Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

DENTAL MANAGEMENT CENTER CORP. and FREDERIC G. PEIGNON
Appellant,

-versus-

SEC EN BANC CASE NO. 06-14-335

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
represented by Director Ferdinand B. Sales,
Appellee.

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DECISION

This resolves the Appeal of Dental Management Center Corp. (DMCC),[1] and Frederic G. Peignon from the letter-ruling of the Company Registration and Monitoring Department (CRMD)[2] denying DMCC's request for the issuance of a Certificate of Good Standing from the Securities and Exchange Commission.[3]

Appellant DMCC,[4] is a domestic corporation duly organized and existing under Philippine Laws with principal office address at the 2nd Floor, ALGO Center, 162 L.P. Leviste St., Salcedo Village, Makati City. DMCC is doing business under the name and style of "METRO DENTAL CENTER." DMCC was incorporated with the following purposes:

<u>Primary Purpose</u>

> To establish, own, operate, maintain and manage dental centers and clinics and other related facilities and businesses including pharmacies, scientific research centers and other allied enterprises which shall provide professional, dental and surgical services and operations and prostethic dentistry, as well as to establish laboratory for dental fabrications and in connection therewith to grant or sell franchise to other entities or persons authorizing them to operate and provide similar dental and

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[1] Hereafter, "DMCC."
[2] Hereafter, "CRMD."
[3] Hereafter, "SEC."
[4] Hereafter, also referred to as "appellant DMCC."

surgical services under its trade name, trademark, service name, and service mark of Dental Management Center Corp., provided that purely professional, dental or surgical services shall be performed by duly qualified and licensed dentists or surgeons who may be connected with the clinics, as well as to grant, organize, initiate, develop, promote, or otherwise undertake the management and operation of franchises as described above, and/or act as agent or representatives of individuals, corporations, partnership, or other entities for the franchising, lettering or lending of business name or goodwill of business enterprises as enumerated above.

Secondary Purposes

1. To purchase, acquire, own, lease, sell and convey real properties such as lands, building, factories, and warehouses and machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities as may be deemed expedient, for any business or property acquired by the corporation.

x x x

Appellant Frederic G. Peignon (Mr. Peignon),[5] French citizen, served as DMCC's President, Chief Executive Officer, and Chairman of the Board of Directors, as stated in DMCC's General Information Sheet for the year 2013.

Sometime in November, 2013, DMCC applied with the Securities and Exchange Commission (SEC)[6] for the issuance of a Certificate of Good Standing.

The CRMD initially opined that based on its findings, DMCC violated the Anti-Dummy Law by having a foreign national as its President, in the person of Mr. Peignon. DMCC disagreed with CRMD's findings, explained the circumstances of DMCC, and argued that the corporation does not fall within the ambit of the Anti-Dummy Law.

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[5] Hereafter, "Frederic," or "Mr. Peignon," for brevity.
[6] Hereafter, "SEC."

DMCC, through its counsel, formalized its objections through a letter dated February 5, 2014[7] addressed to Atty. Mary Anne M. Lagura of the CRMD of the SEC.

In its February 5, 2014 letter, DMCC reiterated that its business is that of "a healthcare company, particularly the management and maintenance of dental clinics and related facilities," in relation to the primary purpose in the Articles of Incorporation. While DMCC quoted the Anti-Dummy Law, in relation to the Philippine Foreign Investments Act – Negative Lists which provided that "no foreign equity is allowed in the practice of profession more specifically the practice of medicine and allied professions," DMCC submits that it "is not engaged in the practice of profession moreso the practice of medicine and allied professions but merely provides a venue for the provisions of these medical services." Further, it argued that "DMCC is a corporation that owns the clinic or the venue while Filipino Dentists/Doctors are the ones who render professional services to the patients as what is sanctioned by our laws particularly the Negative Lists."

