Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

04 October 2016

SEC-OGC Opinion No. 16-22
RE: Power of Corporations to Enter into a Partnership or Joint Venture

FRED O. DELA CRUZ
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First Orient Development and Construction Corporation
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Ayala Alabang, Muntinlupa City

Dear Mr. Dela Cruz:

This refers to your letter dated 04 April 2014 seeking clarification on whether FODC-First Orient Development and Construction Corp. (FODCC) may legally enter into a Joint Venture Agreement (JVA) with another company having a similar purpose.

You claim that FODCC was incorporated on 21 June 2006 when the standard form of the Articles of Incorporation (AOI) did not mention that a company may or may not enter into a JVA with companies with an allied or similar line of business. You argue that despite this, FODCC may still enter into a Joint Venture Agreement because one of its Secondary Purpose in the Amended AOI includes:

> "12. **To carry on any other lawful transactions whatsoever which may seem to the Corporation capable of being carried on in connection with the foregoing purposes and powers or calculated directly or indirectly to promote the interests of the Corporation** or to enhance the value of the properties, and to have enjoy and exercise all the rights, powers, and privileges which are now or which may hereafter be conferred upon similar Corporations organized under the laws of the Republic of the Philippines"

In your letter, you disclosed that the query is in connection with your application to pre-qualify and bid for various Philippine National Oil Company (PNOC) Hydro Projects.

Your query involves an examination of a decision of the PNOC; thus, we decline to confirm your position or answer your question. Please note that as a matter of policy, the Commission refrains from rendering an opinion on matters which would require an examination and review of the acts and rulings of another government agency.[1] Hence, we decline to categorically answer your query.

However, for purposes of information only, we impart the following information.

The Commission has consistently opined[2] that as a general rule, a corporation cannot enter into a contract of partnership with an individual or another corporation; however, it may be allowed to do so provided it complies with certain conditions, to wit:

1. "The authority to enter into a partnership relation is **expressly** conferred by the charter of [or] the articles of incorporation of the corporation, and the nature of the business venture to be under-taken by the partnership is in line with the business authorized by the charter or articles of incorporation of the corporation involved.[3]

2. If it is a foreign corporation, it must obtain a license to transact business in the country in accordance with the Corporation Code of the Philippines.[4]"

However, "while a corporation has no power to enter into a partnership, nevertheless, it may validly enter into a joint venture agreement, where the nature of that venture is in line with the business authorized by its charter." [5]

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[1] SEC Memorandum Circular No. 15 series of 2003, No. 5.6
[2] SEC Opinion dated 17 August 1995, addressed to Sycip Salazar Hernandez and Gatmaitan c/o Atty. Ray C. Espinosa and J.M.G. Hofileña.
[3] *Id., citing* SEC letter dated 29 February 1980, addressed Mr. Antonio E. Librea.
[4] *Id., citing* SEC letter dated 03 September 1984 addressed to Mr. Romeo P. Orsolino,
[5] Decasa, Lucila M., *Handbook on Private Corporation (Domestic & Foreign)*, Rex Printing Company, Inc., 2009 p. 157, *citing* ***Tuason vs. Bolanos***, G.R. No. L-4935, 28 May 1954 *citing* ***Wyoming-Indiana Oil Gas Co. vs. Weston***, 80 A. L. R., 1043, citing 2 Fletcher Cyc. of Corp., 1082.

In ***Aurbach et al., v. Sanitary Wares Manufacturing Corporation***, the Supreme Court discusses the nature of a joint venture, to wit:

> "The legal concept of a joint venture is of common law origin. It has no precise legal definition but it has been generally understood to mean an organization formed for some temporary purpose. (Gates v. Megargel, 266 Fed. 811 [1920]) It is in fact hardly distinguishable from the partnership, since their elements are similar community of interest in the business, sharing of profits and losses, and a mutual right of control. Blackner v. Mc Dermott, 176 F. 2d. 498, [1949]; Carboneau v. Peterson, 95 P. 2d., 1043 [1939]; Buckley v. Chadwick, 45 Cal. 2d. 183, 288 P. 2d. 12 289 P. 2d. 242 [1955]). The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. (Tufts v. Mann 116 Cal. App. 170, 2 P. 2d. 500 [1931]; Harmon v. Martin, 395 111. 595, 71 NE 2d. 74 [1947]; Gates v. Megargel 266 Fed. 811 [1920]). This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. (Art. 1783, Civil Code). **It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others.**"[6]
> (Emphasis and underscoring supplied.)

Thus, "a joint venture is essentially a partnership arrangement, although of a special type, since it pertains to a particular project or undertaking."[7] What determines an agreement as a "joint venture" where corporations are allowed to enter into is not the name or the nomenclature attached therein but the nature and essence of the undertaking between the corporations. The agreement between corporations become a joint venture when it is limited to a particular project that will allow the Boards of the co-

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[6] ***Worlgang Aurbach, et al., vs. Sanitary Wares Manufacturing Corporation, et al.,*** G.R. No. 75875, 15 December 1989.

[7] Villanueva, Cesar L., *Philippine Corporate Law*, (2010 ed.), 2010 at p. 283 *citing* Bautista, Treatise on the Philippine Partnership Law (1978 ed.), at p. 50.

venturers to anticipate and evaluate the corporations' responsibilities and liabilities. [8]

With respect to joint venture agreements, the Commission has a long standing opinion that a corporation may enter into a joint venture provided it is in line with the business authorized by its charter, to wit:

> "In this connection, please be advised that the Commission, in a litany of opinions, has laid down the settled rule that **two or more corporations may enter into a joint venture through a contract or agreement if the nature of the venture is in line with the business authorized by their charters,** which contract agreement need not be registered with the Commission, provided however, that the joint venture will not result in the formation of a new partnership/corporation. (SEC Opinions dated January 26, 1961, February 29, 1980, November 11, 1981 and April 29, 1985)."[9] (Emphasis and underscoring supplied.)

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[8] *Ibid.*, at p. 284.
[9] SEC Opinion No. 04-42 dated 28 September 2004 addressed to Pacific Consultants International Zeus Networks, Inc.