



Republic of the Philippines
SECURITIES & EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, Mandaluyong City

July 6, 2005

SEC Opinion No. 05-09

**Re: Corporate Nationality
under the Special Purpose
Vehicle Act; Acquisition of
Non-Performing Assets**

**Angara Abello Concepcion
Regala & Cruz**
ACCRA Bldg., 122 Gamboa St.,
Legaspi Village, 0770 Makati City

Attention: **Atty. Tadeo F. Hilado**

Gentlemen:

This refers to your letters dated April 8 and May 5, 2005 requesting confirmation of your opinion that the ownership structure of two special purpose vehicles ("SPV 1" and "SPV 2") incorporated pursuant to Republic Act No. 9182 ("SPV Act") is legal and valid.

As stated, Equitable PCI Bank ("Bank") has a portfolio of **non-performing loans** ("NPL's") and **real and other properties owned or acquired** ("ROPOA's") which the Bank intends to dispose.

In order to acquire the Bank's NPLs and ROPOAs, your clients will be establishing two (2) **Special Purpose Vehicles**, namely, **SPV 1** and **SPV 2**.

SPV 1 is **Cameron Granville Asset Management (SPV_AMC) Inc.** It is duly incorporated and organized pursuant to the SPV Act of 2002 and has complied with the minimum capital and other requirements imposed by the SPV

Act. As disclosed in your letter, **SPV 1** will be 100% owned by the Singapore branch of Bayerische Hypothek und Vereinsbank AG (HVB).

SPV 2 is **LNC (SPV-AMC) Corporation**. It is 60% owned by **HoldCo** and 40% by **SPV 1**.

HoldCo will be owned 60% by Filipinos, holding Class "A" common shares and 40% by **SPV 1**, holding Class "B" common shares.

Please refer to the attached diagram on the corporate structures of the subject corporations.

Based on your letter, **SPV 1** will acquire **Non-Performing Loans (NPLs)** from local banks pursuant to the SPV Act. Further, **SPV 1** will acquire: (a) 40% of the capital stock of **SPV 2**; and (b) 40% of the capital stock of **HoldCo**, which in turn will acquire 60% of the capital stock of **SPV 2**.

SPV 2 will acquire **Real and Other Properties Owned or Acquired (ROPOAs)** from local banks pursuant to the SPV Act. Since some of the ROPOAs will consist of land, 60% of the capital stock of **SPV 2** must be owned by "**Philippine Nationals**", as defined in Sec. 3(a) of Republic Act No. 7042 (the "Foreign Investments Act of 1991" or "FIA").

We answer your queries as follows:

1. **SPV 1's** acquisition of the **Non-Performing Loans (NPLs)** of local banks is allowed under Section 5, Article II of the SPV Act, which provides:

"Sec. 5. Powers of an SPV. - An SPV will have the following powers:

(a) to invest in, or acquire NPAs of Fis;
xxx

On the other hand, NPLs are included in the definition of NPAs which are defined by Section 3, Article II of the SPV Act as:

"xxx
(g) "Non-Performing Assets or NPAs" consist of the Non-Performing Loans and Real and Other Properties Owned or Acquired by Fis".

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It is thus clear from the foregoing, that SPV 1 can acquire NPLs of local banks.

2. The acquisition by SPV 1 of shares of stock of HoldCo is legal under Section 4, Article II of the same Act which provides:

" Sec. 4. Special Purpose Vehicle - An SPV shall be organized as a stock corporation in accordance with Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" and the rules promulgated by the Commission for purposes of registering the SPV; Provided, That if the SPV will acquire land, at least sixty percent (60%) of its outstanding capital stock shall be owned by Philippine nationals pursuant to Republic Act NO. 7042, as amended, otherwise known as "The Foreign Investment Act." (underscoring ours)

By statutory definition, an SPV is a corporation organized in accordance with the Corporation Code. Thus, an SPV has all the express powers of a corporation provided by Sec. 36 of the Code, to wit:

"Sec. 36. Express Powers of a Corporation

xxx

(g) To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with all types of properties;

xxx

(k) To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation."

In relation thereto, Section 42 of the Corporation Code likewise provides that:

"Sec. 42. Power to invest corporate funds in another corporation or business or for any other purpose. - Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized x x x."

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The power of a corporation to invest its funds in another corporation or business is well established. An SPV, being a corporation, can acquire shares in another corporation. Thus, it is clear from the foregoing that SPV 1 can acquire shares of stock of HoldCo.

3. SPV 2's acquisition of real properties shall be subject to the nationality requirement of the SPV Act in relation to the Philippine Constitution and the Foreign Investments Act (FIA). Section 4, Article II of the SPV Act provides:

Provided, That if the SPV will acquire land, at least sixty percent (60%) of its outstanding capital stock shall be owned by Philippine nationals pursuant to Republic Act No. 7042, as amended, otherwise known as "The Foreign Investments Act."

The issue here is whether or not at least 60% of SPV 2 is owned by Philippine nationals. Thus, it must be determined whether or not HoldCo, which owns 60% of LNC Corporation, is a Philippine national.

A Philippine national is defined by Sec. 3 of the FIA as follows:

- (a) *the term "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or a*

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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 benefits of Philippine nationals; Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national".

As stated in your letter, HoldCo will be 60% owned by Filipino individuals and/or a Philippine corporation which is 100% owned Filipinos. It is clear that HoldCo is a Philippine national under the abovequoted provision.

In determining whether Holdco is a Philippine national, the computation of the 60% Filipino ownership shall be based on the total number of outstanding capital stock entitled to vote, regardless of the par value of the shares.

Further, considering that HoldCo is a Philippine national and owns 60% of SPV 2, then the latter complies with Section 4, Article II of the SPV Act. Thus, SPV 2 is qualified to acquire lands from the bank's ROPOAs.

The opinion rendered herein specifically applies only to the facts and circumstances as stated herein and can not be used as precedent in other cases.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel

HOLDCO