According to the CRMD, DMCC's industrial classification falls under "Hospital Activities and Medical Dental Practice," which makes it covered by the Negative Lists – "practice of profession" exclusively reserved for Filipinos. To counter this, DMCC argued that what is controlling is not the industry classification but its primary purpose under its Articles of Incorporation. DMCC further explained:

> ...Moreover, the practice of profession involves the act of rendering professional services and not merely providing the venue for the same. DMCC is just providing the venue, the clinic and the equipment, but not the professional services the exercise of which is admittedly restricted to Filipinos. It also bears to note that DMCC does not intervene in the delivery of the professional services as the same is totally separate from the business of DMCC as the owner and operator of the clinics.[8]

In its conclusion, DMCC submitted that the Anti-Dummy Law does not apply to the corporation since it is "neither engaged in a nationalized nor in a partly nationalized industry." Hence, it argued that the SEC should give a Certificate of Good Standing in favor of DMCC.

In its response dated February 10, 2014, the CRMD denied DMCC's request, citing Republic Act No. 7042 also known as "The Foreign Investments Act of 1991," and the definition of a domestic market enterprise

[7] Annex "B" of appellants' Memorandum of Appeal.
[8] See Annex "B" of appellants' Memorandum of Appeal.

as one which produces goods for sale, or renders services to the domestic market entirely[9], or if exporting a portion of its output fails to consistently export at least 60% thereof.

The CRMD further explained that non-Philippine nationals may own up to 100% of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution and existing laws, subject to the further condition that domestic foreign-owned corporation should comply with the paid-up requirement of US$200,000.00. Moreover, the CRMD stated:

> Conversely, domestic market enterprise with paid-up equity capital of less than the equivalent of US$200,000.00 is reserved to Philippine-nationals. By "*Philippine National*", is meant a citizen of the Philippines or domestic partnership or association wholly-owned by citizens of the Philippines or domestic partnership or a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.
>
> Corollary thereto, FINL-List B limits foreign equity participation in a corporation engaged in domestic market enterprise to only 40% unless it complies with the paid-up requirement of US$200,000.00. A corporation operating as a domestic market enterprise with a paid-up capital of less than US$200,000.00 is considered as engaged in a partly-nationalized activity.
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> A review of its 2013 General Information Sheet will reveal that subject corporation is 99.9% Filipino-owned and has capital stock of P50,000,000.00 with total paid-up capital of P3,125,000.00, which is less than the equivalent of US$200,000.00. Clearly, it is engaged in a partly-nationalized activity.
>
> It bears emphasizing also that one of the secondary purposes of subject corporation is ownership of real properties, such as lands.
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> Under FINL, in consonance with Section 7, Article XII of the 1987 Constitution, acquisition and ownership of private lands is a partly-nationalized activity wherein foreign equity participation is limited to only forty percent (40%).

Section 2-A of The Anti-Dummy Law provides:

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[9] See Annex "C" of appellants' Memorandum of Appeal, emphasis retained.

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; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; 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 with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists or abets in the planning consummation or perpetration of any of the acts herein above enumerated shall be punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, That the president, managers or persons in charge of corporations, associations or partnerships violating the provisions of this section shall be criminally liable in lieu thereof: Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege, and the property or business enjoyed or acquired in violation of the provisions of this Act: 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.[3]

Based on the foregoing, we find the subject corporation is subject to the restrictions on foreigners of The Anti-Dummy Law, which prohibits foreigners from holding managerial positions in corporations engaged in partly-nationalized activities.

Foreigners, while allowed to sit as directors or trustees in proportion to their allowable participation or share in the capital of the corporation engaged in activities that are reserved to Filipinos, are prohibited from being elected in management positions, such as the president (SEC-OGC Opinion 12-01). This is consistent with DOJ Opinion No. 37, Series of 1976, which states that, in firms engaged in wholly or partly-nationalized activities, foreigners are banned from being appointed to management positions, such as president, vice-president, treasurer, etc.

