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

OFFICE OF THE GENERAL COUNSEL

5 August 2014

SEC-OGC Opinion No. 14-20
Anti-Dummy Law; Foreign Directors in an Educational Institution

ATTY. RESTER JOHN NONATO
NONATO NONATO and NONATO
4th Floor Tulips Center, A.S. Fortuna Street
Mandaue City, Cebu

Sir:

This refers to your letter dated June 19, 2013 concerning your client, Premier Education Center for Language Incorporated ("PECL"), requesting for a "confirmatory legal opinion" in relation to the Anti-Dummy Law, i.e. *"that foreign stockholders may act as directors in the corporation formed as an English Language School in proportion to their allowable participation or share in the capital of the said corporation"*.

You stated that PECL is an English Language School, the primary purpose of which, per its Articles of Incorporation, is *"(t)o offer technical and vocational education and training specifically by operating a course-based language tutorial center catering to foreign and Filipino students regardless of educational background."* You further stated 60% of PECL's equity is owned by Filipinos, while 40% is owned by Japanese nationals, as distributed in the following manner:

Name	Nationality	No. of Shares Subscribed	Amount of Capital Stock Subscribed	Amount Paid on Subscription
Naohiko Horikawa	Japanese	98	P 9, 800.00	P9, 800.00
Maki Sawane	Japanese	2	200.00	200.00
Dareen Bontilao	Filipino	50	5,000.00	5,000.00

Monaliza A. Laping	Filipino	48	4,800.00	4,800.00
Lilibeth Junasa	Filipino	50	5,000.00	5,000.00
Jessica P. Natavio	Filipino	1	100.00	100.00
Anina G. Busalla	Filipino	1	100.00	100.00
Total		**250**	**P25, 000.00**	**P25, 000.00**

You acknowledge that PECL, being an English Language School, is an educational institution, and hence, governed by nationality restrictions under the Constitution, pertinent laws, rules and regulations.

Given the above premises, you now seek an opinion as to whether it is permissible for PECL's two (2) Japanese stockholders to sit as members of the Board of Directors of PECL in proportion to their shareholdings.

This Commission has consistently ruled that pursuant to Section 2-A of the Anti-Dummy Law,[1] the election of foreigners to the board of directors may be allowed as long as the corporation is not engaged in a wholly nationalized activity and only in proportion to their share in the capital of such corporation.[2] In fact, in a recent SEC Opinion[3] **involving your firm**, a similar query was made as to whether it was permissible for foreigners to have participation in the board of directors of a corporation engaging in the ownership and acquisition of real estate. It was opined that foreigners may participate as board of directors, subject to the aforesaid conditions. **However, the last proviso of Section 2-A of the Anti-Dummy Law shall not apply to educational institutions, as these entities are governed by more stringent requirements under the Constitution and pertinent laws.**

Article XIV, Section 4 (2), of the 1987 Constitution specifically provides nationality restrictions for educational institutions:

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[1] Section 2-A, Commonwealth Act No. 108, as amended by PD No. 715. The particular portion of the law reads: *"xxx (t)hat 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."*.

[2] See SEC Opinion 09-02, January 12, 2009, addressed to Sebastian, Liganor and Gallinato Law Office; SEC-OGC Opinion No. 12-01, January 31, 2012, addressed to Atty. Sheryl C. Santos-Centeno.

[3] SEC-OGC Opinion No. 14-05, April 25 2014, addressed to Nonato Nonato and Nonato Law Offices.

"Section 4.

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"(2) Educational institutions, other than those established by religious groups and mission boards, **shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens.** The Congress may, however, require increased Filipino equity participation in all educational institutions.

"The control and administration of educational institutions shall be vested in citizens of the Philippines." xxxxx

(Emphasis supplied)

Particularly, this provision of the Constitution is implemented by Presidential Decree No. 176.[4] Section 2 of the said presidential decree states as follows:

"2. **Control and Administration**. The control and administration of all educational institutions already established or hereafter to be established in the Philippines **shall be vested in citizens of the Philippines**. **Membership in the governing bodies or boards** of such educational institutions **shall be limited to citizens of the Philippines**. Appointments and designations to, and employment in, positions involving the exercise of administrative discretion in the management of such educational institutions **shall likewise be limited to citizens of the Philippines**. xxx"

(Emphasis and underscoring supplied)

Pursuant to the aforecited provisions, foreigners are not allowed to become members of the Board of Directors/Trustees of "educational institutions".

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[4] The Decree is entitled **"IMPLEMENTING SECTION 8 (7), ARTICLE XV, OF THE NEW CONSTITUTION"**, to implement Article XV Sec. 8(7) of the 1973 Constitution. The said law now implements Article XIV, Section 4 (2), of the 1987 Constitution. (SEC Opinions dated November 7, 1991 and November 10, 1992, infra at Notes 5 and 6)

Neither can a foreigner be elected as chairman of said governing body.[5] The above prohibition/restriction against foreigners applies to all persons who are not citizens of the Philippines, including natural-born citizens of the Philippines who have lost their Philippine citizenship by acquiring naturalized citizenship.[6]

Hence, it is our opinion that the Japanese stockholders of PECL, Mr. Naohiko Horikawa and Mr. Maki Sawane, are disqualified to hold any position in the Board of Directors pursuant to Article XIV, Section 4 (2) of the 1987 Constitution, in relation to Presidential Decree No. 176.

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.[7] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

CAMILO S. CORREA
General Counsel

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[5] SEC Opinion dated November 7, 1991, addressed to Miss Aimee Ada Coryell.
[6] SEC Opinion dated November 10, 1992, addressed to Mr. Eleno L. dela Cruz.
[7] SEC Memorandum Circular 2003-15.