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

OFFICE OF THE GENERAL COUNSEL

08 February 2010

SEC-OGC Opinion No. 10-08
Foreign Equity in Ship Management and Ship Manning Corporations

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Sir:

This refers to your letter dated 05 January 2009 requesting confirmation and guidance regarding foreign ownership limitations in Ship Management Corporations and Ship Manning Corporations.

I. Foreign Ownership and Capital for Ship Management Corporations

As disclosed in your letter, you requested confirmation whether the following information is correct:

1. For Foreign Ship Management Company operating in the Philippines
   a. Maximum Foreign Ownership – 100%
   b. Minimum paid-up capital – $30,000 as foreign representative office
2. Philippine Ship Management Company
   a. Maximum Foreign Ownership – 40%
   b. Minimum Paid-up Capital – none

First, regarding a Foreign Ship Management Company that is planning to set-up a foreign representative office in the Philippines, there is no limitation as to its foreign ownership considering that a representative office merely deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office.[1] However, the said Foreign Ship Management Company, upon registration of its representative office before the Securities and Exchange Commission (the Commission), needs to submit proof of

[1]Implementing Rules and Regulations of the Foreign Investments Act of 1991, Rule I, Section 1(c).

inward remittance in the amount of at least US$30,000.00.[2] A more detailed list of requirements in the registration of a foreign representative office can be found at our website at www.sec.gov.ph.

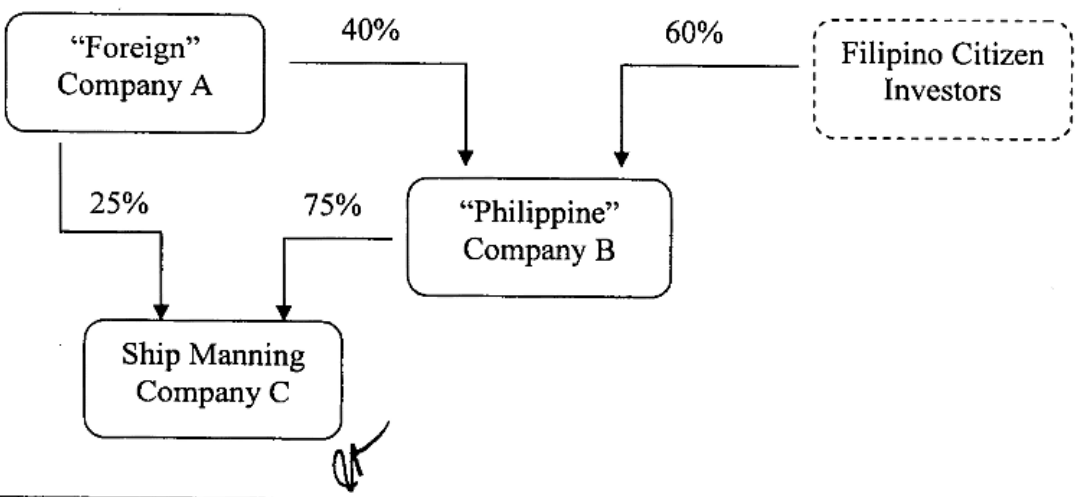
On the other hand, a Philippine Ship Management Company would be considered as a "Philippine National" when the same is organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.[3] Furthermore, during its incorporation as such, at least twenty-five percent (25%) of its authorized capital stock must be subscribed and at least twenty-five (25%) percent of the total subscription must be paid upon subscription. In no case, however, shall the paid-up capital be less than five thousand (Php 5,000.00) pesos[4], unless a higher minimum paid-up capital is required by the appropriate recommending agency such as the Philippine Overseas Employment Administration (POEA). A more detailed list of requirements in the registration of a corporation can likewise be found at our aforesaid website.

II. Case Scenario

Furthermore, in your letter, you likewise inquired on the following case scenario:

> "If a "Foreign" **Company A** invested in a "Philippine" **Company B** (i.e. Company A can only have a maximum of 40% ownership of Company B); and if **Company B** invested in a **Ship Manning Company C** with **Company A** (where Company B has 75% ownership, and Company A has a maximum of 25% ownership), what would be **Company A**'s final share in the **Ship Manning Company C**? Can foreign **Company A** possibly own more than 25% (maximum allowed by POEA) of a Ship Manning Company?"

For reference, below is an illustration of the proposed structure of foreign ownership:



[2] *Id.*, Rule IV, Section 3(a)(2).
[3] Foreign Investments Act of 1991, Section 3(a).
[4] The Corporation Code of the Philippines, Section 13.

From the foregoing case scenario, Company A's share in the Ship Manning Company C is 25% by direct foreign ownership. In addition, Company A likewise has an indirect proportionate interest in Company B's 75% share in Company C on account of Company A's 40% ownership in Company B.

You are concerned, however, that Company A's 40% ownership in Company B might surpass the 25% limit on foreign ownership in a private recruitment firm, such as the Ship Manning Company C, as required by the Labor Code of the Philippines[5] which reads:

> *"**Art. 27. Citizenship Requirement**. — Only Filipino citizens or corporations, partnerships or entities at least seventy-five percent (75%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas."*

Nonetheless, this Office is of the opinion that as long as Company B maintains its 60% Filipino ownership, all its shares, including the 40% owned by foreign Company A, shall likewise be considered as Filipino-owned. This is based on the **control test rule**[6] which provides:

> "**Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality**, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital respectively, of which belong to Filipino citizens, **all of the said shares shall be recorded as owned by Filipinos**. xxx" (emphasis supplied)

Consequently, Company B's 75% ownership in Company C shall likewise be wholly considered as Filipino-owned including the equity owned by Company A considering that the controlling ownership in Company B is the 60% Filipino-owned shares.

Thus, the aforesaid ownership structure will not contravene the 25% maximum foreign ownership limit in a private recruitment firm since Company A's direct foreign ownership in Company C is limited to 25% only. The remaining 75% ownership in Company C by Company B is wholly considered as owned by Filipinos in accordance with the said control test rule.

However, the aforesaid ownership structure will not necessarily reflect in the composition of Company C's board of directors. The Anti-Dummy Law[7] provides that the election of aliens as members of the board of directors of corporations

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[5] Presidential Decree No. 442.
[6] Enunciated in DOJ Opinion No. 18 series of 1989, dated 19 January 1989.
[7] Commonwealth Act No. 108, as amended.

engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities.[8] Thus, in the aforesaid scenario, Company C can only have a maximum of 25% foreign members in its board of directors.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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.[9] If, upon further inquiry, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[8] *Id.*, Section 2-A.
[9] SEC Memorandum Circular No. 15-03, 16 December 2003.