Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

March 24, 2026

SEC OGC Opinion No. 26-07
Re: Nationality restrictions for purely private construction companies

ATTY. CESAR C. CRUZ
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6784, Aya Ave., Makati City

Re : Request for opinion

Dear Sir:

This refers to your letter dated February 18, 2026,[1] requesting for an opinion on "the nationality requirement for construction companies in the light of the Supreme Court decision in ***Philippine Contractors Accreditation Board (PCAB) v. Manila Water [Co. Inc.]***."[2]

In your letter, you represented the following:

a) You client, "Bauer Foundations Philippines, Inc. [Bauer], is a domestic corporation xxx presently registered with [the Commission] as a construction company with a paid-up capital of PHP115,000,000.00 or at least USD200,000.00 and it does not own land"[3];
b) "Presently, [Bauer] has a regular license with the PCAB as a construction company which is at least sixty percent (60%) Filipino[-]owned while forty percent (40%) of its equity is owned by Bauer Spezialtiefbau GmbH, a German corporation"[4]; and
c) "[T]he Supreme Court struck down PCAB's nationality requirement mandating that construction companies be at least [60%] Filipino-owned, declaring as void Rule 3, Section 3.1(a) paragraph 2, Section 3.1 (b) subparagraph (bb), and Rule 12, Section 12.7 of the Revised Rules and Regulations [(IRR)] Governing Licensing and Accreditation of Constructors, implementing Republic Act No. 4566 (R.A. No. 4566), otherwise known as the Contractor's License Law in the Philippines xxx."

You are now requesting the Commission to issue a formal confirmation:

a) "that, pursuant to the Supreme Court's pronouncement, the SEC will align its regulatory framework with the said ruling and will not impose nationality restrictions on construction companies in its registration and amendatory processes, i.e. that a foreign entity holding 40% equity in a domestic corporation engaged in construction business can acquire the shares of the remaining 60% Filipino equity to become 100% foreign equity owned domestic

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[1] Atty. Cesar C. Cruz, Cesar C. Cruz & Partners, *Letter to the Securities and Exchange Commission Re: Request for Confirmation of Opinion on Nationality Requirement for Construction Companies* (February 18, 2026). Proof of payment received on March 13, 2026.
[2] See *Philippine Contractors Accreditation Board v. Manila Water Co., Inc.*, 872 Phil. 577 (2020) [Per J. Gesmundo, En Banc]
[3] *Supra* Note 1. at p. 1, par. 2.
[4] *Id.*

corporation and corollarily, a construction company may now be owned by a corporation with 100% foreign equity participation"[5]; and

b) "[s]pecifically, [that] there is no legal obstacle for [your] client, [Bauer], to become a 100% foreign[-] owned domestic Corporation with Bauer Spezialtiefbau GmH, presently holding 40% equity, acquiring the 60% share of its Filipino stockholders."[6]

In essence, you are asking for an opinion from the Commission on ***whether or not a construction company like Bauer may be 100% foreign-owned.***

Nationality restrictions in general

Article XII, Section 10 of the Constitution provides that "[t]he Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least [60%] of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments."[7]

Pursuant to this authority, Republic Act (R.A.) No. 7042, or the Foreign Investments Act (FIA) as amended, was enacted to promote the policy of the State "to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, xxx to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws, and consistent with the protection of national security."[8]

Under this law, the general rule is that non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises (DMEs). This ownership is only restricted if the specific area of activity is prohibited or limited by the Constitution, existing law, or the Foreign Investment Negative List (FINL).[9] For DMEs with paid-in capital of at least the equivalent of USD 200,000 (or USD 100,000 in the case of certain DMEs), up to 100% foreign ownership is allowed, subject only to constitutional limitations, specific statutory restrictions, and the prevailing FINL.[10]

The nature and structure of the FINL

The FINL is one of the mechanisms by which foreign equity restrictions is imposed. Section 8 of the FIA, as amended by R.A. No. 8179 and R.A. No. 11647,[11] provides the structure of the FINL as follows:

