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

OFFICE OF THE GENERAL COUNSEL

27 November 2008

SEC-OGC Opinion No. 08-27
Foreign equity in Condominium Corporation

ELNAR AGAPAY & SUELLO LAW OFFICES
Unit 2, Josefa Arcade, Sergio D. Lim Building
Gen. Maxilom Street, Cebu City

Attention: Atty. Dominique T. Elnar

Gentlemen:

This refers to your letter dated 26 July 2008 requesting opinion on whether a condominium corporation that is a lessee of a private land can have more than forty percent (40%) foreign equity.

As a brief background, Phil-U.R.I Dev't Corporation (the "Corporation") is a corporation organized under Philippine laws but is owned in majority by foreigners. The Corporation plans to develop a condominium project on a leased land that is owned by a Filipino corporation.

Under the pertinent provisions of the Philippine Constitution only Filipino citizens and corporations or partnerships at least 60% Philippine owned are entitled to acquire land in the Philippines. One exception to that rule is a purchase of not more than 40% interest in a condominium project by foreigners. The exception can be found in Section 5 of the Condominium Act of the Philippines also known as Republic Act No. 4726, which allows foreigners to acquire condominium units and shareholdings or membership in condominium corporations up to not more than 40 percent (40%) of the total and outstanding capital stock of a Filipino-owned or -controlled corporation. It must be stressed that the foregoing discussion applies to acquisition of land.

In the instant query, the condominium corporation will build the condominium project on a leased land. In effect, the condominium corporation will not acquire ownership of the land but will be a mere lessee of the land where the project will be erected. This argument finds support in the opinion of the Secretary of Justice, the relevant portion of which is quoted below :

> "I have carefully examined Republic Act No. 4726 ("The Condominium Act") and I have found no provision therein which, expressly or by necessary implication, prohibits a corporation whose capital stock is wholly owned by aliens from

establishing a condominium corporation and setting up a condominium project on leased land."[1]

The real right in a condominium may be ownership or any other interest in real property recognized by the law on property in the Civil Code and other pertinent laws.[2] The other interest mentioned may be in the form of a lease.

When it comes to long-term lease of private lands by foreign investors, Republic Act No. 7652 also known as the Investors' Lease Act shall govern. Section 4 of R.A. No. 7652 lists down the conditions for allowing foreign investors to lease private lands, to wit:

> "SEC. 4. Coverage. - Any foreign investor investing in the Philippines shall be allowed to lease private lands in accordance with the laws of the Republic of the Philippines subject to the following conditions:
>
> 1. No lease contract shall be for a period exceeding fifty (50) years, renewable once for a period of not more than twenty- five (25) years;
> 2. The leased area shall be used solely for the purpose of the investment upon the mutual agreement of the parties;
> 3. The leased premises shall comprise such area as may reasonably be required for the purpose of the investment subject however to the Comprehensive Agrarian Reform Law and the Local Government Code.
>
> The leasehold right acquired under long-term lease contracts entered into pursuant to this Act may be sold, transferred, or assigned: *Provided,* That when the buyer, transferee, or assignee is a foreigner or a foreign-owned enterprise, the conditions and limitations in respect to the use of the leased property as provided for under this Act shall continue to apply."

With the above-cited provision of law, foreign investors may now lease land for a period of fifty (50) years and renewable for another twenty five (25) years. However, foreign individuals, corporations, associations, or partnerships not otherwise investing in the Philippines shall be governed by P.D. No. 471 and other existing laws on lease of lands to foreigners.[3] It bears stressing that the lease of land is to encourage foreign investments in the country taking into consideration the constitutional mandate to conserve and develop our own patrimony.

Based on the foregoing discussion, a foreign-owned corporation may establish a condominium corporation and set up a condominium project on a leased land subject to the conditions laid down in the applicable laws.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases

---

1 Department of Justice Opinion No. 175, s. 1973 dated 12 December 1973.

2 Section 2, R.A. No. 4726.

3 **Section 1.** The maximum period allowable for the duration of leases of private lands to aliens or alien-owned corporations, associations, or entities not qualified to acquire private lands in the Philippines shall be twenty-five years, renewable for another period of twenty-five years upon mutual agreement of both lessor and lessee.

whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

phil URI devt corp.condo corp on leased land.odt