



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

OFFICE OF THE GENERAL COUNSEL

16 February 2016

SEC-OGC Opinion No. 16-04

Registration of a Corporation to Engage
in the Practice of Interior Design;
Qualifications of Board of Directors

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Attention: Mr. Romeo H. Duran
 Mr. Alexius P. Tang

Gentlemen:

This is in response to your letter dated 04 February 2014, requesting clarification regarding the existing policy on the registrability of a domestic corporation with foreign equity or foreign corporation organized to engage in the practice of interior design in the Philippines under Republic Act No. 10350¹ or the “Philippine Interior Design Act of 2012” (PIDA of 2012).

In particular, you request clarification of the following:

1. Whether the Commission will allow the registration of a domestic corporation with foreign equity (e.g., a non-Philippine national, such as a wholly-owned subsidiary of a foreign corporation) that will engage in the practice of interior design in the Philippines.
2. Who would comprise the “key officers” mentioned in Section 26(b)(3) of R.A. 10350 for purposes of registering a domestic corporation engaged in the practice of interior design?
3. Would there be any particular requirement(s) applicable to the members of the Board of Directors of a domestic corporation registered to practice interior design in the Philippines, whether they be Filipinos or foreign citizens?
4. Whether or not the Commission will allow the registration of a foreign corporation that will engage in the practice of interior design in the

¹ Republic Act. No. 10350, An Act to Regulate and Modernize the Practice of the Interior Design in the Philippines, Repealing for the Purpose Republic Act Numbered 8534, Otherwise Known as “An Act Regulating the Practice of Interior Design in the Philippines”, Appropriating Funds Therefor and for Other Purposes, 17 December 2012.

Philippines, and in the affirmative, under what conditions and/or up to what extent?

5. Other relevant policies on corporations engaged in the practice of interior design in the Philippines.

We answer your first query in the negative.

As stated in your letter, PIDA of 2012 repealed² Republic Act No. 8534³ (PIDA of 1998). Aside from the regulation and modernization of the practice of interior design by individual practitioners, the latter law, unlike the previous law, now provides for corporate practice, thus:

SEC. 26. Lawful Practitioners of Interior Design. – The following persons shall be authorized to practice the interior design profession:

(a) Natural persons who are:

(1) Duly registered and licensed as interior designers and holders of valid certificates of registration and valid professional identification cards issued by the Board and the Commission pursuant to this Act; and

(2) Holders of valid temporary/special permits issued by the Board and the Commission to foreign licensed interior designers pursuant to this Act.

(b) Juridical persons:

(1) Single proprietorship owned by a registered and licensed interior designer;

(2) General professional partnership duly registered with the Securities and Exchange Commission (SEC) as professional partnership pursuant to the Civil Code and composed of partners who are all duly registered and licensed interior designers; and

(3) Corporation whose chief executive officer (CEO) and other key officers are all registered and licensed interior designers may be duly registered with the SEC as engaged in the practice of interior design.

However, PIDA of 2012 is silent as to whether corporations, to engage in such practice, can have foreign equity.

In this connection, you pointed out that the Ninth Regular Foreign Investment Negative List⁴ (FINL-9) expressly disallows foreign equity in the practice of interior design. Yet, you claim that the prohibition made by FINL-9 is based on PIDA of 1998, which expressly did not allow corporate practice of interior design, and had not taken into account the new law, PIDA of 2012, which now explicitly allows corporate practice of interior design. In other words, you argue that, with the repeal of the PIDA of 1998, there should also be a change in the interpretation, i.e. corporations that will engage in the practice of interior design should be allowed to have foreign equity.

² Republic Act. No. 10350, Section 41. Repealing Clause.

³ Republic Act No. 8534, An Act Regulating the Practice of Interior Design in the Philippines, 23 February 1998.

⁴ Executive Order No. 98, The Ninth Regular Foreign Investment Negative List, 29 October 2012.

We have a contrary view. Foreign equity participation cannot be allowed in the registration of corporations that intend to engage in the practice of interior design.

We base our opinion on the provision of Section 14, Article XII of the 1987 Constitution, which declares that **“the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law”**.⁵ 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 professionals⁶ and has been the long-standing rule upon which the enactment of laws and regulations relating to the practice of profession is based.

In the instant case, the PIDA of 2012 is the law referred to in the Constitution that could have provided an exception to the prohibition against foreign participation in the corporate practice of interior design. However, as stated earlier, the law is silent on the matter. Thus, consistent with the well-settled principle that the Constitution, as the fundamental law of the land, is deemed written in every statute⁷, **the general rule that the practice of all professions is exclusively reserved to Filipinos, thereby prohibiting any foreign equity in corporations to engage in such practice of professions, should be applied**.