> ***Sec. 8. List of Investment Areas Reserved to Philippine Nationals [(FINL)].*** — The [FINL] shall have two (2) component lists: A and B:
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> a) List A shall enumerate the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws.
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> b) List B shall contain the areas of activities and enterprises regulated pursuant to law:
>   1) which are defense-related activities, requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials, unless such manufacturing or repair activity is specifically authorized by the Secretary of National Defense; or
>   2) which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs, all forms of gambling, nightclubs, bars, beer houses, dance halls, sauna and steam bathhouses and massage clinics.
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> Except as otherwise provided under [R.A.] No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 and other relevant laws, micro and small domestic market enterprise with paid-in equity capital less than the equivalent of Two hundred thousand US dollar (US$200,000.00). are reserved to Philippine nationals: Provided, That if: (1) they involve advanced technology as determined by the Department of Science and Technology, or (2) they are endorsed as startup or startup enablers by the lead host agencies pursuant to Republic Act No. 11337, otherwise known as the Innovative Startup Act; or (3) a majority of their direct employees are Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), then a minimum paid-in capital of One hundred thousand US dollars (US$100,000.00) shall be allowed to non-Philippine nationals: Provided, further, That registered foreign enterprises employing foreign nationals and

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[5] *Supra* Note 1 at p. 6, par. 2.
[6] *Id.*
[7] Article XII, Section 10, 1987 Constitution. February 02, 1987.
[8] Republic Act (R.A.) No. 11647, *Promoting Foreign Investments*, Section 1. March 02, 2022.
[9] R.A. No. 8179, Section 2, amending Section 7 of R.A. No. 7042. March 28, 1996.
[10] *Supra* Note 8 at Section 8, amending Section 8 of R.A. No. 7042.
[11] *Supra* Note 9 at Section 3, amending Section 8 of R.A. No. 7042.

> enjoying fiscal incentive shall implement an understudy or skills development program to ensure the transfer of technology or skills to Filipinos. Compliance with this requirement shall be regularly monitored by the DOLE.
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Aside from being an administrative mechanism to impose and implement nationality restrictions, the FINL also illustrates the policy trend of gradual liberalization as evidenced by the evolution of the FINL itself.

FINL provisions on construction companies

The First[12] and Second[13] Regular FINLs (1994 and 1996) explicitly listed "private domestic construction contracts" under List A, limiting foreign equity to 40%, **citing R.A. No. 4566** and Article XIV, Section 14 of the Constitution.

R.A. No. 4566 established the Philippine Licensing Board for Contractors (now PCAB), defined "contractor," and vested in PCAB the power to classify, license, and discipline contractors.[14] **Notably, however, it does not prescribe any foreign equity or nationality requirement for construction firms.** Its main function is to ensure that any person or entity engaging in the business of contracting holds an appropriate PCAB license and meets the Board's competence and integrity standards, regardless of nationality, except where other laws impose specific nationality restrictions. As held in ***PCAB vs. Manila Water***[15]:

> We agree with respondent that a scrutiny of R.A. No. 4566 reveals that **there is nothing which would indicate that petitioner is authorized to set an equity limit for a contractor's license.** As argued by respondent, it is Congress which has the power to determine certain areas of investments which must be reserved to Filipinos, upon recommendation of the National Economic Development Authority (NEDA), and when national interest requires. Again, we do not find any basis in any law enacted by Congress for the equity requirement set by petitioner in the assailed regulation. **This power is not even impliedly delegated to petitioner under R.A. No. 4566 from which it anchors its existence and authority.** (Citations omitted, emphasis supplied).
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Verily, without a specific imposition of the nationality restriction in the law itself, the IRR cannot expand the provisions of the law to include such limitation. In fact, as early as 1996, the Department of Justice (DOJ) issued an opinion on whether or not the FINL can add a nationality restriction based **only** on the provisions of an IRR and not the law itself,[16] *viz.*:

> With respect to List A, you seek the legal opinion of this Department "on whether the provision on the nationality requirement/foreign equity restrictions which is provided for in the Implementing Rules and Regulations (IRR) but not in the specific law, could be used as legal basis for inclusion of an investment activity in List A."
>
> You pose the query in relation to the "submission" of the Construction Industry Authority of the Philippines (CIAP) indicating a foreign equity limitation of 40% for ***private construction contracts*** which is allegedly based on the Contractors' License Law (CLL), as shown in the table below:

