



**Republic of the Philippines
Department of Finance
Securities and Exchange Commission**

OFFICE OF THE GENERAL COUNSEL

22 November 2019

SEC-OGC Opinion No. 19-53
RE: Foreign Real Estate Holding
Company; Ownership of
Condominium Unit

CORTINA & MONTES LAW OFFICES

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**ATTENTION: ATTY. JEANNE R. T. MONTES
ATTY. PATRICK DANIEL O. LADRIDO**

Dear Attys. Montes and Ladrido:

This refers to your letter dated 06 February 2019 requesting an opinion on whether a foreign real estate holding company is legally allowed to own and hold a condominium unit.

You state in your letter that Company X, a holding company registered with the Commission, has P23,500,000.00 worth of common shares which are fully subscribed and paid, 39.9996% of which, amounting to P9,399,900.00, are fully subscribed and paid by Mr. Y, a British national.

You also mention that Company X will undergo restructuring and proposes to increase its authorized capital stock and to categorically exclude from its purpose clause the ownership of land. As a consequence, you aver that the corporation will no longer be constrained by the foreign equity limit as it is a domestic market enterprise with a paid-in capital of more than the equivalent of US \$200,000.00. Consequently, this will categorize Company X as a foreign corporation because Mr. Y owns approximately 51% of the shares of the corporation.

You now seek the Commission's opinion on whether Company X may legally own and hold a condominium unit.

Republic Act No. 4726, as amended, provides:

"Section 2. **A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common**, directly or indirectly, **in the land on which it is located** and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. **Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose** (hereinafter known as the "condominium corporation") **in which the holders of separate interest shall automatically be members or shareholders**, to the exclusion of others, **in proportion to the appurtenant interest of their respective units in the common areas.**

The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other pertinent laws."

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"Section 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: Provided, however, That **where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens**, except in cases of hereditary succession. **Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.**"
(Underscoring and emphasis supplied)

In your letter, there is no mention as to who actually owns the land on which the condominium project is built. As can be gathered from the above provision, such a factual matter is necessary to answer your query on whether Company X may own and hold a condominium unit. In this regard, assumptions pertinent to the above provision shall be made.

In the above scenario, Section 5 of R.A. 4726 is clear that where the common areas are owned by the unit-owners as co-owners, a condominium unit shall be conveyed only to corporations where 60% of its capital stock belongs to Filipino citizens.

Assuming that the common areas in the condominium project are owned by the owners of different units as co-owners thereof, then **Company X is prohibited from owning a condominium unit considering that more than 40% of its capital stock is owned by a foreign national.**

On the other hand, if the land upon which the project is to be built is owned by a condominium corporation, **Company X may legally own a condominium unit** *provided* that it will not result with Company X owning more than 40% of the capital stock of the condominium corporation.

This is consistent with the Commission's previous Opinion, to wit:

"However, where the condominium corporation is a Filipino corporation which owns the land on which the condominium project is situated, the Condominium Act allows the transfer to an alien of an "interest" in a "unit" in the said condominium, and of an "undivided interest" in the common areas thereof, subject to the qualifications mentioned in Section 5 of the said law. More specifically, x x x when the common areas are held by a condominium corporation, that the transfer to aliens of units in the project may be made only up to the point where the concomitant transfer of stockholdings in the condominium corporation would not cause the alien interest in such corporation to exceed 40% of its entire capital stock."¹

It shall be understood that the opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.² If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.


ROMUALD C. RADILLA
Officer-in-Charge

¹ SEC-OGC Opinion No. 09-17, *citing* DOJ Opinion NO. 134, Series of 1992.

² SEC Memorandum Circular No. 15, Series of 2003.