Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

28 January 2019

SEC-OGC Opinion No. 19-02
Re: Definition of Foreign Nationals
under RA 10881

Atty. Chin Chih Lin
Unit 318 Pacific Center Building,
No. 460 Quintin Paredes, Binondo,
Manila 1000

Dear Atty. Lin:

This refers to your letter dated 04 January 2018 requesting an opinion on whether the term "foreign national" under Republic Act (RA) No. 10881[1] in relation to RA 8556 or the Financing Company Act of 1998 refers only to individuals or likewise refers to corporations, associations, and/or juridical entities.

Briefly, you stated that your client seeks to establish a 100% foreign-owned financing company in the Philippines engaged solely in granting car and/or vehicle loans in light of RA 1088 which removed the nationality restriction for financing companies. The primary issue actually presented is whether a juridical entity like a foreign company incorporated under the laws of a foreign country may hold and/or own majority shares of stock of a financing company. If so, you also inquire as to the documentary requirements that must be prepared by the foreign company.

Under the rules of statutory construction, a word of general significance in a statute is to be taken in its ordinary and comprehensive sense, unless it is shown that the word is intended to be given a different or restrictive meaning.[2] For instance, the word "foreigner" in the Election Code prohibiting any foreigner from contributing campaign funds includes a juridical person.

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[1] An Act Amending Investment Restrictions In Specific Laws Governing Adjustment Companies, Lending Companies, Financing Companies And Investment Houses Cited In The Foreign Investment Negative List And For Other Purposes

[2] Statutory Construction 2009 ed, Ruben E.. Agpalo, p. 276

The word "person" includes private juridical corporation, unless it appears that it is used in a more limited sense; and the word "person" under a penal statute which is intended to prevent an act, must be "a person in law" that is, an artificial as well as a natural person.[3]

Where the law does not distinguish nor make any qualification, courts should not make any. [4]

Thus, all persons, whether natural or juridical, may become stockholders. [5]

Related to this, Section 1, Rule 1 of The Foreign Investments Act-Implementing Rules and Regulations (FIA-IRR) defines the term "non-Philippine national":

> "a. The term "Philippine national" shall mean a citizen of the Philippines or 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 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of the Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a SEC registered enterprise, at least 60% of the capital stocks outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least 60% of the members of the Board of Directors of both corporations must be citizens of the Philippines, in order that the corporations shall be considered a Philippine national;"
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> xxx
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> **Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals.** (Emphasis ours)

The FIA-IRR defines a Philippine national as an individual Filipino citizen or a domestic corporation or partnership either wholly owned or 60% owned by Filipino citizens. It likewise defines a non-Philippine national as the reverse of the term Philippine national. Thus, a non-Philippine national could either be individual foreigners or corporations and partnerships with less than 60% Filipino equity ownership.

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[3] Gatchalian v. Commission on Elections, GR No. 32560, October 22, 1970, 35 SCRA 435

[4] Statutory Construction 2009 ed, Ruben E.. Agpalo, p. 291

[5] The Corporation Code of the Philippines, annotated. 2002 ed., Rosario N. Lopez p. 81

Applying this rule to RA 10880 and RA 8556, the term "foreign national" cannot be said to relate exclusively to individuals excluding juridical entities, the law not having made any distinction. RA 10880 merely removed the nationality restriction. Thus, we answer your primary query in the affirmative.

As to your question on documentary requirements, please refer to our website at www.sec.gov.ph for the list of requirements for setting up a foreign-owned company.

It shall be understood that the foregoing opinion is rendered based 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 courts, or upon the Commission in other cases of similar or dissimilar circumstances.[6] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

CAMILO S. CORREA
General Counsel

[6] SEC Memorandum Circular 2003-15, No. 7.