Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

24 July 2017

SEC-OGC Opinion No. 17-06
Re: Equity restructuring
through the increase of par value

NEW TRANSCEND CONSTRUCTION & DEVELOPMENT CORPORATION
Unit 309 Humana Wellness Center
Tagaytay Road, Brgy. Don Jose
Sta. Rosa, Laguna 4026

Attention: **Atty. Anna P. Cureg**
Vice-President

Gentlemen:

This refers to your letter dated 19 September 2016 requesting for a legal opinion regarding the intended equity restructuring of your company.

In your letter, you mentioned that you intend to amend your company's Articles of Incorporation (Articles) to increase the par value of each share from ₱10.00 to ₱ 50.00, without increasing the present number of shares. In addition, you disclosed that your company's authorized capital stock (ACS) is fully subscribed and fully paid up. On the basis of the foregoing, you sought clarification on the following matters:

(a) The requirements for the above application;
(b) The processes involved in the equity restructuring that will result after the increase in par value; and
(c) The laws and/or jurisprudence applicable to your case.

At the outset, we note that, although you mentioned that your company does not intend to increase the present number of shares, you did not categorically state whether, in applying for the increase in par value, you intend to maintain the current number of shares (i.e. 2 million shares),[1] on the one hand, or to maintain the current ACS (i.e. ₱ 20,000,000.00),[2] on the other. Increasing the par value while maintaining the number of shares will, consequently, result in the increase of the ACS. In contrast, increasing the par value while maintaining the ACS will necessarily result in the decrease in the number of shares.

This opinion will, thus, provide a discussion on both scenarios.

[1] New Transcend's 2016 General Information Sheet (GIS).
[2] *Id.*

Scenario A – Increase the par value while maintaining the number of shares

Increasing the par value from ₱10.00 to ₱ 50.00 while maintaining the company's 2 million shares will increase the ACS from ₱20 million to ₱100 million. If such an increase in the ACS is intended by the company, it may undertake the following:

(1) Reverse stock split. – In SEC Opinion No. 05-01 dated 04 January 2005, we previously recognized a reverse stock split, i.e. the reduction of shares by increasing the par value thereof, as a valid mode of corporate restructuring.

In the case of your company, this will involve the amendment of the Articles by changing the equity structure from an ACS of ₱20 million divided into 2 million shares with a par value of ₱10, to an ACS of ₱20 million divided into 400,000 shares with a par value of ₱50. A list of the requirements for this step is attached hereto as Annex A;[3] and

(2) Increase the ACS. – Proceeding from the reverse stock split, the company may increase its ACS from ₱20 million to ₱100 million by amending its Articles and submitting the requirements provided in the list attached hereto as Annex B.[4]

The requirements for the resulting increase in ACS are based on Section 38 of the Corporation Code, which provides:

> "Section 38. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. - No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.
>
> A certificate in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and the secretary of the stockholders' meeting, setting forth:
>
> (1) That the requirements of this section have been complied with;
>
> (2) The amount of the increase or diminution of the capital stock;

---

[3] A list of the requirements is also available on our website at: http://www.sec.gov.ph/services-2/company-2/other-applications/, under the heading "Reclassification/Declassification/ Conversion of Shares."

[4] A list of the requirements is also available on our website at: http://www.sec.gov.ph/services-2/company-2/amendment/, under the heading "Increase of Authorized Capital Stock." Depending on the mode of payment for the new subscription, the submission of additional documents may be required.

(3) If an increase of the capital stock, the amount of capital stock or number of shares of no-par stock thereof actually subscribed, the names, nationalities and residences of the persons subscribing, the amount of capital stock or number of no-par stock subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital stock or number of shares of no-par stock allotted to each stockholder if such increase is for the purpose of making effective stock dividend therefor authorized;

(4) Any bonded indebtedness to be incurred, created or increased;

(5) The actual indebtedness of the corporation on the day of the meeting;

(6) The amount of stock represented at the meeting; and

(7) The vote authorizing the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.

Any increase or decrease in the capital stock or the incurring, creating or increasing of any bonded indebtedness shall require prior approval of the Securities and Exchange Commission. One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed with the Securities and Exchange Commission and attached to the original articles of incorporation. From and after approval by the Securities and Exchange Commission and the issuance by the Commission of its certificate of filing, the capital stock shall stand increased or decreased and the incurring, creating or increasing of any bonded indebtedness authorized, as the certificate of filing may declare: Provided, That the Securities and Exchange Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by the 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 (25%) percent of such increased capital stock has been subscribed and that at least twenty-five (25%) percent of the amount subscribed has been paid either in actual cash to the corporation or that there has been transferred to the corporation property the valuation of which is equal to twenty-five (25%) percent of the subscription**: Provided, further, That no decrease of the capital stock shall be approved by the Commission if its effect shall prejudice the rights of corporate creditors.

