



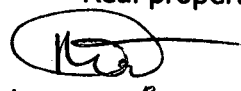
Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
Department of Finance
SEC Bldg. EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

08 August 2012

SEC-OGC Opinion No. 12-11
Foreign-owned corporation;
Real property

ATTY. ZOMER A. OCHAVILLO
Rm. 609 City & Land Megaplaza
ADB Ave., Ortigas Center
Pasig City


ROGELIO QUIDAYEN
AUGUST 10, 2012

Dear Atty. Ochavillo:

This pertains to your request for opinion dated 15 March 2012 inquiring whether or not a private corporation, 99.995% of stockholdings are owned by foreign individuals, can acquire/buy real property here in the Philippines.

The Civil Code of the Philippines ("Civil Code") generally classifies property as immovable (real) or movable (personal).¹ Real property comprises a broad enumeration under the Civil Code,² which includes land and buildings thereon.

¹ Art. 414. All things which are or may be the object of appropriation are considered either:

- (1) Immovable or real property; or
- (2) Movable or personal property.

² Art. 415. The following are immovable property:

- (1) **Land, buildings, roads and constructions of all kinds** adhered to the soil;
- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
- (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
- (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
- (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
- (7) Fertilizer actually used on a piece of land;
- (8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
- (9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

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With respect to ownership of private lands, the Constitution provides: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations **qualified to acquire or hold lands** of the public domain."³ Among those qualified are corporations or associations "at least sixty *per centum* of whose capital is owned by citizens."⁴

Furthermore, Sections 22 and 23 of Commonwealth Act No. 141 ("C.A. No. 141"), as amended, provide:

"Sec. 22. Any citizen of lawful age of the Philippines, and any such citizen not of lawful age who is a head of a family, and any corporation or association of which **at least sixty per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of Philippines, and corporate bodies organized in the Philippines authorized under their charters to do so; may purchase any tract of public agricultural land disposable** under this Act, not to exceed one hundred and forty-four hectares in the case of an individual and one thousand and twenty-four hectares in that of a corporation or association, by proceeding as prescribed in this chapter: Provided, That partnerships shall be entitled to purchase not to exceed one hundred and forty-four hectares for each member thereof. But the total area so purchased shall in no case exceed the one thousand and twenty-four hectares authorized in this section for associations and corporations.xxx

Sec. 23. No person, corporation, association, or partnership **other than those mentioned in the last preceding section** may acquire or own agricultural public land or land of any other denomination or classification, which is at the time or was originally, really or presumptively, of the public domain, or any permanent improvement thereon, or any real right on such land and improvement xxx"⁵

Thus, in order for a corporation to purchase, acquire or own land in the Philippines, it has to comply with the sixty percent (60%) requirement, which means that at least sixty percent (60%) of the total capital stock of the corporation must be wholly owned by Filipino citizens.⁶ Corollarily, if more than 40% of its capital is owned by foreigners, then the corporation cannot own Philippine land.

On the other hand, as to ownership of real properties *other than land*, foreigners, generally, can purchase houses or buildings unless specifically prohibited by law.

(10) Contracts for public works, and servitudes and other real rights over immovable property.

³ Article XII, Sec. 7 of the Constitution.

⁴ Article XII, Section 2 of the Constitution.

⁵ SEC-OGC Opinion No. 10-20, addressed to Atty. Teodulo G. San Juan, Jr. of the Castillo Laman Tan Pantaleon & San Jose Law Firm, 27 May 2010.

⁶ SEC-OGC Opinion No. 10-20 dated 27 May 2010, addressed to Atty. Teodulo G. San Juan, Jr.

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One such example of a prohibition on ownership of interest in a building is in the case of a condominium project. A foreign individual or a foreign corporation can own an interest in a condominium project subject to certain conditions:

"Interests in a condominium, which may be in the form of **ownership, lease or any other real rights**, are subject to the following rules:

1) If the condominium project is **set up on leased land, the corresponding condominium corporation may be established by a corporation which is wholly owned by a foreign firm.** xx

2) Where the condominium corporation is a Filipino corporation which owns the land on which the condominium project is situated, no interest in the condominium may be transferred to aliens or to corporations more than 40% of the capital stock of which is owned by aliens; or, when the common areas are held by a condominium corporation, 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 stock.** (citations omitted)⁷

Finally, with respect to your allegation that In-Wangsan Corporation,⁸ a corporation wholly owned by foreigners, became a "buyer" of a parcel of land, including an eleven storey building situated thereon, we shall refer your letter to the Enforcement and Prosecution Department (EPD) for investigation and proper action, if necessary. Please coordinate with the EPD for any further concerns.

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 issues 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.⁹ If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,


CAMILO S. CORREA
General Counsel

⁷ SEC-OGC Opinion No. 12-03, Letter dated 06 February 2012 to Atty. Joan A. Giduquio-Baron. Please see the original opinion for the authorities cited.

⁸ SEC Reg. No. CS200419473.

⁹ Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.