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

12 February 2016
SEC Opinion No. 16 – 02
Anti-Dummy Law.

Atty. Peter Anthony V. Rafanan
PAV RAFANAN & ASSOCIATES
3RD FLOOR AMO Building
#92 New York Avenue cor. Purdue Street
Cubao, Quezon City.

Dear Attorney Rafanan:

This pertains to your letter dated 06 March 2015 requesting opinion on whether Mr. James Wright, a British national, could assume the position of president/chairman of the board in LiveIn Quarters Steel Corporation ('LQSC') and increase his shareholdings therein from 25% to 40%, without violating the Anti-Dummy Law.

You disclosed that during a briefing at the Philippine Retirement Authority ('PRA') after Mr. Wright took his oath, he was informed by the PRA's general manager, Mr. Veredigno P. Atienza, that being a holder of Special Resident Retiree Visa ('SRRV'), Mr. Wright could assume the position of president/chairman of the board and increase his stockholdings to forty percent (40%), the threshold for foreign nationals under the Constitution.

You likewise informed us that LQSC has the following purposes:

" PRIMARY

To develop real estate projects in conjunction with modern construction methods and systems using galvanized steel materials for homes, offices, factories, warehouses, commercial and residential buildings.

SECONDARY

1.)To fabricate, manufacture, construct the lystesteel sections, import and export the raw material and finished products.
2.)To acquire, lease, purchase and go into joint venture, borrow, lend and develop subdivision and condominium, properties and create events in relation to its businesses.
3.)To market, promote, manage real estate, retirement projects, hotel condominium, commercial, industrial, agricultural, resort, subdivisions, and specialized real estate properties."

Finally, you disclosed that you are wary of the provisions of Commonwealth Act No. 108, or the Anti-Dummy Law, as well as the Foreign Investments Act of 1991 ('FIA'), which limit the participation of foreigners in a domestic corporation.

Thus, you ask us whether Mr. Wright could increase his shares in LQSC from 25% to 40% and be the corporation's president/chairman.

Of pertinence to your query is Section 2-A of the Anti-Dummy Law, which applies to corporations engaged in wholly or partly nationalized activity or business undertaking. This provision prohibits the employment by any person, corporation, or association of an alien, who shall intervene in the management, operation, administration or control thereof, whether as officer, employee, laborer, when the exercise or enjoyment of the property or of the franchise, privilege, or business engaged in by such person, corporation or association "is expressly reserved by the Constitution or the law to the citizens of the Philippines" or "corporations or associations at least 60% of the capital of which is owned by such citizens"; however, it allows such alien to be elected as director in proportion to his allowable participation or share in the corporation's capital.[1]

Hence, to answer your query, we must first determine if LQSC is engaged in a partly nationalized activity or business undertaking.[2]

To reiterate, LQSC has the primary purpose "***to develop real estate projects*** in conjunction with modern construction methods and systems" and the secondary purpose "***to acquire***, lease, ***purchase*** and go into joint venture, borrow, lend and develop ***subdivision and condominium properties*** xxx ***in relation to its businesses***". Such purposes include or allow ownership of land. In short, we are of the opinion that one of the activities to be undertaken by LQSC is ownership of land, which is a partly nationalized undertaking, considering that 60% of the capital of a corporation engaged in this activity is required by Art. XII, Section 7, of the Constitution and List A, No. 18 of the 10th Foreign Investment Negative List ('FINL-10')[3] to be owned by Philippine citizens.

Consequently, the Anti-Dummy Law applies to LQSC. Therefore, Mr. Wright cannot act as a president/chairman of the board, nor can he increase his shareholdings to 40% if there are other foreign stockholders in the corporation. On the other hand, if there is no other foreign stockholders in the corporation, Mr. Wright can increase his shareholdings from 25% to 40%, but cannot act as president/chairman of the board.

---

[1] SEC Opinion No. 12, Series of 2002 (dated 21 November 2002) addressed to Mr. Jose L. Gonzales.

[2] An undertaking or activity is partly nationalized, within the meaning of Section 2-A of the Anti-Dummy Law, if its enjoyment or exercise is limited by the Constitution or any law to corporations or associations at least 60% of the capital of which is owned by Filipino citizens, that is to say, the minimum equity participation required to be owned by Filipinos is 60%. (Department of Justice Primer on Anti-Dummy Law)

[3] Executive Order No. 184. Signed 29 May 2015.

Furthermore, assuming that LQSC is not covered by the rules on land ownership, it may still be covered by Section 8 of the FIA and List B of the FINL-10, which provide:

> "Section 8. xxx xxx xxx
> Small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of two hundred thousand US dollars (US$200,000.00) are reserve to Philippine nationals: Provided, that if (they involve advanced technology as determine by the Department of Science and Technology, or (2) they employ at least fifty (50) direct employees, then a minimum paid-in capital of one hundred thousand US dollars (US$100,000.00) shall be allowed to non-Philippine nationals."
>
> "List B ---
>
> Foreign ownership is limited up to 40% foreign equity for protection of small and medium scale enterprises:
>
> Domestic market enterprises with paid-in equity capital of less than equivalent of US$200,000.00.
>
> Domestic market enterprises which involve advance technology or employ at least fifty (50) direct employees with paid-in equity capital of less than the equivalent of US$100,000.00."

In this connection, the Commission opined that a domestic company engaged in construction of all types of houses and buildings as well as roads and bridges will be considered as engaged in an undertaking classified as partially nationalized activity because it is a domestic market enterprise with paid-up capital of only one million pesos (Php1,000,000.00) which is roughly equivalent to US$18,182.00; as such, the Anti-Dummy Law was applied to the said corporation.[4]

Thus, if LQSC is a domestic market enterprise that only has a paid-in equity of less than US$200,000.00, or a domestic market enterprise which involve advance technology or employ at least fifty (50) direct employees with paid-in equity capital of less than the equivalent of US$100,000.00, it can be considered as engaged in a nationalized activity. Hence, it will be covered by the Anti-Dummy Law which would restrict the officer positions of LQSC only to Filipinos, as well as the foreign ownership thereof to 40%.

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

---

[4] SEC Opinion No. 50, Series of 2003 (dated 23 October 2003) addressed to Mr. Yatsutaka Hinda. See Also Opinion SEC Opinion 16, Series of 2003 (dated 30 April 2003) addressed to De Borja Medialdea Bello Guevarra & Gerodias.

circumstances.[5] 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,

HON. MANUEL HUBERTO B. GAITE
OGC Supervising Commissioner

---

[5] Paragraph 7, SEC Memorandum Circular No.15, Series of 2003