In connection with your second and third queries, we refer you to the Professional Regulation Commission (PRC), specifically to the Professional Regulatory Board of Interior Design⁸ (Board) created pursuant to the PIDA of 2012 to be the lead agency to implement the law. In its reply⁹ to the Commission’s query on who shall be considered as the chief executive officers and other key officers of the corporation to engage in the practice of interior design, the PRC stated that “the Board will come up with an issuance on the Registration of Firms and Corporations for the Practice of Interior Design where the term ‘CEO and key corporate officers’ will be defined to determine who are covered by the aforesaid legal requirement”.

Nevertheless, regarding the qualifications of the directors, hereunder are the qualifications pursuant to the Corporation Code, thus:

1. Only natural persons can be elected as directors;
2. He must own at least one (1) share of the capital stock of the corporation in his own name (Section 23);
3. A majority of the directors must be residents of the Philippines (Section 23);
4. He must not have been convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years, or a

⁵ The 1987 Constitution, Article XII, Section 14, second paragraph.

⁶ Bernas, The 1987 Constitution of the Republic of the Philippines (1996), p. 1049

⁷ Manila Prince Hotel v. GSIS, G.R. No. 122156, 03 February 1997.

⁸ Republic Act No. 10350, Article II, The Professional Regulatory Board of Interior Design.

⁹ Letter dated 28 August 2014 from PRC Chairperson Teresita R. Manzala addressed to Dir. Ferdinand B. Sales.

violation of the Corporation Code, committed within five (5) years prior to the date of his election (Section 27); and

5. Other qualifications as may be prescribed in the by-laws of the corporation (e.g., a provision in the by-laws which prescribes that a director must not have a substantial interest in a competing corporation [Gokongwei vs. SEC, G.R. No. L-45911, April 11, 1979]).

We are of the view that the foregoing are the general qualifications that should be observed in selecting the directors of a corporation engaged in the practice of interior design, in addition to those to be prescribed by the issuances of the PRC pursuant to the PIDA of 2012.

In relation to your fourth query, you noted that Section 30 of the PIDA of 2012 allows foreign individuals to perform professional services as interior designers or consultants as long as they secure a temporary special permit from the PRC through the Board of Interior Design specifically authorizing him or her to practice on a special project or commission. You also mentioned SEC Opinion No. 34-06¹⁰ wherein the Commission allows the creation of a professional corporation wholly-owned by Korean architects and naval engineers to practice the said profession in the Philippines but solely for a special purpose or undertaking which shall be understood to be undertaken only for a limited duration or period of time.

In this regard, we cannot give a categorical answer to your query because the question you posed is vague, abstract and too general in scope for lack of factual circumstances from which the Commission may draw premises and conclusions¹¹. Nonetheless, if your query is founded on the context of SEC Opinion No. 34-06 which you cited, we are of the view that the pronouncement made in the said opinion is not squarely comparable, hence, not applicable, to that of your query. It is noteworthy that SEC Opinion No. 34-06 refers to the registration of a corporation engaged in the practice of naval architecture and marine engineering that intends to do business in an industry exclusively inside the export processing zone, making reference to the provision of the Omnibus Investment Code of 1987 quoted therein, which is not the case in your query.

As to your fifth query, please be informed that the Tenth Regular Foreign Investment Negative List¹² (FINL-10) was recently issued wherein it is indicated, in a footnote, that foreigners are allowed to practice several professions, including interior design, provided their country allows Filipinos to be admitted to the practice of the same professions. To note, this was not the case in the prior Negative Lists, which explicitly state that no foreign equity participation is allowed in all of the professions, including interior design, enumerated in the List A thereof, citing Section 14, Article XII of the Constitution in relation to the relevant professional laws. However, as to what the modification in the FINL-10 actually means [i.e. whether the National Economic and Development Authority (NEDA), as the agency tasked to endorse the amendments to the FINL¹³ diametrically changed its previous position on the matter], we suggest that a clarification be made with the NEDA. We likewise recommend that the PRC's comment be asked, considering that it is the lead agency which implements the PIDA of 2012.

¹⁰ SEC Opinion No. 34-06 addressed to Atty. P.V. Vergel De Dios, Jr. dated 17 October 2006.

¹¹ SEC Memorandum Circular No. 15, series of 2003.

¹² Executive Order No. 184, The Tenth Regular Foreign Investment Negative List, 29 May 2015.

¹³ Republic Act No. 7042, Sections 8 and 13.

It shall be understood that the foregoing opinion is rendered 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 a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.¹⁴ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.



MANUEL HUBERTO B. GAITE
OGC Supervising Commissioner

¹⁴ SEC Memorandum Circular No. 15, series of 2003.