Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 April 2022

SEC-OGC Opinion No. 22-05
Re: Citizenship of a Trust; Grandfather Rule

Atty. Joselito T. Lopez
Alvarez Nuez Galang Espina & Lopez and Espina Law Firm
9th floor, Cebu Holdings Center
Cebu Business Park,
Cebu City

Dear Atty. Lopez:

This refers to your letter[1] requesting an opinion on whether or not the contemplated ownership structure of the Proposed Corporation that will engage in the acquisition and development of real estate in the Philippines will be compliant with nationality laws.

Per your letter, the proposed incorporators/stockholders are as follows:

Incorporator	**Citizenship**	**Percentage of Ownership**
Individual (Minor C)	Filipino (with Chinese trustee)	50%
Corporation X	100% foreign-owned (BVI)	39%
Individual	Filipino	10%
Individual	Filipino	1%
Individual	Chinese	1 Share
Individual	Chinese	1 Share
Individual	Chinese	1 Share

You request an opinion on the following queries:

1. Whether or not the Chinese Father of Minor C can validly be appointed/designated as trustee for his daughter's shares in the Proposed Corporation?
2. Can the Chinese trustee qualify as nominee/representative of the Filipino minor incorporator in the Board of Directors?
3. Will this not violate the "Grandfather Rule"?

[1] Dated 21 March 2018

Relative to the first query, the issue actually posed is how the nationality of the trustee will impact the nationality of the Proposed Corporation and the legality of the latter's pursuit of its real estate business.

Shares may be issued in trust for another person. The shares may be registered in the name of one person but the beneficial owner may belong to another.[2]

In a previous opinion[3], we opined that in the determination of the citizenship of shares being held in trust, both the nationality of the trustee and of the beneficiary should be considered. It was pointed out that the Foreign Investment Act[4] includes in its definition of "Philippine national" a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals.[5] In order for a trustee of a trust fund for retirement benefits of employees to be considered a Philippine national, two requirements must be satisfied, namely: (1) the trustee is a Philippine national and (2) at least sixty percent (60%) of the fund will accrue to the benefit of the Philippine nationals.[6] Further, the rules of the Bangko Sentral ng Pilipinas[7] on trust fund invested in banks provides that if the trustee is foreign, the equity investment shall be considered foreign regardless of the citizenship of the beneficiaries.[8]

The foregoing are consistent with the ruling in *Gamboa vs. Teves*[9] in relation to *Roy vs. Herbosa*[10] that control should be determined by looking at the stockholder's ability to vote in the election of directors and other important corporate affairs.

In this case, the Proposed Corporation will be engaged in the acquisition and development of real estate which is a partially

---

[2] Guy v. Court of Appeals, G.R. Nos. 165849, 170185, 170186, 171066 & 176650, 10 December 2007

[3] SEC Opinion No. 12-13 dated 09 August 2012 addressed to Atty. Loreto J. Dapon, Jr.

[4] Republic Act No. 7042 Foreign Investments Act of 1991

[5] This definition is a reproduction of that contained in the Omnibus Investment Code as well as the Investment Incentives Act.

[6] *Supra*, Note 2, *citing* SEC-OGC Opinion No. 01-A-09 dated 08 December 2009 addressed Mr. Demosthenes B. Donato of Donato Zarate & Rodriguez

[7] *Supra*, Note 2, *citing* the Manual of Regulations of the Bangko Sentral ng Pilipinas, 07-11-1975

[8]Manuals of Regulations of the Bangko Sentral ng Pilipinas, 07-11-1975, (1975) cited in SEC Opinion No. 12-13 dated 09 August 2012

[9] Gamboa v. Teves, G.R. No. 176579, 28 June 2011, 668 PHIL 1-118

[10] Roy III v. Herbosa, G.R. No. 207246, 22 November 2016, 800 PHIL 459-617

nationalized[11] activity; thus, the Proposed Corporation must comply with the 40% foreign ownership threshold. [12]

The proposed structure is that 61% will be owned by Filipinos, 50% of which, by virtue of a Deed of Donation, is owned by a Filipino minor (with a Filipino mother). However, the shares of stock of the minor incorporator will be held in trust by her Chinese father, with authority to represent the minor in all stockholders' meeting of the corporation, while she is still a minor. She will have full control over the shares only upon attaining the age of majority.

