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

26 February 2008

SEC-OGC Opinion No. 08-05
Real estate ownership by foreigners

MR. GAVIN DUNNE
Pearl of the Pacific
R&G Tirol Building
831 EDSA, Quezon City

Sir:

This refers to your letter dated 06 December 2007 requesting feedback on your proposed real estate development venture described as follows: a joint venture will build apartments to be marketed to foreign buyers. The buyer of the apartment will be issued a security. This security shall represent the amount of shares in the company that owns the land but this security will detail the freehold rights to buy/sell/rent and lease a particular unit in the development, whenever the owner of this security wishes. All of the units in the development shall correspond in total to 40% of the share capital in the development company.

Your proposed real estate development venture is similar to a real estate investment vehicle (REIV). A REIV is a security that sells like a stock on the major exchanges and invests in real estate directly, either through properties or mortgages. A REIV must have transferable shares or transferable certificates of interest.[1] With REIV, foreigners are issued securities thereof, which in turn, will invest in and own properties.[2] A REIV is envisioned to attract foreign investment in the country, which will compete with other sources of income like money market funds, Treasury securities, corporate bonds and utility stocks.[3] A REIV is also one way for foreigners to invest in real estate in the country.

While the proposed legal framework for REIVs has yet to be approved by the Philippine Congress, this Office sees no reason to object to your proposed real estate development venture in Boracay Island. It must be borne in mind, however, that there are some restrictions in the foreign ownership of land and real estate. One of these limitations can be found in Article XII, Section 2 of the 1987 Constitution, which

1 http://en.wikipedia.org/wiki/Real_estate_investment_trust.
2 http://www.investopedia.com/terms/r/reit.asp.
3 JOHN A. MULLANEY.REITS: BUILDING PROFITS WITH REAL ESTATE INVESTMENT TRUSTS.USA: John Wiley & Sons, Inc., p. 239 (1998).

provides that only corporations with capital at least 60% of which is owned by Filipino citizens are allowed to own lands in the Philippines. Republic Act No. 4726 also known as "The Condominium Act" only allows foreigners to acquire condominium units and shares in condominium corporations up to 40% of the total and outstanding capital stock. It is true that foreigners can lease land. However, the lessees cannot use the leased land as collateral in contracting loans with banks.

Given the above scenario, there is thus a need to balance the government's initiative to encourage foreign investments in the Philippines with the constitutional mandate to limit the ownership of lands to Filipino nationals, with the end in view of providing an environment conducive to doing business. For as long as the foreign equity participation in a corporation that will engage in the real estate development or will manage the real estate is observed, this Office sees no reason to object to your proposed investment vehicle.

The foregoing opinion is based solely on the facts disclosed in the query and it shall not be used in the nature of a standing rule binding upon the Commission in other cases.[4]

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

RETURN SLIP

SENDER	:	Office of the General Counsel Securities and Exchange Commission
ADDRESS	:	9/F SEC Building, EDSA Greenhills, Mandaluyong City
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ADDRESSEE	:	MR. DUNNE
RECEIVED BY	:	DANTE D. HETTAC
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4 SEC Memorandum Circular No. 15, series of 2003.

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