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

April 26, 2007
SEC-OGC Opinion No. 07-05

SUAREZ AND REYES LAW OFFICES
2111 BSA Suites, 103 C. Palanca Street
Legaspi Village, Makati City 1229

Attention: Atty. Ramoncita V. Reyes
Managing Partner

Gentlemen:

This refers to your letter dated February 19, 2007 addressed to Director Benito A. Cataran of the Company Registration and Monitoring Department inquiring whether your client should comply with the minimum assigned capital of US$200,000.00 imposed on foreign companies setting up a branch in the Philippines if it intends to do business in the Philippines as a holding company. You stated in your letter that your client is a company incorporated in Singapore and is a "**Philippine National**" for being one hundred percent (100%) Filipino-owned company.

The term "**Philippine National**" is defined under Section 3 of the Republic Act No. 7042[1] as amended by Republic Act No. 8179[2].

> "Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the 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 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos** or a 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 the Philippine nationals xxx xxx xxx" *(Emphasis supplied)*

Under the foregoing provisions, two (2) conditions have to be met before your client can be considered a "**Philippine National**":

[1] Foreign Investments Act of 1991.
[2] An Act to Further Liberalize Foreign Investments, Amending for the purpose RA No. 7042, and for other purposes.

1. One hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; and
2. The corporation should be registered as doing business in the Philippines under the Corporation Code.

As alleged in your letter, your client has already fulfilled the first requirement. However, for it to be a "**Philippine National**" it still needs to comply with the second requirement.

For purposes of registering to do business in the Philippines, your client is a foreign corporation pursuant to Section 123 of the Corporation Code:

> *"Definition and rights of foreign corporations.*—For the purposes of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state. It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency. xxx xxx xxx"

Under the incorporation test of corporate nationality, the nationality of the corporation is that of the state of incorporation regardless of the nationality of its stockholders.[1] As a foreign corporation it has to comply with the requirements under Sections 125 and 126[2] of the Corporation Code.

Note that a "**Philippine National**" is not subject to the US $200,000.00 inward remittance requirement under RA No. 7042 and its implementing rules and regulations. The assigned capitalization requirement is imposed on **Non-Filipino nationals** only by reason of **List B of the Foreign Investments Negative Lists (FINL)** which provides that **"small and medium-sized domestic market enterprises[3] with paid-in equity capital less than the equivalent of Two Hundred Thousand US dollars (US $ 200,000.00) are reserved to Philippine nationals."**

It shall be understood that the opinion rendered is based solely on the facts disclosed and presented in your letter-query and relevant solely to the particular facts 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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[1] Lopez, The Corporation Code of the Philippines, Annotated, p. 1081.
[2] SEC Opinion, March 26, 1963.
[3] Rule I, Sec. 1(k), IRR of RA 7042, as amended by RA No. 8179

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