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

OFFICE OF THE GENERAL COUNSEL

23 May 2016

SEC-OGC Opinion No. 16-14
Foreign Participation in a Real Estate Brokerage Company

PUYAT JACINTO & SANTOS
10th Floor, 8 Rockwell
Hidalgo corner Plaza Drive
Rockwell Center,
Makati City

Attention: Mr. Joshua Gilbert F. Paraiso
Ms. Jessica Kristine F. Hilado

Gentlemen:

This is in response to your letter dated 11 December 2015, requesting, on behalf of your client, Ducasa Ventures, Inc. (Ducasa), a legal opinion regarding foreign participation in a real estate brokerage company.

You stated that Ducasa, doing business as RE/MAX Philippines, was incorporated under Philippine laws and is engaged in the business of selling RE/MAX franchises. RE/MAX or Real Estate Maximum is a U.S.-based real estate franchise company. Ducasa is the master franchisee of RE/MAX in the Philippines. Through Ducasa, the franchisees of RE/MAX can tap the strength of the RE/MAX brand name, the RE/MAX training events, online continuing education programs and RE/MAX global network. Otherwise put, the franchisees of RE/MAX engage in real estate services, although Ducasa itself is not engaged in the sale of RE/MAX franchises.

You added that one of Ducasa's potential franchisees is a foreigner who is interested in partnering with Filipinos and creating a Philippine corporation which would purchase an RE/MAX franchise. However, he and his counsel are concerned that under Philippine laws, a foreigner is not allowed any participation in corporate real estate service, even as an incorporator in a brokerage company where 60% of the shares are owned by Filipinos and 40% by foreign nationals.

Hence, your query on whether a foreigner may be an incorporator in a real estate brokerage company where 60% of the shares are owned by Filipinos and 40% by foreign nationals.

You argue that a foreigner may be allowed ownership in the registration of a real estate brokerage company. In support of this argument, you presented the following bases, to wit:

1. Republic Act No. 9646[1] or the Real Estate Service Act of the Philippines (RESA), which provides, thus:

> "Section 32. Corporate Practice of the Real Estate Service. -
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> (a) No partnership or corporation shall engage in the business of real estate service unless it is duly registered with the Securities and Exchange Commission (SEC), and the persons authorized to act for the partnership or corporation are all duly registered and licensed real estate brokers, appraisers or consultants, as the case may be. The partnership or corporation shall regularly submit a list of its real estate service practitioners to the Commission and to the SEC as part of its annual reportorial requirements. There shall at least be one (1) licensed real estate broker for every twenty (20) accredited salespersons."

2. Tenth Regular Foreign Investment Negative List[2] (FINL-10), which states, in a footnote, thus:

> "Foreigners are allowed to practice the following professions provided their country allows Filipinos to be admitted to the practice of these professions: x x x real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate salesperson) x x x
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> x x x real estate service (real estate consultant, real estate appraiser, real estate assessor, real estate broker and real estate salesperson) x x x allow corporate practice by Filipinos."

3. Republic Act No. 7042[3] or the Foreign Investments Act of 1991 (FIA), as amended, which declares, thus:

> "SEC. 3. Definitions. - As used in this Act:
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> a. The term "Philippine national" shall mean a citizen of the Philippines; of 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 corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos 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 Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the

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[1] Republic Act No. 9646, An Act Regulating the Practice of real Estate Service in the Philippines, Creating for the Purpose a Professional Regulatory Board of Real Estate Service, Appropriating Funds therefor and for other purposes, June 29, 2009.
[2] Executive Order No. 184, The Tenth Regular Foreign Investment Negative List, 29 May 2015.
[3] Republic Act No. 7042, An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for other Purposes, 13 June 1991.

> members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national."

You stated that the RESA expressly allows corporate practice of real estate service and that it does not require that a corporation engaged in the business of real estate service be 100% owned by Filipinos. You also noted that the FINL-10 allows corporate practice of real estate service by Filipinos. Your interpretation of the word "Filipinos" in the afore-quoted footnote in the FINL-10 includes a corporation which is 40% owned by foreign nationals, applying the definition of a "Philippine national" in the FIA. Hence, your argument that a corporation engaged in real estate service, such as a brokerage company, can be 40% owned by foreign nationals.

