Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

24 May 2016

SEC-OGC Opinion No. 16 -12
Re: Nationality Requirement for Non-stock Non-profit Corporations.

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Sir:

This is in response to your letter dated 01 March 2016, requesting confirmatory opinion that Pandoo Foundation, Inc ('PFI'), a non-stock non profit corporation not engaged in any nationalized or partly nationalized activities in the Philippines, is entitled to have alien trustees in its board, and a foreigner as its President/Chairman.

You disclosed that the PFI has the following primary purpose in its Articles of Incorporation:

> "**SECOND:** That the purpose or purposes for which such association is incorporated is to operate a foundation that engages in charitable and knowledge sharing activities in the Philippines specifically to challenge a new generation of young people to participate actively in improving the lives of underprivileged children and their families trough programs in the area of financial inclusion and self-sufficient living/livelihood, knowledge based powers, health and sanitation."

You further cited SEC-OGC Opinion No. 07-07 dated 08 August 2007 to support your position, to wit:

> "More specifically, for as long as the association is not engaged in any nationalized activity, a non-Philippine national may serve as member of its board of trustees or be the chairman of the board subject only to the limitation that trustees must be members of the association and majority of them should be residents of the Philippines."

We confirm your opinion.

The issues raised in your letter calls for the application of Section 2-A of Commonwealth Act No. 108, as amended, otherwise known as "The Anti Dummy Law", which provides:

> "Section 2-A. *Unlawful use, Exploitation or enjoyment* - Any person, **corporation**, or association which, having in its name or under its control, a right, franchise, privilege, **property** or business, **the exercise or enjoyment of which is expressly**

> **reserved by the Constitution or the laws to citizens of the Philippines** or of any other specific country, or to corporations or associations at least **sixty per centum** of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by a the Constitution or the laws of the Philippines; xxx xxx xxx; **or in any manner permits or allows any person, not possessing the qualifications required by the Constitution**, or existing laws **to acquire**, use, exploit or enjoy a right, franchise, privilege, **property** or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein xxx xxx xxx **And provided, finally, That the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities.**" (Emphasis ours.)

Thus, considering that PFI, based on its Articles of Incorporation, is not engaged in any nationalized or partly nationalized business or industry, it may have an alien trustee in its board, and a foreigner as its President/Chairman.

However, the purpose clause PFI's Articles of Incorporation allows, or does not exclude, ownership of land by the corporation. Hence, in the event that PFI owns land, it shall already be considered to have engaged in a partly nationalized activity. As such, foreigners should not comprise more than 40% of its membership.[1] Consequently, PFI can elect foreign trustees in proportion to their allowable participation in the membership of the corporation. Otherwise stated, not more than 40% of the trustees should be foreigners. However, it cannot have a foreigner as President/Chairman of the board.[2]

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and 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 and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[3]

Please be guided accordingly.

Very truly yours,

MANUEL HUBERTO B. GAITE
OGC Supervising Commissioner

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[1] Article XII, Section 7, of the 1987 Constitution; List A, No. 18 of the 10th Foreign Investment Negative List; Decasa, Lucilla, Handbook on Private Corporations (Domestic and Foreign), p.527 citing SEC Opinion dated28 February 2002 addressed to Atty. Victoria A. Timbacaya.

[2] Section 2-A, Anti-Dummy Law.

[3] SEC Memorandum Cricular No. 15, Series of 2003.