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

5 September 2008

MESSRS. MANUEL C. MALABANAN and ROSANNA AILEEN C. SO
Deutsche Bank AG, Manila Branch
26th Floor, Ayala Tower One,
Ayala triangle, Makati City

SEC Opinion No. 08-20
Foreign Bank Branch Office as Trustee of an Employee Retirement Fund: Limitation on Real Estate Investment

Gentlemen:

This refers to your letter dated 08 March 2007 requesting opinion on whether Deutsche Bank Manila (*"DBM"* for brevity), a wholly owned branch of Deutsche Bank AG, a German national, acting as Trustee of its client's employees retirement fund whose beneficiaries are sixty percent (60%) Filipinos, may put up a real estate company composed of forty percent (40%) foreign national and sixty percent (60%) Deutsche Bank.

Sections 7 and 10, Article XII of the Constitution[1] limit foreign equity investment in the business of real estate up to forty percent (40%) of the total outstanding capital of a corporation, thus:

> "Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public domain."
>
> "Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
>
> xxx xxx xxx"

Further, List A of the Seventh Regular Foreign Investment Negative List[2] contains the said limitation of foreign equity participation in the ownership of private lands up to forty percent (40%) of the outstanding capital stock. Being a

[1] 1987 Philippine Constitution.
[2] Executive Order No. 584 dated 8 December 2006.

4/7

partly nationalized activity, foreign investors shall be allowed to invest in real estate companies not exceeding forty percent (40%) of its capital stock.

Moreover, Section 3 of Republic Act No. 7042[3] as amended defines "Philippine national" as:

> "The term "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by 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 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 benefit of the Philippine nationals:** xxx" (Emphasis supplies).

The aforequoted provision defines the term "Philippine national." A Trustee of funds for pension or other employee retirement or separation benefits can be a Philippine national provided that the following requisites shall be obtained:

1. The trustee is a Philippine national; and

2. That at least sixty percent (60%) of the fund must accrue to the benefit of the Philippine nationals.

In the case at hand, DBM, although a trustee of its client's employee retirement fund whose beneficiaries are sixty percent (60%) Filipinos, is not a Philippine national considering that it is registered with the Commission as a foreign domestic branch office of Deutsche Bank AG, Germany. Hence, DBM is disqualified to set up real estate company in the Philippines exceeding forty percent (40%) of its capital stock.

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

[3] An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for other purposes.

46