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

OFFICE OF THE GENERAL COUNSEL

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SEC Opinion No. 06-34
Limited Practice of Profession of Foreign National

ATTY. P.V. VERGEL DE DIOS, JR.
Counsel for Hanjin Heavy Industries
and Construction Co. Ltd.
Vergel De Dios Maritime Law Offices
No. 280 T. Morato Ave., cor. Sct. Limbaga St.,
1103 Quezon City, Philippines

Sir:

This refers to your letter dated 6 July 2006 requesting opinion on whether or not Korean/foreign professional naval architects and marine engineers can register a wholly-owned professional corporation in the Philippines.

You stated in your letter that the foreign naval architects and marine engineers who are planning to incorporate shall exclusively limit their practice of profession to the Subic Shipbuilding Project in Subic Bay Freeport Zone.

In reply thereto, the Sixth Regular Foreign Investment Negative List[1] provides that no foreign equity shall be allowed in the practice of all professions under List A, *save in cases prescribed by law.* The pertinent portion of the list is quoted in part thus:

No foreign Equity

"xxx xxx xxx

2. Practice of all professions
   a. Engineering

xxx xxx xxx

xi. Naval architecture and marine engineering"

[1] Executive Order No. 389. Promulgating the Sixth Regular Foreign Investment Negative List.

Corollary thereto, Sections 9, 18, and 27 of Republic Act No. 4565[2] provides and we quote:

> Section 9. Registration required - Unless herein exempted from registration, no person shall practice or offer to practice naval architecture and marine engineering in the Philippines without valid certificate of registration as naval architect and marine engineer issued by the Board.
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> Section 18. Exemption from registration - (a) Registration shall not be required of the following:
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> xxx xxx xxx
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> 2. Naval architects and marine engineers from other countries called in for consultation or for specific design, construction or project, provided that their practice shall be limited to such work.
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> xxx xxx xxx.
>
> Section 27. Foreign reciprocity - A person who is not a citizen of the Philippines at the time he applies for the examination may be allowed to take such examination if he can prove in a manner provided by the Rules of Court that, by specific provisions of law, the country of which he is citizen, subject or national, either admits citizen of the Philippines to the practice of naval architecture and marine engineering without restriction or allows them to practice the profession after an examination on terms of strict and absolute equality with citizens, subjects or nationals of said country, including the unconditional recognition of degrees issued by the institutions of learning duly recognized for the purpose by the Government of the Philippines.

Based on the aforequoted provisions of law, foreign naval architects and marine engineers may be exempted from the registration requirement provided that their practice of profession shall be limited to consultation, or for specific design, construction or project. However, a foreigner must also secure an authority to practice naval architecture or marine engineering from the Philippine Regulation Commission and a special temporary working permit from the Department of Labor and Employment and a working visa from the Bureau of Immigration and Deportation before he can practice his profession for such limited project in the Philippines.

Furthermore, it is required that a foreigner must show proof that the law of the country of which he is a citizen, subject or national, either admits citizens of the Philippines to such practice of profession without restriction or allows them to practice the profession after passing a licensure examination for naval architecture and marine engineering, in compliance with the above-quoted reciprocity provision.

[2] An Act to Regulate the Practice of Naval Architecture and Marine Engineering in the Philippines.

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Anent the issue on the establishment of a corporation, firm or partnership which will engage in the business of naval architecture and marine engineering or practice of profession, Section 26 of Republic Act No. 4565 provides, thus:

> "Section 26. Firms and Corporation engaged in the practice of naval architecture and marine engineering – A firm, partnership, corporation or association may engage in the practice of naval architecture and marine engineering in the Philippines provided that such practice is carried out under the supervision of a naval architect and marine engineer or naval architects and marine engineers holding valid certificates of registration issued by the Board."

In view thereof, foreign naval architects and marine engineers may be allowed to form a corporation or establish a firm or partnership to practice their profession in the Philippines, solely for the purpose of undertaking the Subic Shipbuilding Project in Subic Bay Freeport Zone,[3] which shall be understood to be undertaken only for a limited duration or period of time provided that the practice of profession shall be undertaken by and under the supervision of a duly registered naval architect and marine engineer with the Board of Examiners for Naval Architects and Marine Engineers.

It shall be understood that the opinion rendered is based 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 in other cases whether of similar or dissimilar circumstances.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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[3] Article 76 of Executive Order 226, otherwise known as the Omnibus Investment Code of 1987 provides:

"Article 76. Employment of Foreign Nationals. The provisions of law to the contrary notwithstanding, Export Processing Zone Authority, hereinafter referred to as the "Authority" may authorize an alien or an association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any law other than those of the Philippines, or which is not a Philippines national, or the working capital of which is fully owned or controlled by aliens to do business or engage in an industry inside the export processing zone.

Subject to the provision of Section 29 of Commonwealth Act No. 613, as amended, an enterprise, a zone registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Authority: Provided, however, That when the majority of the capital stock of a zone registered enterprise is owned by foreign national, the positions of president, treasurer, and general manager or their equivalents may be retained by foreign nationals beyond the period set forth herein.

xxx xxx xxx

A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports of such training to the Board."

(101)