OFFICE OF THE GENERAL COUNSEL

07 July 2025

SEC OGC Opinion No. 25-10
Re: Participation of Foreigners in the Board of Directors

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Dear Attorney:

This pertains to your letter dated 18 August 2022, requesting confirmation that foreigners may be nominated and elected to two (2) out of the five (5) seats in the Board of Directors (BOD) of Cebu Park Tower One Condominium Corporation (CPTOCC) regardless of the actual percentage of foreign ownership in the corporation.

You stated that you are a unit owner in CPTOCC. Based on the latest General Information Sheet of CPTOCC, foreigners hold 12.5% of the total ownership in the corporation.

According to you, foreigners may be nominated and elected to 2 out of the 5 seats in the BOD, regardless of the actual percentage of foreign ownership in the corporation, since condominium corporations are allowed by law to be 40% owned by foreigners.

Section 2-A of the Anti-Dummy Law, as amended[1], states:

> "SEC. 2-A. xxx xxx xxx Provided, finally, that the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed **in proportion to their allowable participation or share in the capital** of such entities."

In this relation, when asked as to which between actual or allowable participation or share in the capital is the basis for the determination of the number of seats allowed for foreigners in the BOD of a partially nationalized corporation, the Department of Justice (DOJ), in DOJ Opinion No. 40, Series of 2023, opined that:

> "We advise that **only those corporations that are considered "public utilities" under Republic Act No. 11659[2], or engaged in the advertising industry**, are covered by the limitation that the participation of foreign investors in the board of directors is limited to their **actual participation** or share in the capital of such entities. **For all other corporations with foreign equity engaged in a partially-nationalized activity**, and subject to existing capitalization requirements and ownership of stocks, or those corporations engaged in regular activity, the participation of foreigners is limited by their

[1] Commonwealth Act No. 108, As amended by Presidential Decree No. 715.
[2] An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act as amended.

allowable participation or share in the capital of such entities, as provided for in Section2-A of the Anti-Dummy Law."

Based on the foregoing and considering that CPTOCC is neither a public utility nor an advertising corporation, we confirm your position.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances, and documents disclosed/submitted and 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.[3] 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.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[3] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.