Accordingly, we are of the view that Mr. Peignon, a French national, albeit a shareholder and director of subject corporation, is not qualified to occupy the position of a president/chief executive officer of same corporation.

DMCC filed a letter dated March 24, 2014, praying for reconsideration of CRMD's February 10, 2014 decision. In this letter, DMCC submitted the following issues for CRMD's reconsideration:

(1) Whether DMCC is engaged in nationalized or partly-nationalized activity;

(2) Whether the restrictions in Section 2-A of the Anti-Dummy Law are applicable to DMCC, a domestic corporation and 99.9% Filipino-owned;

(3) Whether Mr. Frederic G. Peignon, a French National, who holds in his name one nominee share in DMCC, may be

elected as one of its directors and as its President and CEO; and

(4) Whether the secondary purpose for which DMCC was organized, i.e., ownership of real properties such as lands, effectively makes it as a nationalized or a partly nationalized corporation.

On the **first issue**, DMCC argues that the subject corporation is not engaged in nationalized or partly-nationalized activities, as indicated in its Articles of Incorporation. DMCC posits that it merely operates and manages dental centers, clinics, pharmacies, scientific research centers and other allied enterprises and is in no way engaged in the practice of the medical profession. DMCC cites *Alfafara, et al., vs. Acebedo Optical Co., Inc.*,[10] and argues that this supports its position that "the fact that a corporation hires medical practitioners to practice their profession in the course of their employment in the corporation does not mean that the corporation is itself engaged in the practice of medicine and/or other allied medical professions."[11]

DMCC argues further that since the subject corporation, allegedly, is not engaged in the practice of medical profession, and that its business is not engaged in the 9th FINL, it is crystal clear that it is not engaged in nationalized and/or partly nationalized activities. On the issue of paid-up capital of US$200,000.00, DMCC contends that the minimum paid-up capital requirement of US$200,000.00 applies only when the foreign equity in a domestic corporation **exceeds** 40%, and is not the basis for classifying the business to be either nationalized or partly-nationalized. Consequently, DMCC claims that when the foreign stockholdings in a domestic corporation is 40% or less, then, the minimum paid-up capital requirement of US$200,000.00 does not apply. Since DMCC is 99.9% Filipino-owned, the US$200,000.00 paid-up capital requirement finds no application.

DMCC also states that Mr. Peignon holds a nominal share in trust for Go Kim Pah Foundation, and that his single nominal share could not be deemed to have the effect of changing a 99.9% Filipino-owned corporation into a nationalized or partly-nationalized entity.

On the **second issue**, DMCC cites SEC Memorandum Circular No. 8 stating that the provisions of the Anti-Dummy Law, particularly, Section 2-A thereof, apply only to corporations engaged in nationalized or partly-nationalized activities. The Anti-Dummy Law should not be made to apply to corporations whose activities or businesses are not reserved, whether fully or partially, only to Filipinos such as this case. DMCC also cites the

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[10] G.R. No. 148384, April 17, 2002.
[11] See page 3 of DMCC's March 24, 2014 letter, Annex "D" of appellants' Memorandum of Appeal.

Department of Justice Opinion No. 165, Series of 1984, laying down the badges of "dummy status," and submits that none of the indicators apply to it. While Mr. Peignon is a foreign national as DMCC's President and CEO, his nominal share is held in trust for and on behalf of a Filipino entity, which trust may be revoked at any time by the trustor. DMCC maintains that appointment to a managerial position by itself does not constitute violation of the Anti-Dummy Law when the Corporation is not engaged in a nationalized or partly-nationalized activity.

On the **third issue**, DMCC contends that because it is not engaged in a nationalized or partly-nationalized industry, there is no legal impediment to Mr. Peignon's election as Director and to his appointment as President and CEO.

