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

22 July 2009
SEC-OGC Opinion No. 09-17
Re: Application of Anti-Dummy Law to a Condominium Corporation

MR. JOHN WORLEY
Unit 1-2C UN Gardens Condos,
Cristobal St., Paco, Manila

Sir:

This refers to your letter dated 11 June 2009 requesting opinion on some legal matters stated therein.

You mentioned that you are an American citizen who owns a condo unit at the condominium project known as "*UN Gardens*". It appears that you have been offered to be appointed to an officer position in UN Gardens Condominium Corporation, Inc. ("UNG", for brevity), a non-stock, non-profit organization incorporated "*to own or hold title to the common areas*" and "*to manage the project*" in accordance with Republic Act No. 4726, otherwise known as the Condominium Act.

Essentially, you are asking us to opine on the following issues:

1. Is a condominium corporation considered to be within the legal definition of a partially nationalized industry as contemplated in the Anti-Dummy Law[1]?

2. If appointed to a non-officer position, can the Board of Directors of UNG authorize you to counter-sign corporate checks in lieu of the President's signature based on Section 2, Article 4 of UNG's By-Laws?

Section 2-A of the Anti-Dummy Law prohibits employment by a corporation of an alien who shall intervene in the management, operation, administration or control thereof, whether as officer, employee, or laborer. However, it **only applies** when the said corporation is engaged in wholly or partly-nationalized activities, that is, where the exercise or enjoyment of the property or of the franchise, privilege, or

[1] Commonwealth Act No. 108, as amended.

business engaged in by such corporation *"is expressly reserved by the Constitution or the law to the citizens of the Philippines"* or *"corporations or associations at least 60% of the capital of which is owned by such citizens"*.[2]

Of pertinence herein is Section 7, Article XII of the 1987 Constitution, which is a substantial reproduction of Section 5, Article XIII of the 1935 Constitution, and Section 14, Article XIV of the 1973 Constitution. The provision reads:

> "Sec. 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."

Those so qualified to own lands are: (1) Filipino citizens, corporations and associations at least sixty percent (60%) of the capital of which is owned by Filipino citizens; (2) aliens, in cases of hereditary (intestate) succession; and (3) natural-born Filipino citizens who have lost their Philippine citizenship subject to the limitations provided by law.[3]

It has been opined that the said constitutional provision had guided the lawmakers in enacting Section 5 of the Condominium Act, and hence, must be read with the latter.[4] Section 5 of the Condominium Act provides:

> "Sec. 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas, or in a proper case, the membership or shareholdings in the condominium corporation: *Provided, However,* That where the common areas in the condominium project are held by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporations at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in the condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholdings in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing law."

In this connection, a condominium is defined as an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial

[2] SEC-OGC Opinion 09-02 dated 12 January 2009 addressed to Sebastian Liganor & Galinato Law Offices; SEC Opinion No. 12, Series of 2002 (dated 21 November 2002) addressed to Mr. Jose L. Gonzales.
[3] DOJ Opinion No. 139, Series of 1998, citing the 1987 Constitution; Krivenko vs. Register of Deeds (79 Phil. 461); Cheesman vs. Intermediate Appellate Court (193 SCRA 93); and Ramirez vs. Vda. de Ramirez (111 SCRA 704). See also Section 10 of the Foreign Investments Act., as amended by RA 8179.
[4] DOJ Opinion No. 134, Series of 1992.

building **and an undivided interest in common, directly or indirectly, in the land on which it is located** and in other common areas of the building.[5] The interests in a condominium may be ownership or any other real right in real property, **e.g. lease**, recognized by the law of property in the Civil Code and other pertinent laws.[6]

From the foregoing, if the condominium project is set up on **leased land**, the corresponding condominium corporation may be established by a corporation which is wholly owned by a foreign firm.[7]

However, where the condominium corporation is a Filipino corporation **which owns the land** on which the condominium project is situated, the Condominium Act allows the transfer to an alien of an "*interest*" in a "*unit*" in the said condominium, and of an "*undivided interest*" in the common areas thereof, subject to the qualifications mentioned in Section 5 of the said law.[8] More specifically, the result would be that no interest in a condominium may be transferred to aliens or to corporations more than 40% of the capital stock of which is owned by aliens; or, when the common areas are held by a condominium corporation, that the transfer to aliens of units in the project may be made only up to the point where the concomitant transfer of stockholdings in the condominium corporation would not cause the alien interest in such corporation to exceed 40% of its entire capital stock.[9]

We must point out that the primary purpose of UNG is "***to own or hold title to the common areas in the condominium project***" which include the land on which the condominium is erected. Thus, if UNG owns such land, the Anti-Dummy Law applies.[10]

As to your second query, please be informed that the Commission adheres to the hands-off policy in the interpretation and application of the provisions of the by-laws of a corporation on the issue(s) raised as they are internal and may be intra-corporate matters that should be resolved by the parties in the proper forum.[11] However, **for purposes of information only**, the following may be imparted:

The only officers of a corporation are those who are given that character either by the Corporation Code, specifically by Sections 24 and 25 thereof, or the charter or by-laws; the rest can be considered merely as employees or subordinate

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[5] Section 2, Condominium Act.
[6] Ibid.
[7] SEC-OGC Opinion No. 27-08 dated 27 November 2008 addressed to Elnar Agapay & Suello Law Offices, quoting DOJ Opinion No. 175, Series of 1973.
[8] DOJ Opinion No. 175, Series of 1973.
[9] DOJ Opinion No. 134, Series of 1992.
[10] See SEC Opinion dated 11 September 2002 addressed to Atty. Perseveranda A. Abrenica of Abrenica Duque Sicat Law Offices.
[11] Subsections 5.2 and 5.3, SEC Memorandum Circular No. 5, Series of 2003.

officials.[12] The president, vice president, treasurer and secretary are commonly regarded as the principal or executive officers of the corporation.[13] Additional offices may, however, be created as long as the same are so enumerated and authorized by the laws; this is the import of the term "*officers*" in the phrase "*and such other officers as may be provided for in the by-laws*" contained in paragraph one (1) of Section 25 of the Corporation Code.[14]

That said, please take note that per UNG's By-Laws, the Board may authorize "*other officers*", and not non-officers, to perform the President's duty of countersigning all checks, drafts, notes and orders for the payment of money against the fund of the corporation.[15]

At any rate, if a corporation is covered by the Anti-Dummy Law, any corporate function which is specifically and/or specially spelled out and intended under its By-Laws to be belonging to its President cannot be delegated to an alien because the same would be tantamount to a circumvention of the said law.

The opinion is based solely on the facts disclosed in the query and relevant only to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.[16]

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[12] De Leon, The Corporation Code of the Philippines Annotated, 2002 Edition, p. 252, citing Gurrea vs. Lezama (103 Phil. 553).
[13] Ibid., citing Tabang vs. NLRC (266 SCRA 462).
[14] SEC Opinion dated 4 December 1991.
[15] Section 2, Article IV, UNG's By-Laws.
[16] Section 7, SEC Memorandum Circular No. 15, Series of 2003.