Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23-12
Re: Nationality of the President of a Non-Stock Non-Profit Corporation

19 June 2023

UNION CHURCH OF MANILA, INC.
Rada St. cor. Legazpi Village
Makati, Philippines 1229
ucmadmin@unionchurch.ph

Attn: Alberto P. Roa
Church Administrator

Chad Williams
Senior Pastor and Chairman of the Council

Dear Sirs:

This refers to your letter dated 27 March 2023 requesting the Commission's opinion on whether or not a non-Filipino citizen can be the President of Union Church of Manila, Inc. (the "Church"), a non-stock, non-profit religious corporation.

As stated in your letter, the relevant facts are as follows:

1. The Church, a non-stock, non-profit religious corporation, was originally organized in 1915 under the provisions of Act No. 271 of the former Philippine Commission. It was further incorporated in 1954 as Union Church of Manila, Inc., with office address at the corner of Legazpi and Rada Streets, Legazpi Village, Makati City.

2. As provided in its By-laws, as amended on 17 February 2013 and approved by the Commission on 29 January 2014, the corporate officers are the following:

   (a) Chairperson;
   (b) Vice Chairperson;
   (c) Corporate Secretary;
   (d) Treasurer;
   (e) Assistant Treasurer;
   (f) Finance Secretary; and
   (g) Assistant Finance Secretary.

3. In compliance with Section 24 of the Revised Corporation Code, the position of President was created in 2020 and a President, a Filipino citizen, was elected by the Council.[1] The Chairperson is usually the Senior Pastor, an American citizen, and a resident of the Philippines. The Senior Pastor/Chairperson, with the help of the Church Administrator, who is a regular employee of the Church and is not a member of the Council, takes care of the overall management of the affairs of the Church.

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[1] The official body of the Church which receives authority form the members of the Church and which exercises the corporate powers of the Church, directs strategic priorities, delegates management authority and responsibility of the Pastoral Team or other appropriate Committees of the Church and monitors and reviews Church operations. (Article III, Section 3.1 of the Church's By-laws).

Hence, this query.

Section 2-A of Commonwealth Act No. 108, as amended by Presidential Decree No. 715, otherwise known as the Anti-Dummy Law, provides:

> Section 2-A. *Unlawful use, Exploitation or enjoyment.* — Any person, *corporation,* or association which, having in its name or under its control, a right, franchise, privilege, *property* or business, *the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines* or of any other specific country, or to corporations or associations at least *sixty per centum* of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by the Constitution or the laws of the Philippines; . . .; *or in any manner permits or allows any person, not possessing the qualifications required by the Constitution,* or existing laws *to acquire*, use, exploit or enjoy a right, franchise, privilege, *property* or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein . . . *And provided, finally, That 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]

The Commission, on several occasions, has opined that in firms engaged in *wholly or partially nationalized activities*, aliens are banned from being appointed to management positions such as president, vice-president, treasurer, auditor, etc. of said companies pursuant to the ruling of the Department of Justice, although they can be elected directors in proportion to their allowable participation or share in the capital of such activities in accordance with Section 2-A of the Anti-Dummy Law.[3]

Meanwhile, the legal capacity of a corporation to acquire land in the Philippines is regulated by the 1987 Constitution and the Public Land Act. Section 7, Article XII of the 1987 Constitution provides:

> Section 7. Save in cases of hereditary succession, no private lands shall be transferred except to individuals, corporations or associations qualified to acquire or hold lands in public domain.

Corollary thereto, Sections 22 and 23 of the Public Land Act expressly provide who are qualified to acquire land in the Philippines, *viz*:

> "Section 22. Any citizen of lawful age of the Philippines and any such citizen not of lawful age who is a head of a family, and *any corporation or association of which at least sixty percentum of the capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of the Philippines, authorized under their charter, to do so, may purchase any tract of public agricultural land disposable under this Act. . . .*"
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> "Section 23. *No person, corporation, association, or partnership other than those mentioned in the last preceding section, may acquire or own agricultural public land or land of any other denomination or classification, which is at the time or was originally really or presumptively of the public domain, or any permanent improvement thereon, or any real right on such land and improvement, ...*" [4]

The Commission previously opined that in the event that a corporation owns land, *it shall already be considered to have engaged in a partly nationalized activity.* As such, foreigners should not comprise more than 40% of its membership and cannot be elected as President/Chairman of the Board of Trustees.[5] Thus:

> Thus, considering that PFI, based on its Articles of Incorporation, is not engaged in any nationalized or partly nationalized business or industry, it may have an alien trustee in its board, and a foreigner as its President/Chairman.
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> However, the purpose clause PFI's Articles of Incorporation allows, or does not exclude, ownership of land by the corporation. ***Hence, in the event that PFI owns land, it shall already be considered to have engaged in a partly nationalized activity. As such, foreigners should not comprise more than 40% of its membership. 1 Consequently, PFI can elect foreign trustees in proportion to their allowable participation in the membership of the corporation. Otherwise stated, not more than 40% of the trustees should be foreigners. However, it cannot have a foreigner as President/Chairman of the board.***[6]

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[2] Emphasis supplied.
[3] SEC Opinion dated 27 July 1990, addressed to Philippine Association of Service Exporters. Inc., citing SEC Opinions dated 14 June 1982, 01 July 1983, 15 May 1985, 28 May 1985, and 26 April 1989.
[4] The Public Land Act, Commonwealth Act No. 141, 07 November 1936, as quoted in SEC-OGC Opinion No. 14-05 dated 25 April 2014, addressed to Atty. Rester John L. Nonato. Italics supplied.
[5] SEC-OGC Opinion No. 16-12 dated 24 May 2016, addressed to Atty. Rester John L. Nonato. Citations omitted.
[6] Emphasis and italics supplied.

Accordingly, *based on Section 2-A of the Anti-Dummy Law,* if the Church owns land, *it cannot have a foreigner as its President or officer.*

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted and 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.[7] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

[7] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.

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