We believe otherwise.

Section 14, Article XII of the 1987 Constitution declares that **"the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law".**[4] It is clear from the afore-cited constitutional provision that a limitation has been set on the practice of profession in favor of Filipinos, i.e. as a general rule, the practice of all professions in the country is exclusively reserved to Filipino citizens. However, an exception is also stated in the said provision, i.e. when there is a law which provides otherwise.

The law enacted to regulate the practice of real estate service in the country is the RESA. It provides for the regulation of the practice of real estate service, such as real estate consultant, real estate appraiser, real estate assessor, real estate broker, and real estate salesperson. As you correctly stated, it allows corporate practice; **however, it is silent as to whether foreign participation is allowed in such corporate practice.**

The Ninth Regular Foreign Investment Negative List[5] (FINL-9), pursuant to the Constitution and specific laws, provides, in List A, that no foreign equity is allowed for the practice of professions, including real estate services, as such practice is limited to Filipino citizens, save in cases prescribed by law. **This means that the practice of profession by corporations should be done only by 100% Filipino-owned corporations, as no foreign equity is allowed.**

In a previous Opinion[6], which discusses whether foreign participation can be allowed in the practice of interior design in the country, the Commission declared, thus:

> "In the instant case, the PIDA of 2012 is the law referred to in the Constitution that could have provided an exception to the prohibition against foreign participation in the corporate practice of interior design. However, as stated earlier, the law is silent on the matter. Thus, consistent with the well-settled principle that the Constitution, as the fundamental law of the land, is deemed written in every statute, the general rule that the practice of all professions is exclusively reserved to Filipinos, thereby prohibiting any foreign equity in corporations to engage in such practice of professions, should be applied."

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[4] The 1987 Constitution, Article XII, Section 14, second paragraph.
[5] Executive Order No. 98, The Ninth Regular Foreign Investment Negative List, 29 October 2012.
[6] SEC-OGC Opinion No. 16-04, addressed to Sapalo Velez Bundang & Bulilan, dated 16 February 2016.

Based on the foregoing, we are of the view that no foreign participation is allowed in corporations, such as a real estate brokerage company, that will engage in the practice of real estate service.

However, we acknowledge that there has been an amendment in the Negative List regarding the practice of certain professions. While List A of FINL-9 expressly states that no foreign equity is allowed in the practice of professions (save in cases provided for by law), List A of FINL-10 indicates in a footnote, that (1) foreigners are allowed to practice several professions, including real estate services, subject to the reciprocity rule, and (2) real estate services allow corporate practice by Filipinos.

In our Opinion cited above, the Commission stated, thus:

> "As to your fifth query, please be informed that the Tenth Regular Foreign Investment Negative List[7] (FINL-10) was recently issued wherein it is indicated, in a footnote, that foreigners are allowed to practice several professions, including interior design, provided their country allows Filipinos to be admitted to the practice of the same professions. To note, this was not the case in the prior Negative Lists, which explicitly state that no foreign equity participation is allowed in all of the professions, including interior design, enumerated in the List A thereof, citing Section 14, Article XII of the Constitution in relation to the relevant professional laws. However, as to what the modification in the FINL-10 actually means [i.e. whether the National Economic and Development Authority (NEDA), as the agency tasked to endorse the amendments to the FINL[8] ... changed its previous position on the matter], we suggest that a clarification be made with the NEDA. We likewise recommend that the PRC's comment be asked, considering that it is the lead agency which implements the PIDA of 2012."

Hence, we would like to reiterate our recommendation that the National Economic and Development Authority (NEDA) and the Professional Regulation Commission (PRC) be consulted regarding the amendment in the latest Negative List in relation to the relevant provision/s in the RESA.

It shall be understood that 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 courts, or upon the Commission in other cases of similar or dissimilar circumstances.[9] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

MANUEL HUBERTO B. GAITE
OGC Supervising Commissioner

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[7] Executive Order No. 184, The Tenth Regular Foreign Investment Negative List, 29 May 2015.
[8] Republic Act No. 7042, Sections 8 and 13.
[9] SEC Memorandum Circular No. 15, series of 2003.