Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

23 November 2016

SEC-OGC Opinion No. 16-28
RE: Applicability of Anti-Dummy Law to Business Process Outsourcing

MR. NICANOR EVANGELISTA
Assistant Corporate Secretary
EcoOffices, Inc.
Block 6 Lot 3 Brgy. Sta. Fe,
Dasmariñas, Cavite

Dear Mr. Evangelista:

This refers to your letter dated 4 December 2014 requesting for an opinion regarding the applicability of Section 2-A of the Anti Dummy Law[1] to EcoOffices, Inc. (EcoOffices) and the legality of appointing a foreign national as Director and President, and Sales and Marketing Director of EcoOffices.

You stated that EcoOffices is a domestic corporation registered in the Commission with SEC Registration No. CS200701304, authorized to engage in business process outsourcing, which provides internet based bookkeeping and other related services to foreign companies and to earn intermediation fee for its activities. You opine that EcoOffices is an export enterprise and that the corporation's activities are not covered by the 9th Foreign Investment Negative List (FINL) [now 10th Foreign Investment Negative List][2].

You further averred that our Compliance and Monitoring Division (CMD) verbally informed your staff of the need to amend EcoOffices' General Information Sheet on the ground that the Anti Dummy Law disallows the appointment of a foreign national as President of the corporation, which is 60% Filipino owned. Moreover, you were advised to increase foreign equity to more than 40% in order to be allowed to elect a foreign national as president of EcoOffices.

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[1] Commonwealth Act No. 108
[2] Executive Order No. 184

In view of the foregoing premises, you seek an opinion on the following issues:

1. Whether or not the restriction in Section 2-A of the Anti-Dummy Law applies to EcoOffices.
2. Whether or not a foreign national holding 20% or 40% shares in a domestic corporation considered as an export enterprise not engaged in a nationalized or partially nationalized activity can be elected as one of its Directors and as its President.
3. Whether or not a foreign national can be appointed as Sales and Marketing Manager or Director of a domestic corporation considered as an export enterprise not engaged in a nationalized or partially nationalized activity.

Relative to your first query, it is well-settled that Section 2-A the Anti-Dummy Law prohibits aliens from being appointed to management positions as president, vice-president, etc. of corporations engaged in wholly or partially nationalized activities[3]. The pertinent provision of the said law provides:

> **"Section 2-A.** *Unlawful use, Exploitation or enjoyment* — **Any person, corporation, or association which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens,** permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by a the Constitution or the laws of the Philippines; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; or in any manner **permits or allows any person, not possessing the qualifications required by the Constitution, or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee** or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists or abets in the planning consummation or perpetration of any of the acts herein above enumerated shall be punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, That the president, managers or persons in charge of corporations, associations or partnerships violating the provisions of this section shall be criminally liable in lieu thereof:

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[3] SEC Opinion dated 27 July 1990 addressed to Philippine Association of Service Exporters, Inc. citing SEC Opinions dated 14 June 1982, 1 July 1983, 15 May 1985, 26 April 1989.

> Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege, and the property or business enjoyed or acquired in violation of the provisions of this Act: And provided, finally, That the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities."

In the case at hand, a review of the 10th FINL shows that engaging in business process outsourcing that provides internet based bookkeeping to foreign companies, is neither a wholly nationalized nor partially nationalized activity. As such, Section 2-A of the Anti-Dummy Law is inapplicable to EcoOffices.

As to your second query, considering that the abovementioned provision of Anti-Dummy Law does not apply to EcoOffices, the appointment of a foreign national as director and his election as President, are allowed. However, compliance with Sections 23[4] and 25[5] of the Corporation Code is indispensable. Thus, the foreign national must own at least one (1) share of the capital stock of the corporation to be a director and to be qualified to hold the position of President.

With respect to your third query, there is no prohibition for a foreign national to assume managerial position in a corporation which does not engage in nationalized activities[6]. To reiterate, EcoOffices is not engaged in such activities. Therefore, subject to existing laws, rules, and regulations, a foreign national may assume the position of a Sales and Marketing Director of a corporation not engaged in nationalized or partly nationalized activity[7].

It shall be understood, however, 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.[8] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

for: **CAMILO S. CORREA**
General Counsel

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[4] "Section 23. xxx Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. xxx"
[5] "Section 25. Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director xxx"
[6] SEC Opinion No. 09-03 dated 21 January 2009
[7] supra
[8] SEC Memorandum Circular 2003-15, No. 7.