The Commission previously opined, based on Articles 320[13] and 326[14] of the Civil Code that the stock certificates owned by the minors should be issued in the name of the father or in his absence, in the name of the mother, in trust for the minors. He/She may represent and vote for the minor children in the stockholders' meetings inasmuch as said acts are embraced in the administration of property. However, he/she does not have the power to dispose or encumber the property of the minors, as such power is only granted by law to a judicial guardian of the wards' property, and even then only with the court's prior approval secured in accordance with the proceedings set forth by the Rules of Court. [15]

The following provisions of the Family Code amended Articles 320 and 326 of the Civil Code by, among others, providing the joint legal guardianship over the property of the unemancipated child, to wit:

> "Article 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children or wards the following rights and duties:
>
> xxx xxx xxx
>
> (5) To represent them in all matters affecting their interests;"
>
> "Article 225. **The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child** without the necessity of a

---

[11] Eleventh Regular Foreign Investment Negative List (FINL); Section 7, Article XII of the 1987 Constitution.
"Section 7. 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."

[12] SEC Opinion No. 14-05 dated 25 April 2014

[13] Civil Code of the Philippines, Republic Act No. 386, 18 June 1949. "Article 320. The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance."

[14] *Ibid.*, "Article 326. When the property of the child is worth more than two thousand pesos, the father or mother shall be considered a guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court."

[15] SEC Opinion dated 30 June 1982, TGN Realty Corporation

> court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.
>
> Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten *per centum* (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.
>
> xxx xxx xxx."

Based on the foregoing, the general rule is that parents exercise parental authority over their children. The father or the mother, should, by force of law and without need of judicial appointment, administer the child's property.[16] However, under the proposed structure, the 50% shareholding of Minor C will be under the control of her Chinese father. Since foreign control over the Proposed Corporation will exceed 40%, it will not comply with the Constitution and nationality laws. Thus, the Proposed Corporation cannot engage in real estate business under this structure.

As to your second query, we answer in the affirmative, with a qualification.

Section 22 of the Revised Corporation Code (RCC) requires stock ownership in order to be eligible as director. For the purpose of stock ownership qualification, the general rule is that beneficial ownership is not necessary and that a person who holds the legal title to stock on the books of the corporation is qualified, although the beneficial ownership may be in another. In other words, it is sufficient that the title to the stock, as it appears on the books of the corporation, is in the director, since the legal title is what counts and it is the person whose name appears as owner on the books of the company who is the stockholder and eligible as director. For instance, a director may hold his stock as trustee and yet be legally qualified. So a person to whom one share of stock has been transferred for the purpose of qualifying him as a director is eligible.[17]

In your letter, you represented that Minor C will be an incorporator of the Proposed Corporation. However, Section 10 of the RCC requires that a natural incorporator must be of legal age. Considering the above prohibition and the fact that the Chinese father represents the minor in such incorporation, the legal title to the stocks issued shall be in

---

[16] Paras, Civil Code of the Philippines, Vol. 1, 1984 ed. p.742

[17] SEC Opinion dated 11July 1989 addressed to Mr. Rolando Rosales

the name of the Chinese father. As such, the trustee Chinese father may qualify as a director **subject to the allowable proportion under the Anti-Dummy Law**.[18]

As to your third query, the Grandfather Rule does not apply in this case. The Grandfather Rule applies when there is a doubt on the nationality of an investee corporation and such is determined by tracing or "grandfathering" the shares of an investing corporate stockholder(s). Here, the nationality of the corporate stockholder, Corporation X, is not in doubt. What we are analyzing is the 50% share ownership of Minor C, which can directly be determined without applying the Grandfather Rule.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[19] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

ROMUALD C. PADILLA
General Counsel

---

[18] Section 2-A of Commonwealth Act No. 108, as amended by P.D. 715
[19] SEC Memorandum Circular 2003-15, No. 7.