On the **fourth issue**, DMCC argues that despite its secondary purpose of acquiring real properties as stated in the Articles of Incorporation, there is completely no connection between such purpose and the nature of the business in which DMCC is engaged. To support its argument, DMCC states that domestic corporations are expressly allowed to acquire, possess, and own real properties in the Philippines, as this is explicitly provided for as one of the powers of the corporations under Section 36 of the Corporation Code of the Philippines. Moreover, DMCC maintains that having the right of domestic corporations to own real properties in the Philippines does not make it either a nationalized or partly-nationalized corporation.[12]

The CRMD responded[13] through a letter dated April 21, 2014, denying DMCC's March 24, 2014 letter request for reconsideration, and informing DMCC that the position of the CRMD regarding the matter remains. DMCC's counsel received CRMD's April 21, 2014 letter on May 16, 2014.

DMCC had a period of 15 days, or until May 31, 2014 to file its appeal. Since May 31, 2014 fell on a Saturday, DMCC had until the next working day, or June 2, 2014, to file its appeal. DMCC and Mr. Peignon timely filed their appeal together with their Memorandum on Appeal on June 2, 2014 through registered mail. Hence, this Appeal.

Despite this Commission's Order dated June 10, 2014 directing CRMD to file a Reply Memorandum within 10 days from receipt, CRMD waived its right to file the same for lapse of the prescribed period without the Reply having been filed.

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[12] See page 13 of Annex "D" of appellants' Memorandum of Appeal.
[13] To DMCC's letter request for reconsideration dated March 24, 2014.

This Commission shall now resolve the following issue central to this Appeal, thus:

> WHETHER DMCC IS ENGAGED IN A NATIONALIZED OR PARTLY-NATIONALIZED ACTIVITY, THUS PROHIBITING THE CORPORATION FROM APPOINTING OR ELECTING A FOREIGNER IN A MANAGEMENT POSITION.

Logically, the resolution on whether CRMD's actions are correct shall hinge on this Commission's findings on the above issue.

DISCUSSION

In this case, appellant Mr. Peignon was DMCC's President, CEO, and Chairman of the Board of Directors for the year 2013. Mr. Peignon was likewise a director of DMCC, holding one share in his name.

In order to resolve whether Mr. Peignon is prohibited from holding this position, this Commission shall refer to Section 2-A of Commonwealth Act No. 108,[14] otherwise known as the "Anti-Dummy Law," which states:

> **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; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; 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

[14] An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges

> in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists or abets in the planning consummation or perpetration of any of the acts herein above enumerated shall be punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, That the president, managers or persons in charge of corporations, associations or partnerships violating the provisions of this section shall be criminally liable in lieu thereof: Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege, and the property or business enjoyed or acquired in violation of the provisions of this Act: 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.

While foreigners are disqualified to be elected/appointed as corporate officers in wholly or partially nationalized business activities, they are allowed representation in the Board of Directors or governing body of said entities in proportion to their shareholdings. The reason for the exception is that the Board of Directors/governing body performs specific duties as a "body." Unlike corporate officers, each members of the Board of Directors/governing body has no individual power or authority to perform management function. The powers delegated to the Board of Directors/governing body can only be exercised by it acting as a body when a quorum is present. Hence, there can be no intervention in the management, operation, administration and control of the corporation by the members thereof in their individual capacity. All told, Mr. Peignon's appointment as a member of the Board of Directors is not in issue as this is permitted by prevailing laws.

