Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

06 February 2012

SEC-OGC Opinion No. 12-03
Foreign ownership restriction

ATTY. JOAN A. GIDUQUIO-BARON
Asst. Corporate Secretary
and Compliance Officer
Vivant Corporation
Suite 907-908 Ayala Life-FGU Center
Mindanao Avenue cor. Biliran Road
Cebu Business Park
Cebu City

Dear Atty. Giduquio-Baron:

This refers to your letter requesting for legal opinion on whether Vivant Corporation is subject to any foreign ownership restriction.

As disclosed in your letter and its attachments, Vivant Corporation (Vivant) is a corporation registered under SEC Registration No. 175222 and whose shares are listed with the Philippine Stock Exchange, Inc.

The primary purpose of Vivant reads as follows:

> "To invest in, purchase, or otherwise acquire and own, hold, develop, use, sell , lease, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of, real and personal property, of every kind and description, including buildings, apartments, shares of stock, bonds, debentures, notes, evidences of indebtedness and other securities or obligations, domestic or foreign, for whatever lawful purpose or purposes the same may have been organized and to pay therefor in money or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities of this or any other corporation, and while the owner or holder of any such real and personal property, stocks, bonds, debentures, contracts or obligations, to receive, collect and dispose of the interest, dividends and income arising from such property, and to possess and exercise in receipt thereof all the rights, powers and privileges of ownership, including all voting powers of any stock so owned; except management fund securities portfolios and other similar assets of the managed entity."

Considering that its primary purpose allows Vivant to invest in, purchase, or otherwise acquire and own, hold, develop, use, sell, lease, assign, transfer, mortgage, pledge exchange or otherwise dispose of, real property, of every kind and description, including buildings, apartments, Vivant is now asking whether it is subject to any foreign ownership restriction.

Given the foregoing facts, this Office is of the opinion that Vivant must observe the 40% foreign equity threshold provided in the Constitution, the Foreign Investments Act of 1991 (FIA),[1] the Foreign Investment Negative List (FINL),[2] the Public Land Act[3] and the Condominium Act.[4]

The legal capacity of a corporation to acquire land in the Philippines is regulated by the Constitution and the Public Land Act. Section 7, Article XII of the Philippine Constitution provides:

> "Save in cases of hereditary succession, no private lands shall be transferred except to individuals, corporations or associations qualified to acquire or hold lands in public domain."

Corollary thereto, Sections 22 and 23 of the Public Land Act, quoted in part hereunder, expressly provide as to who are qualified to acquire land in the Philippines:

> "SECTION 22. Any citizen of lawful age of the Philippines and any such citizen not of lawful age who is a head of a family, and any corporation or association of which at least sixty percentum of the capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of the Philippines, authorized under their charter, to do so, may purchase any tract of public agricultural land disposable under this Act . . . ."

> "SECTION 23. No person, corporation, association, or partnership other than those mentioned in the last preceding section, may acquire or own agricultural public land or land of any other denomination or classification, which is at the time or was originally really or presumptively of the public domain, or any permanent improvement thereon, or any real right on such land and improvement, ..."

Accordingly, Vivant must comply with the 40% foreign equity threshold in order to be qualified to acquire private lands or disposable lands of public domain in the Philippines.

Assuming that Vivant would retain in its purpose clause the ownership of real properties but would exclude therefrom ownership of land, other rules would apply.

Under Section 8 of the FIA and List B of the FINL, a domestic market enterprise with paid-in equity capital of less than the equivalent of US$200,000.00 is partially reserved to Philippine nationals and that foreign equity participation is limited only up to forty percent (40%). In Vivant's case, its 2010 General Information Sheet shows that it has exceeded the required minimum paid-in equity capital equivalent of Two Hundred Thousand US Dollars (US$200,000.00) in Philippine Peso under the FIA. Thus, the aforementioned foreign ownership restriction does not apply to Vivant.

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[1] Republic Act No. 7042, as amended by Section 3 of Republic Act No. 8179.
[2] Executive Order No. 858.
[3] Commonwealth Act No. 141.
[4] Republic Act No. 4726.

Moreover, a business activity in the operation and management of buildings which does not include ownership or acquisition of land in the Philippines and whose paid-in equity capital is more than the equivalent of US$200,000.00 is not a nationalized or partly nationalized activity.[5] In such a case, the aforementioned foreign ownership restrictions would not apply to Vivant.

Also, interests in a condominium, which may be in the form of ownership, lease or any other real rights, are subject to the following rules:

> 1.) 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.[6] In such a case, the land ownership restriction would not apply to Vivant.
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> 2.) Where the condominium corporation is a Filipino corporation which owns the land on which the condominium project is situated, no interest in the 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, 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.[7]

The foregoing opinion is rendered based solely 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 whether of similar or dissimilar circumstances.[8] If, upon investigation, it is disclosed that the facts relied upon are different, this opinion shall be rendered void.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[5] SEC Opinion dated 28 September 2001, addressed to Attys. Federico G. Noel and Myla Rae M. Santos.
[6] SEC-OGC Opinion No. 09-17 dated 22 July 2009 addressed to Mr. John Worley, citing SEC-OGC Opinion No. 08-27 dated 27 November 2008 addressed to Elnar Agapay & Suello Law Offices, quoting DOJ Opinion No. 175, Series of 1973.
[7] Id, citing DOJ Opinion No. 134, Series of 1992.
[8] SEC Memorandum Circular No. 15, series of 2003.