Investment Activities Related [to] Construction		
Foreign Equity Participation	***Government Construction***	***Private Construction***
Up to 100%	Foreign-funded/assisted projects under the ICB (Loan/Bilateral Agreements)	
	Construction of public utilities under BOT (R.A. No. 7718)	
Up to 40%	Construction of defense-related structures, e.g. land, air, sea, and coastal defenses, arsenals, barracks, depots, hangars, landing fields, quarters, hospitals, etc. (C.A. No. 541)	Private construction contracts (R.A. No. 4566)
	Construction and repair of locally-funded public works (C.A. NO. 541, as amended by P.D. No. 1594, LOI No. 630)	

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[12] Executive Order (E.O.) No. 182, Series of 1994, First Regular FINL, June 22, 1994.
[13] E.O. No. 362, Series of 1996, Second Regular FINL, August 20, 1996.
[14] R.A. No. 4566, *the Contractors' License Law*, Article I, Section 2, June 19, 1965.
[15] *Supra* Note 2.
[16] Department of Justice (DOJ) Opinion No. 17, Series of 1996 addressed to Mr. Cielo Habito, February 09, 1996.

> However, **your office has observed that the CLL has** <u>no provision specifying a nationality requirement/equity restriction on investments on construction business</u> **but surmised that such equity restriction is only contained in the IRR of the CLL** xxx.
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> xxx
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> Hence, you want to be clarified —
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> > ". . . on how such provision in the provision in the IRR should be treated in relation to the formulation of List A of the RFINL. That is, should the IRR be considered part of the specific law and as such can be used as legal basis for the equity limitation? If not, what remedial action could be taken to address the matter? Should the specific provision of the IRR be deleted to make it conform with of RA 4566 and its Implementing Rules and Regulations, for reference."
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> For your enlightenment, the rule is that an administrative agency like the CIAP can neither amend nor overrule the law it seeks to implement. **Thus, an administrative agency tasked to implement the law cannot by rules and regulations extend or restrict the terms and provisions thereof.** In other words, administrative rules and regulations must be in harmony with the provisions of the law. For it is only when regulations are found to be in harmony with the general purpose and objects of the law that they may be deemed to have force and effect of the law
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> Moreover, in case of discrepancy between the basic law and an implementing rule or regulation, the former prevails, thus rendering the issuance of the latter of no force and effect. (Citations omitted, emphasis and underscoring supplied)

Thus, in the Third FINL (1998)[17] onwards through the 11th FINL,[18] the previous entry limiting private domestic construction contracts to 40% foreign equity was removed. ***PCAB vs. Manila Water***[19] observed:

> Worthy to note that the first and second Foreign Investments Negative List (FINL) included "private domestic construction contracts." These FINLs were issued in 1994 and 1996, respectively. <u>***Noticeably, from the third FINL in 1998 until the most recent 11th FINL (2018), private construction contracts were no longer included in the list. This means that the restriction on foreign investments on private construction contracts was already lifted as early as 1998.***</u> The opening of investment areas to foreign investors is an indication of a developing economy to which our governing and implementing laws must also adapt to depending on the demands of the industry and economy. It follows that the assailed IRR which was last amended in 1989, or thirty (30) years ago, must also conform to these developments in order to be consistent with the current state policy. (Citations omitted, emphasis and underscoring supplied)

While ***PCAB vs. Manila Water*** only discusses up to the 11th FINL, the removal of private domestic construction contracts was retained in the current negative list, the 12th FINL.[20] Despite such removal, however, the 12th FINL retains specific restrictions that still apply to specialized niches in the construction industry, such as:

a) ***Contracts for construction of defense-related infrastructures***

The 12th FINL (List A) caps foreign equity in "contracts for the construction of defense-related structures" at twenty-five percent (25%) foreign ownership,[21] *viz.*:

> **Up to twenty-five percent (25%) foreign equity**
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> xxx
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> 13. Contracts for the construction of defense-related structures (Section 1 of Commonwealth Act [CA] No. 541)

For defense-related construction contracts, foreign equity is limited at 25%. Thus, private construction companies non-compliant with this restriction cannot undertake the construction of defense-related infrastructure.

b) Procurement of infrastructure projects

The 12th FINL (List A) likewise adds foreign equity restrictions on procurement of infrastructure projects,[22] *viz.*:

[17] E.O. No. 11, Series of 1998, Third Regular FINL, Annex A, August 11, 1998.
[18] E.O. No. 65, Series of 2018, Eleventh Regular FINL. October 29, 2018.
[19] *Supra* Note 2.
[20] E.O. No. 175 or the 12th Regular FINL, List A, Item No. 13, June 27, 2022.
[21] *Id.* at List A, Item No. 13.
[22] *Id.* at List A, Item No. 15.