On the other hand, it is well-settled that Section 2-A of the Anti-Dummy Law prohibits aliens from being elected or appointed to management positions such as president, vice-president, treasurer, secretary, etc., in business activities where there is a constitutional or statutory provision imposing a specific nationality requirement as a requisite for the exercise or enjoyment of a right, franchise, or privilege. The foregoing constitutional and statutory provisions are reflected in the 9th Foreign Investment Negative

List,[15] in accordance with Republic Act No. 7042, also known as the "Foreign Investments Act of 1991." The relevant provisions state:

> 9th Regular Foreign Investment Negative List A
>
> LIST A: FOREIGN OWNERSHIP IS LIMITED BY MANDATE OF THE CONSTITUTION AND SPECIFIC LAWS
>
> **No Foreign Equity**
>
> x x x
>
> 2. Practice of all professions[16] (Art. XII, Sec.14 of the Constitution, Sec. 1 of R.A. 5181)
>
> x x x
>
> b) Medicine and allied professions
>
> x x x
>
> iii. Dentistry (R.A. 9484)
>
> x x x
>
> **Up to Forty Percent (40%) Foreign Equity**
>
> x x x
>
> 18. Ownership of private lands (Art. XII, Sec. 7 of the Constitution; Ch. 5, Sec. 22 of CA 141; Sec. 4 of RA 9182)

As stated, dentistry is exclusively reserved to Filipino Citizens, even falling under the classification of "**No Foreign Equity**" which means a requirement of 100% Filipino ownership. Thus, even if a corporation would be permitted to engage in dentistry, the corporation must not have any foreign equity.

Meanwhile, domestic corporations with up to 40% foreign equity may own private lands.

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[15] Executive Order No. 98, Promulgating the Ninth Regular Foreign Investment Negative List
[16] This is limited to Filipino citizens save in cases prescribed by law.

Appellant DMCC strongly contends that it is not engaged in a nationalized or partly-nationalized industry. DMCC relies on the wording of its "primary purpose" in its Articles of Incorporation, arguing that it merely operates and manages dental centers, clinics, pharmacies, scientific research centers and other allied enterprises, without allegedly being engaged in practice of dental services.

Moreover, DMCC cites the case of *Alfafara, et al., vs. Acebedo Optical, Co., Inc.*,[17] and draws the following conclusion: "the fact that a corporation hires medical practitioners to practice their profession in the course of their employment in the corporation does not mean that the corporation is itself engaged in the practice of medicine and/or other allied medical profession."

Despite DMCC's arguments and suppositions, this Commission is not persuaded. After a thorough review of DMCC's Articles of Incorporation and its submissions, this Commission finds that DMCC is thus engaged in the practice of medicine and other allied professions, specifically in providing dental services. This Commission finds improbable DMCC's thesis that it does all of the following:

(a) establishes the dental centers and clinics,
(b) owns the dental centers and clinics;
(c) operates the dental centers and clinics;
(d) manages the dental centers and clinics and other related facilities and businesses which shall provide professional, dental, and surgical services and operations and prostethic dentistry;
(e) has in its employ dentists to perform contracted services;
(f) reports its income under all its branches as "**dental services**";
(g) does business under the name of "Metro Dental Center."

and yet claim that it is not at all engaged in the dental profession. Moreover, since they report the "dental services" as its income, necessarily, this means that DMCC provided the said services, through the dentists under their employ within the clinics that they established, owned, and operated. If it were true that DMCC merely provided the venue then it should have reported its income as rental services.

Moreover, a reading of the entire primary purpose, and not just cherry-picked phrases to support DMCC's contention, would reveal that DMCC thus engaged in providing dental and surgical services. To be accurate, we quote the primary purpose:

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[17] Hereafter, "**Acebedo Optical case**"

Primary Purpose

> **To establish, own, operate, maintain and manage dental centers and clinics and other related facilities and businesses including pharmacies, scientific research centers and other allied enterprises which shall provide professional, dental and surgical services and operations and prostethic dentistry, as well as to establish laboratory for dental fabrications and in connection therewith to grant or sell franchise to other entities or persons authorizing them to operate and provide similar dental and surgical services under its trade name, trademark, service name, and service mark of Dental Management Center Corp.,** provided that purely professional, dental or surgical services shall be performed by duly qualified and licensed dentists or surgeons who may be connected with the clinics, as well as to grant, organize, initiate, develop, promote, or otherwise undertake the management and operation of franchises as described above, and/or act as agent or representatives of individuals, corporations, partnership, or other entities for the franchising, lettering or lending of business name or goodwill of business enterprises as enumerated above.

