attacked in the present Rule 45 Petition. A direct proceeding must be filed questioning the validity of the IRR, and without such, the presumption of its validity stands.

D. Conclusion.

Prescinding from the foregoing, the definition of paid-up capital contemplated under the 2000 and 2021 RTLA clearly envisions the total investment put into a corporation or business where share premium and APIC must be taken into consideration for investors.

Thus, we ***confirm*** your position.

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.[37] 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,

Romualdo C. Padilla
General Counsel

[34] SEC-OGC Opinion No. 24-36 dated 19 November 2024 issued to SeniorProperties Corporation.
[35] SEC Opinion dated 8 October 1993 addressed to Mr. Edwin V. Patricio.
[36] G.R. No. 264196, 28 May 2024
[37] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.