Up to forty percent (40%) foreign equity

15. Procurement of infrastructure projects pursuant to Section 23.4.2.1 (b), (c) and (e) of the Implementing Rules and Regulations (IRR) of R.A. No. 9184.

For procurement of infrastructure projects cited in the 12th FINL, foreign equity in the bidding entity is capped at 40%. Bidders must therefore be at least 60% Filipino-owned to qualify.

Notably, the FINL cites Section 23.4.2.1 (b), (c), and (e) of the IRR of R.A. No. 9184[23] but R.A. No. 9184 is already superseded by R.A. No. 12009 or the New Government Procurement Act (NGPA).[24] Nevertheless, the IRR of the NGPA[25] also contains a reproduction of the relevant sections of the IRR of R.A. No. 9184, to wit:

> 52.4.2 For the procurement of Infrastructure Projects:
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> 52.4.2.1 The following persons or entities shall be allowed to participate in the bidding for Infrastructure Projects:
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> a) Duly licensed Filipino citizens or sole proprietorships;
> c) Partnerships duly organized under the laws of the Philippines and of which **at least sixty percent (60%) of the interest belongs to citizens of the Philippines;**
> d) Corporations duly organized under the laws of the Philippines, and of which **at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;**
> e) Cooperatives duly organized under the laws of the Philippines; or
> f) Persons or entities forming themselves into a joint venture, i.e., a group of two (2) or more persons or entities that intend to be jointly and severally responsible or liable for a particular contract; Provided, however, That in accordance with EO No. 65, s. 2018, **Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%):** Provided, further, That joint ventures in which Filipino ownership or interest is less than sixty percent (60%) may be eligible where the structures to be built require the application of techniques or technologies which are not adequately possessed by a person or entity meeting the sixty percent (60%) Filipino ownership requirement: Provided, furthermore, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA: Provided, finally, That the primary purpose of each member of the joint venture must be similar or related to the requirement of the project to be bid out.
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> 52.4.2.2 Foreign bidders may be eligible to participate in the procurement of Infrastructure Projects **when provided for under any treaty or international or executive agreement as provided in Section 4 of the Act and this IRR.** (Emphasis supplied)

With the invalidation of PCAB's nationality-based licensing rule in ***PCAB v. Manila Water***[26] vis-à-vis the continued presence of nationality rules under the government procurement law, compliance with nationality requirements in public procurement falls **primarily within the responsibility of the procuring entity**. This is because the procuring entity is the one responsible for prescribing and enforcing eligibility requirements, including any nationality requirements, under the procurement law.

Thus, for ***purely private construction***, there is currently no foreign equity restriction in R.A. No. 4566, the FIA, or the latest FINL. This is consistent with ***PCAB vs. Manila Water***, which should be given the necessary weight pursuant to Article 8 of the Civil Code.[27]

From the foregoing, a construction company like Bauer may be 100% foreign-owned, provided it engages in purely private construction and does not undertake defense-related construction nor bid in the procurement of public infrastructure projects.

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[23] Implementing Rules and Regulations (IRR) of R.A. No. 9184 or the *Government Procurement Reform Act (GPRA)*, July 19, 2024.
[24] R.A. No. 12009 or the *New Government Procurement Act (NGPA)*, July 20, 2024.
[25] IRR of R.A. No. 12009, February 25, 2025.
[26] *Supra* Note 2.
[27] R.A. No. 386, Civil Code of the Philippines, Article 8, August 30, 1950 provides:

> Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

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

Yours most respectfully,

ROMUALD C. PADILLA
General Counsel

[28] SEC Memorandum Circular No. 15, Series of 2003, 16 December 2003.