Notice that in the underlined portion which states: "**to operate and provide similar dental and surgical services**" in relation to DMCC's intent to grant or sell franchise to other entities or persons, DMCC itself acknowledges that it provides dental and surgical services, not merely a venue for the same. While DMCC in its submissions placed emphasis only on the first part, this Commission cannot accept its arguments hook, line, and sinker.

As to the doctrine in the *Acebedo Optical* case, the facts do not fall squarely with this case, as the petitioners therein sought to enjoin Acebedo Optical Co., Inc. from practicing optometry in the province of Cebu, for violation of the Optometry Law and the Code of Ethics. However, the Court found that Acebedo Optical Co., Inc., is merely engaged in the business of selling optical products, hence, a merchandising business, and not an optometry clinic. In this case however, DMCC provides dental services performed by dentists under its employ, not simply selling dental instruments and supplies. Clearly, the distinction is too important to brush aside.

Section 14, Article XII of the 1987 Constitution declares that the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law. The provision clearly sets the standard with regard to the practice of profession, as well as the exception thereto. As a general rule, the practice of all professions in the country is exclusively reserved to Filipino Citizens, except when there is a law which provides otherwise. This basic constitutional rule is aimed at protecting the welfare of Filipino professionals[18] and has been the long standing-rule upon which the enactment of laws and regulations relating to the practice of profession is based. Based on this principle, foreign equity in corporations that engaged in the practice of dentistry is prohibited, since there is no law that allows otherwise.

Hence, on this issue alone, DMCC was indeed engaged in a nationalized industry and the CRMD was correct in not issuing to it a Certificate of Good Standing.

In addition to the Commission's findings, emphasis should also be placed on DMCC's Secondary Purposes as stated in its Articles of Incorporation, the first of which states:

> <u>Secondary Purposes</u>
>
> 1. To **purchase, acquire, own, lease, sell and convey real properties such as lands, building**, factories, and warehouses and machineries, equipment and other personal properties **as may be necessary or incidental to the conduct of the corporate business**, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities as may be deemed expedient, for any business or property acquired by the corporation.

This secondary purpose clearly states DMCC's intent to purchase or acquire real properties as may be necessary or incidental to the conduct of its corporate business, which in this case, includes a primary purpose of establishing, owning, and operating dental centers and clinics and other related facilities and businesses. DMCC contends that this is one of the powers of a corporation under Section 36 of the Corporation Code, thus:

> **Sec. 36. *Corporate powers and capacity.*** - Every corporation incorporated under this Code has the power and capacity:
>
> x x x
>
> 7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
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> x x x

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[18] Bernas, The 1987 Constitution of the Republic of the Philippines (1996), p. 1049.

While the above provision is one of the powers granted by the Corporation Code, this power is likewise limited by other relevant laws and is subordinate to the Constitution. DMCC's argument is also misplaced because the issue raised by the CRMD was that DMCC's secondary purpose included its intent "to purchase, acquire, own, lease, sell and convey real properties" in relation to its primary purpose. No other conclusion can be had except that DMCC did not limit itself to leasing real property, but had the purpose of also acquiring real property.

Since ownership of real properties are reserved to Filipinos and Filipino corporations (up to 40% Foreign Equity), DMCC could not have a foreigner occupying a management position, let alone, have Mr. Peignon as its President, Chief Executive Officer, and Chairman of the Board of Directors in clear violation of the Anti-Dummy Law.

WHEREFORE, premises considered, the instant appeal is hereby denied.

Let a copy of this Order be furnished the Corporate Filing and Records Division and the Company Registration and Monitoring Department for proper notation.

SO ORDERED.

Pasay City, Philippines; 30 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner