



OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-01

Re: Foreign ownership, control, and administration of educational institutions; Applicability of the Foreign Investments Negative List to educational institutions

02 January 2024

ESTRADA & AQUINO

2515 High Street South Corporate Plaza Tower 2,
26th St. Cor. 11th Ave, Taguig City

Attn: Atty. Therese Ray Anne O. Aquino
Atty. Kristine Carmina R. Manaog

Dear Attys. Aquino and Manaog:

This refers to your letter dated 28 August 2020 requesting, on behalf of your client, for an opinion on the applicability of Executive Order (E.O.) No. 65 or the 11th Foreign Investment Negative List (FINL), which is now superseded by E.O. No. 175, or the 12th FINL¹, to educational institutions.

In your letter, you disclosed the following:

- a) Your client, a Japanese foreign corporation (JFC), intends to establish a domestic corporation or subsidiary in the Philippines (proposed corporation);
- b) The purpose of the proposed corporation is, primarily, "to develop, promote, and offer non-degree business, management, and corporate leadership courses through training, testing, seminars, practical demonstration, accreditation, certification, and other related services" (non-degree certification courses);
- c) The non-degree certification courses will be offered to Filipinos and foreign nationals for a fee;
- d) The non-degree certification courses will not grant any educational degree or diploma;
- e) The proposed corporation would be ninety-nine percent (99%) owned by JFC and one percent (1%) owned by a Filipino citizen;
- f) The Filipino citizen would be the sole director of the proposed corporation; and
- g) The JFC is prepared to remit two hundred thousand US dollars (USD 200,000.00) required minimum paid-in capital.

You are now asking for an opinion on the following matters:

- a) Whether or not "short-term high-level skills development" as contemplated in the FINL, is exempt from the forty percent (40%) foreign equity requirement;
- b) Whether or not the proposed corporation, which will be offering non-degree certification courses, falls under the purview of "short-term high-level skills development" as contemplated in the FINL; and
- c) Whether or not the ownership, management, and operations of the proposed corporation can be undertaken or 99% owned by the JFC.

¹ Executive Order (E.O.) No. 175, Promulgating the Twelfth Regular Foreign Investment Negative List, 27 June 2022.

Discussion on the First Query

Foreign Investment Negative List

Under Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act (FIA),² foreigners are allowed to invest up to 100% of the equity of a domestic enterprise unless otherwise restricted by the Constitution and other pertinent laws.³

The constitutional and statutory restrictions on allowable foreign equity are enumerated in the FINL which is updated from time to time by the National Economic and Development Authority (NEDA).⁴ List A Item No. 19 of the 12th FINL provides the following:

Up to forty percent (40%) foreign equity

xxx

19. Educational institutions other than those established by religious groups and mission boards, for foreign diplomatic personnel and their dependents, and other foreign temporary residents (Section 4, Article XIV of the Constitution),⁵ or for short-term high-level skills development that do not form part of the formal education system as defined in Section 20 of Batas Pambansa No. 232.⁶

Short-term High-level Skills Development

By the language of the above provision of the 12th FINL, it appears that the forty percent (40%) foreign equity limitation does not apply to “short-term high-level skills development **that do not form part of the formal education system,**” as defined in Section 20 of Batas Pambansa (B.P.) No. 232.⁷

Thus, we answer your first query in the affirmative.

Discussion on the Second Query

Educational Institutions

Educational institutions are subject to the nationality restrictions under Section 4, Article XIV of the 1987 Constitution, to wit:

Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school.

The provisions of this subsection shall **not apply** to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.⁸ (Emphasis supplied)

² Republic Act (R.A.) No. 7042, *Foreign Investments Act (FIA)*, 13 June 1991.

³ Section 2, *ibid.*

⁴ SEC-OGC Opinion No. 53-03 addressed to Mr. Felix Opena dated 28 October 2003.

⁵ Section 4 (2), Article XIV of the 1987 Constitution provides that “Control and administration of educational institutions shall be vested in citizens of the Philippines” as cited in the 12th FINL.

⁶ Batas Pambansa (B.P.) No. 232, *An Act Providing for The Establishment and Maintenance of An Integrated System of Education*, 11 September 1982 as cited in the 12th FINL.

⁷ Section 20 of B.P. No. 232 provides the following:

SECTION 20. *Definition.* — “Formal Education” refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to higher levels. Formal education shall correspond to the following levels:

1. Elementary Education. — the first stage of compulsory, formal education primarily concerned with providing basic education and usually corresponding to six or seven grades, including pre-school programs.
2. Secondary Education. — the stage of formal education following the elementary level concerned primarily with continuing basic education and expanding it to include the learning of employable gainful skills, usually corresponding to four years of high school.
3. Tertiary Education. — post-secondary schooling is higher education leading to a degree in a specific profession or discipline.

⁸ Section 4, Article XIV of the 1987 Constitution.

In *SEC-OGC Opinion No. 16-18*, the Commission previously opined that educational institutions refer to schools and that the school system is synonymous with formal education, to wit:

Under the Education Act of 1982, educational institution refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels."

Section 25, Chapter 3 of the Education Act, in relation to *People v. Filomena Foster* citing Section 2 of Act No. 2706, as amended, requires that **only an educational institution can engage in the private business of providing technical vocational or training programs to its students**, viz. —

Section 25. Establishment of Schools. — All schools shall be established in accordance with law. The establishment of new national schools and the conversion of existing schools from elementary to national secondary schools or from secondary to national secondary or tertiary schools shall be by law: Provided, That **any private school proposed to be established must incorporate as either a non-stock or a stock educational corporation in accordance with the provisions of the Corporation Code of the Philippines**. This requirement to incorporation may be waived in the case of family-administered preschool institutions.

The term "private school or college" shall be deemed to include any private institution for teaching, managed by private individuals or corporations, which is not subject to the authority and regulations of the Bureau of Education or of the University of the Philippines, or of the Bureau of Public Welfare, and which offer courses of kindergarten, primary, intermediate or secondary instruction or **superior courses in vocational, technical, professional or special schools by which diplomas or certificates are to be granted or titles and degrees conferred** (*People v. Foster*). (Emphasis supplied)

Offering the English language as a training course or program for public consumption, in general, is considered offering "technical vocational education." Educational institutions offering Technical Vocational Education Training is within the regulatory power of the Technical Education and Skills Development Authority (TESDA).⁹ (Citations omitted; Emphasis supplied)

The foregoing opinion was based on a Memorandum from the Technical Education and Skills Development Authority (TESDA) dated 30 September 2013 (TESDA Memorandum) which provides the meaning of "Technical Vocational Education," to wit:

"Technical Vocational Education" shall refer to **any program** at the post-secondary educational level **oriented towards skills proficiency leading to certificates or diploma in preparation for a particular occupation** or group of middle-level occupations. **Short-term programs of instruction, including the acquisition of technical knowledge and skills lasting less than a school year, are generally considered as technical-vocational educational activities, irrespective of the training provider** in which such programs are offered.¹⁰

The TESDA Memorandum concludes, thus:

1. **No Certificate of Training or Diploma for Program Completion.** If the domestic corporation purely caters to foreign clients abroad who wish to enhance their English language skills through informal online tutorial class instruction for a fee and **does not issue any Certificate of Training or Diploma for Program Completion to their successful online students**, it cannot be considered as engaged in formal technical-vocational education or training activities, and hence, not under the jurisdiction of TESDA; and
2. **With a Certificate of Training or Diploma for Program Completion.** If the domestic corporation offers the English program for a fee and at the end of the training program is **issuing any Certificate of Training or Diploma for Program Completion to its successful students**, it is considered engaged in formal technical vocational education, regardless of whether the same is performed online or within a regular classroom atmosphere and regardless of whether its students are foreigners or not, and hence, under the jurisdiction of TESDA.¹¹

Accordingly, if a corporation wishes to engage in the business of providing technical vocational education or training programs based on the foregoing standards, it follows that being an educational

⁹ SEC-OGC Opinion No. 16-18 addressed to Punongbayan and Araullo dated 21 July 2016.

¹⁰ Section 4, Paragraph 22, TESDA's Manual of Policies and Guidelines on the Establishment and Operation of Public and Private Technical-Vocational Education (TVET) and Training Institutions as cited in the 30 September 2013 TESDA Memorandum. Emphasis supplied in the Technical Education and Skills Development Authority (TESDA) Memorandum.

¹¹ 30 September 2013 TESDA Memorandum invoking Section 4, Paragraph 22 of TESDA's Manual of Policies and Guidelines on the Establishment and Operation of Public and Private Technical Vocational Education and Training Institutions.

institution, it must comply with the sixty percent (60%) – forty percent (40%) Filipino-Foreign equity requirement, subject to limitation and exceptions prescribed by law.¹²

However, and in light of the recent passage of the 12th FINL, the determination of whether or not the TESDA Memorandum is still consistent with the definition of “*short-term high-level skills development that do not form part of the formal education system*” under the 12th FINL rests with the TESDA and not with this Commission.

In line with this, we recognize that other government agencies have the jurisdiction to interpret Section 20 of B.P. No. 232 and to determine the status of the proposed corporation as an educational institution. Thus, we recommend that the following agencies’ opinions be obtained:

- a) the Commission on Higher Education (CHED) has the primary jurisdiction over educational institutions, including which entities can be considered as such, and has the competence to interpret and determine compliance with B.P. No. 232; and
- b) the TESDA has primary jurisdiction over Technical Vocational Education and Training (TVET) under R.A. No. 7796.¹³

Consequently, as to your second query, please be informed that as a matter of policy, the Commission shall refrain from rendering opinion on queries which involve interpretation of administrative rules and issuances of other government agencies 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 issuances¹⁴ and matters which would require an examination and review of the acts and ruling of another government agency since Commission does not review acts and ruling of other government agencies.

Discussion on the Third Query

If the proposed corporation falls within the ambit of the exception stated in the 12th FINL, then, “the ownership, management, and operations of the proposed corporation can be undertaken or 99% owned by the JFC” since in this case, no nationality restriction would apply. Otherwise, JFC cannot so own, manage, or operate the proposed corporation.

Lastly, we took note of your proposal to have a Filipino citizen as the sole director of the proposed corporation. Please be informed that while the R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCCP)¹⁵ removed the minimum number of directors for corporations, this removal must be read in conjunction with Sections 115 and 121 of the RCCP which provides that the rule on sole directorship applies only to One Person Corporations.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances, and documents disclosed/submitted, and should be considered 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.¹⁶ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,


ROMUALD C. PADILLA
 General Counsel

¹² SEC-OGC Opinion No. 16-18, *supra*.

¹³ R.A. No. 7796, *An Act Creating the Technical Education and Skills Development Authority, Providing for Its Powers, Structure and For Other Purposes, or Technical Educational and Skills Development Act of 1994*, 25 August 1994.

¹⁴ Section 5.6, SEC Memorandum Circular (MC) No. 15-03, Series of 2003 dated 16 December 2003.

¹⁵ R.A. No. 11232, Revised Corporation Code of the Philippines (RCCP), 23 February 2019.

¹⁶ Section 7, SEC MC No. 15-03, *supra*.