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

August 8, 2007

SEC-OGC Opinion No. 07-07
Re: Non-Filipino Nationals as Officers;
Members of non-stock corporations

REYES FRANCISCO
& ASSOCIATES LAW OFFICE
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Attention: Atty. Pastor M. Reyes, Jr.
Partner

Gentlemen:

This refers to your letter dated November 27, 2006 endorsed to us by the Company Registration and Monitoring Department regarding your client, Phil-Japan Gujitsu Iten Foundation, Inc. ("Phil-Japan"). You stated that its present chairman of the board is a Japanese national and you seek clarification on the following:

> "1. Whether an alien may assume the chairmanship of the board of a non-stock corporation whose membership is composed substantially by Filipinos;
>
> 2. Whether an alien may serve as a member of the board of a non-stock corporation whose membership is composed substantially by Filipinos; and
>
> 3. Assuming that aliens may indeed assume the office of board members, how many of them may be allowed to simultaneously serve in a five-member board of a non-stock corporation whose membership is composed substantially by Filipinos?"

It appears on record that among the purposes stated in the amended articles of incorporation of Phil-Japan are the following:

> "1. To provide free and voluntary advisory for manpower assistance in Developing technical skills and engage in free technology transfer activities among the member or non-members in support of the anti-poverty and socio-economic programs of the government.

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2. To promote without compensation high standards of quality workmanship among members or non-members.

3. To encourage members to avail of free and voluntary training through the foundation for the enhancement of their skills.

4. To equip for free members and non-members with the necessary technical skills (e.g. computer; mechanical, electronics, electricity, auto-electricity, etc.), agricultural training, as well as all forms of processing and production through human skills and new technology from and to developed/developing countries.

5. To develop for free members and non-members skills for future job placement.

6. To provide for free, financial, educational, housing and medical assistance to qualified members of the foundation.

The issues raised in your letter call for the application of Section 2-A of Commonwealth Act No. 108, as amended, otherwise known as "The Anti Dummy Law" which provides:

> 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; xxx xxx xxx 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 xxx xxx xxx, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice xxx xxx xxx; Provided, finally, That the election of aliens as members of the board of director 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 in such entities. (Emphasis supplied)

As can be gleaned from the aforequoted proviso, the nationality requirement applies to both stock and non-stock corporations or associations. Whether or not the nationality restriction applies is not dependent on the classification of a corporation into stock or non-

stock but on the type of activities the corporation is engaged in. Neither can the composition of the Filipino equity participation nor the substantial membership of Filipino citizens be the yardstick in the determination of whether a foreign national may become a member of the board of trustees or assume chairmanship in a non-stock corporation.

More specifically, for as long as the association is not engaged in nationalized activity, a non-Philippine national may serve as member of its board of trustees or be the chairman of the board subject only to the limitation that the trustees must be members of the association and majority of them should be residents of the Philippines.

On the other hand, if the association engages in partly nationalized activities, foreign nationals may sit in the board in proportion to their allowable membership therein. In the same vein, an alien national may assume the post of the Chairman of the board whose act shall be limited to that of a presiding officer during board meetings.

On the strength of the ruling in the case of Manila Golf and Country Club, Inc.,[1] an alien may assume the chairmanship and become a member of the board of directors of a non-stock corporation, subject to the following conditions:

a) he must be a member of the association;

b) majority of the board of trustees must be residents of the Philippines;

c) the association is engaged in partly nationalized economic activity or other activities not classified as "nationalized economic activity"; and

d) for associations delving in "partly nationalized economic activity" the alien representation is in proportion to their percentage membership participation in the board. The alien chairman shall merely act as presiding officer at corporate meetings.

It shall be understood that the opinion rendered is based only on the facts disclosed in your letter-query and relevant solely to the particular facts raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases whether similar or dissimilar circumstances.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[1] Considering that Manila Golf and Country Club, Inc. is a non stock corporation organized to undertake recreational, social, cultural and educational non-profit activities set forth in Section 88 of the Corporation code, said purposes cannot be read within the context of the term 'partly nationalized economic activity' which would justify the banning of foreign nationals who are members of the Club from holding management or executive positions therein.

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