Non-stock corporations may incur or create bonded indebtedness, or increase the same, with the approval by a majority vote of the board of trustees and of at least two-thirds (2/3) of the members in a meeting duly called for the purpose.

Bonds issued by a corporation shall be registered with the Securities and Exchange Commission, which shall have the authority to determine the sufficiency of the terms thereof." (Emphasis supplied.)

To clarify, two (2) separate applications, with their respective documentary requirements must be filed with the Commission for this Scenario, however, these applications may be filed simultaneously, in which case, the same will likewise be processed by the Commission simultaneously. Thus, the Company need not await

the approval of the reverse stock split before it can apply for the ACS increase, provided that all requirements for both applications are complied with.

Scenario B – Increase the par value while maintaining the amount of ACS

Increasing the par value from ₱10.00 to ₱ 50.00 while maintaining the company's ACS will result in the reduction of shares (i.e. authorized, subscribed and paid up) from 2 million to 400,000. To do this, the company may undertake a reverse stock split by amending its Articles, as provided in number (1) of Scenario A above.

The company is advised that as a consequence of the reverse stock split, fractional shares may arise. In this regard, the company may do well to consider the treatment thereof prior to commencing the restructuring process, e.g. repurchase by the company of the fractional shares (as treasury shares) at a pre-determined price.

Both restructuring scenarios will necessarily result in the cancellation of current stock certificates and the issuance of new ones in replacement thereof, which reflects the new number of shares and/or par value thereof, as applicable. In this regard, the company is reminded to comply with the principle of indivisibility of subscription, as enshrined in Article 64 of the Corporation Code, thus:

> "Section 64. Issuance of stock certificates. - No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid."

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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. 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.

CAMILO S. CORREA
General Counsel

mdr/vjbg

ANNEX A

Other Applications – Documentary Requirements

Reclassification/Declassification/Conversion of Shares

1. Directors' certificate - notarized and signed by majority of the directors certifying the (i) amendment of the articles of incorporation reclassifying/declassifying/converting the shares of stock (ii) votes of the directors and the stockholders, (iii) date and place of stockholders' meeting and (iv) the tax identification number of the signatories which shall be placed below their names.
2. Amended Articles of Incorporation
3. List of stockholders showing the names, nationalities and stockholdings before and after the reclassification/declassification/conversion, as certified by the corporate secretary
4. Audited financial statements as of the last fiscal year, stamped received by the SEC and the BIR.
5. Notarized Secretary's Certificate on no pending case of intra-corporate dispute
6. Compliance Monitoring Division (CMD) Clearance and/or clearance from other Department of the Commission or government agencies

ANNEX B

Increase of Authorized Capital Stock

1. Certificate of Increase of Capital Stock signed by majority of the directors and certified by Chairman and Corporate Secretary of the stockholders meeting
2. Treasurer's Affidavit certifying the increase of capital stock, the amount subscribed and the amount received as payment thereto
3. List of stockholders as of the date of the meeting approving the increase, showing the nationalities of the subscribers and their respective subscribed and paid-up capital in the existing authorized capital stock certified by the corporate secretary
4. Amended Articles of Incorporation;
5. Notarized Secretary's Certificate on no pending case of intra-corporate dispute
6. Directors Certificate - notarized and signed by majority of the directors and the corporate secretary certifying (i) the amendment of the Articles of Incorporation increasing the authorized capital stock, (ii) the votes of the directors and the stockholders, (iii) the date and place of the stockholders' meeting (iv) the tax identification number of the signatories which shall be placed below their names
7. Notarized Secretary's Certificate attesting that non-subscribing stockholders have waived their pre-emptive rights or attesting the resolution of the stockholders representing at least 2/3 of the outstanding capital stock approving the issuance of shares in exchange for a property or previously incurred indebtedness of the corporation.
8. If the foreign equity is increased to more than 40%, compliance with registration under Foreign Investments Act
9. Compliance Monitoring Division (CMD) Clearance and/or clearance from other Department of the Commission*
10. Endorsement/clearance from other governmen agencies,if applicable.

Additional Requirements Depending on the Kind of Payment on Subscription