



Legal Opinion (LO) No.:	2022-17
Date:	06 December 2022

MR. MANUEL M. MALOLES
President and Chief Executive Officer
Fortune General Insurance Corporation
4F Citystate Centre,
709 Shaw Boulevard, Pasig City

**SUBJECT: Request for Confirmation / Certification of
the Proposed Terms and Conditions of
Preferred Shares Offering**

Dear **Mr. Maloles**:

This refers to your letters dated 04 November 2022 and 14 November 2022 requesting for confirmation of the proposed terms and conditions of the preferred shares offering of Fortune General Insurance Corporation (FGIC). The said request for confirmation is in relation to FGIC's capital build-up plan in compliance with the net worth requirement under Section 194 of the Insurance Code, as amended.

As part of its capital build-up plan, FGIC intends to convert its unissued common shares to preferred shares, the terms and conditions of which have been submitted to the Insurance Commission for consideration. In your 14 November 2022 letter, you further clarified your request, to wit:

"In light of our intended sourcing of capital through private placement for which we have engaged the services of SB Capital Investment Corporation, may we request from your good office a **CERTIFICATION** confirming that subscriptions of the intended preferred share offering are considered **admitted assets for net worth purposes for both FGIC and its prospective investors – applicable to those as may likewise be regulated by the Insurance Commission**, subject to the limitations as set forth under the Insurance Code as well as the regulations issued and implemented by the Insurance Commission."

Anent your first query on whether subscriptions of the intended preferred share offering may be admitted for net worth purposes insofar as FGIC is concerned, please be informed that the proposed transaction shall result in the following relative to FGIC's books:

1. **Additional paid-up Preferred Shares shall be considered as additional equity for Net Worth Purposes;**
2. **Preferred Shares paid-up through cash shall be considered as an Admitted Asset for the value of the cash payment; and**
3. **Preferred Shares paid through forms other than cash shall be considered as an Admitted Asset, subject to applicable rules and regulations issued by the Commission.**

Item 57 of Circular Letter No. 2016-65 or the "Financial Reporting Framework Under Section 189 of the Amended Insurance Code (Republic Act No. 10607)" provides the instances when preferred shares may be classified as equity and as liability. As provided in Item 57.1:

- "57.1 *Preferred Stock* – This represents shares of stock which provide the stockholders preference as to dividends and upon liquidation. **The features of the preferred stocks are varying and should be carefully analyzed whether these qualify as capital stock or creates an obligation on the part of the company. In the latter case, the preferred stocks issued should be classified as part of liabilities.**"
(Emphasis supplied.)

Meanwhile, Philippine Accounting Standard (PAS) 32 provides that a financial instrument may be classified as an equity instrument, instead of a financial liability, if and only if the following conditions are met:

- "(a) **The instrument includes no contractual obligation:**
- (i) **To deliver cash or another financial asset to another entity; or**
 - (ii) **To exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the issuer.**
- (b) If the instrument will or may be settled in the issuer's own equity instruments, it is:
- (i) A non-derivative that includes no contractual obligation for the issuer to deliver a variable number of its own equity instruments; or