



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

26 January 2011

SEC-OGC Opinion No. 11-06
Licensing of foreign
corporation; Doing business

MR. ROMEO C. ESCOBAR JR.

Authorized Representative
Next Victory Holdings Limited
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Makati City

Sir:

This refers to your letter dated 30 April 2010 requesting opinion on whether or not:

1. A foreign-registered company, not doing business in the Philippines, is required to be registered with the SEC before it can acquire a condominium unit in the Philippines;
2. Whether or not a foreign-registered company, not doing business in the Philippines, is required before it can purchase or own a condominium unit, to submit for approval by the SEC, its Articles of Incorporation and By-Laws which state that the company can purchase or own real estate.

The Condominium Act of the Philippines¹ provides:

"SECTION 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas or in a proper case, the membership or share holdings in the condominium corporation: provided, however. That where the common areas in the condominium project are held by the owners of separate units as co-owners hereof, *no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or*

¹ Republic Act No. 4726 (1966).

corporation at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws. (emphasis supplied)"

The law does not prohibit the acquisition of a condominium unit by a foreign corporation provided the requisites of the law are met – *i.e.* that foreign equity does not exceed the 40% limit provided by law. As previously opined:

"The Condominium Act does not forbid the transfer to aliens of an interest in a unit and the undivided interest in common areas in a condominium. It should be noted that only a "separate interest" in a unit and an undivided interest in the common areas are what are transferred as a matter of course to the grantee by virtue of a condominium grant. (Secs. 2 and 5) Moreover, paragraph (b) of section 3 defines "unit" for purposes of the Act as "a part of the condominium project intended for any type of independent use or ownership"; and paragraph (e) of the same section in defining the term "to divide real property" in the condominium project speaks of dividing the ownership thereof or other interest therein.

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Applying the proviso in this section to the present case, the result would be that should it be a case covered by the first sentence of the proviso, no unit in the condominium may be transferred to aliens or to corporations more than 40% of the capital stock of which is owned by aliens; and should it be a case covered by the second sentence, the transfer to aliens of units in the project may be made only up to the point where the concomitant transfer of membership or stockholding in the condominium corporation would not cause the alien interest in such corporation to exceed 40% of its entire capital stock."²

The law does not require a foreign corporation not doing business in the Philippines to register with the SEC before it can acquire a condominium unit. What is important is that the proportionate equity ownership is maintained even after such acquisition.

In addition, the Foreign Investments Act of 1991, as amended, provides that:

² DOJ Opinion No. 175, series of 1973 dated December 12, 1973 as cited in SEC-OGC Opinion No. 27-08 dated 27 November 2008.

"'Doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' officer or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more, participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or of the purpose and object of the business organization; *Provided, however,* That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor, nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account."³

In elaborating on what is deemed as 'doing business', the Supreme Court held that:

"No general rule or governing principle can be laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing a body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another ... The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization."⁴

Thus, in the present situation, the facts you provided – which is mere acquisition of a condominium unit is one such activity that is not contemplated by the definition of "doing business."

The Commission has previously opined that: "It can be gleaned from the above-cited provision that for a business activity or dealing to be considered doing business, there should be an element of continuity of conduct in that respect. In the present case, said element is not present. It would appear therefore that the above-contemplated activity does not fall within the coverage of the term "doing business"

³ Sec. 3 (d), RA No. 7042, as amended.

⁴ *Mentholatum vs. Mangiliman*, G.R. No. 47701 (1941).

which requires licensing under the Corporation Code and Foreign Investments Act.
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The foregoing opinion rendered is 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 Commission whether of similar or dissimilar circumstances.⁶ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VP 27 Jan. '11 1:00 P.M.
VERNETTE G. UMALI-PACO
General Counsel *[Signature]*

⁵ Letter-opinion dated 11 October 1995 addressed to Quisumbing Torres.

⁶ SEC Memorandum Circular No. 15, series of 2003.