



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

September 16, 2019

SEC-OGC Opinion No. 19-40
Re: Paid-Up Capital; PSE Rules

MR. JOSE MA. L. QUIAOIT
Buskowitz Finance Inc.
4th Floor Dominion Building
833 A. Arnaiz Avenue, Makati City

Mr. Quiaoit:

This refers to your letters dated 06 July 2018 and 10 September 2018 requesting for an opinion on whether Additional Paid-In Capital (APIC) can be considered as Paid-Up Capital, for purposes of complying with the requirements of the Philippine Stock Exchange (PSE) on the minimum capital of corporations seeking to be listed with the PSE, as follows:

Listing at PSE	
Main Board	SME Board
Minimum Capital Requirement	
Minimum authorized capital stock of P500M, of which, at least 25% is <u>subscribed and fully paid</u> . At listing, the market capitalization of the Applicant Company must be at least P500M.	Minimum authorized capital stock of P100M, of which, at least 25% is <u>subscribed and fully paid</u> .

Buskowitz Finance Inc. (Buskowitz) is contemplating on going public through an initial public offering. Buskowitz' balance sheet shows that it has an APIC amounting to PhP 70,000,000. Hence, your query.

Please be advised that the Commission shall refrain from rendering a categorical opinion on queries which involve the interpretation of administrative rules and issuances of other government agencies, and in this particular instance, a self-regulatory organization, *i.e.* the PSE, considering that it is the promulgating agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances.¹ Hence, it is the PSE which should interpret the term "paid-up capital" in the context of its own Rules.

Nevertheless, we provide the following discussion for your guidance and information.

¹ SEC Memorandum Circular 2003-15, No.5.6

The concept of ***paid-up capital*** under Section 13² of the Corporation (Code)³ has a settled technical meaning. In *MSCI-Nacusp Local Chapter vs. National Wages and Productivity Commission et al.*⁴, the Supreme Court said:

“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 P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as ‘paid-up capital stock’.”

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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.**” (Emphasis ours)

While Section 13 of the Code no longer appears in the Revised Corporation Code (RCC)⁵ because 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 37⁶ of the RCC relative to the increase of capital stock. Further, the term “paid-up” capital is also used in other laws and/or rules.

Meanwhile, ***paid-in capital*** is defined under Section 2 of SEC Memorandum Circular No. 11 (SEC MC No. 11)⁷ as follows:

“xxx Paid-In Capital – the amount of outstanding capital stock⁸ and additional paid-in capital or premium over the par value of shares” (Emphasis ours)

² “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 (P5,000.00) pesos.**” (Emphasis ours)

³ Batas Pambansa Blg. 68, The Corporation Code of the Philippines, 1 May 1980

⁴ G.R. No. 125198. March 3, 1997 citing Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1984 ed., p. 153

⁵ Republic Act No. 11232, The Revised Corporation Code of the Philippines, 23 February 2019

⁶ xxx *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 xxx*

⁷ SEC Memorandum Circular No. 11, Series of 2008, Guidelines on the Determination of Retained Earnings Available for Dividend Declaration, 5 December 2008

⁸ Section 137 of the old Corporation code defines Outstanding capital stock as “the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares”

Additional Paid-In Capital (APIC) is any contribution of stockholders *over* the par value of shares. Incidentally, share premium is also defined as the amount received by a firm over the par value of its share.⁹

Thus, ***paid-up capital*** differs from ***paid-in capital*** such that the former refers to shares actually subscribed and paid while the latter is the sum of the amount paid for shares of stocks issued, plus the APIC, or the excess or premium paid over the par value of such shares.

It is a rule in statutory construction that words or phrases that have been used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute in which they are used, should be construed according to the sense in which they have been so previously used, although the sense may vary from strict literal meaning of the words.¹⁰ The technical or legal, not the ordinary or general, meaning of a word used in a statute should be adopted in the construction of the statute, in the absence of any qualification or intention to the contrary.¹¹

Please be guided accordingly.


CAMILLO S. CORREA
General Counsel


⁹ SEC Opinion No. 14-13 dated 11 June 2014 addressed to Isla Lipana & Co.

¹⁰ Agpalo, Ruben R. Statutory Construction, Fifth Edition, 2003 p. 187 citing Krivenko vs. Register of Deeds, G.R. No. L-630, November 15, 1947

¹¹ *Ibid.*, p. 187