Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 March 2019

SEC-OGC Opinion No. 19-07
RE: Citizenship and Composition of the Incorporators, Directors and Officers of a Corporation Engaged in the Practice of Architecture

ATTY. JUNETH A. RENTUMA
Suite 307 Centro Maximo Building
D. Jakosalem St., Cebu City

Gentlemen:

This refers to your letter requesting for an opinion regarding the composition of incorporators, directors and officers of a corporation engaged in the practice of architecture, organized pursuant to Republic Act No. 9266[1] (R.A. No. 9266), known as "The Architecture Act of 2004".

You seek clarification on Section 37 of R.A. 9266 which provides:

"SECTION 37. Limitation to the Registration of a Firm, Company, Partnership, Corporation or Association. - The practice of architecture is a professional service, admission to which shall be determined upon the basis of individual personal qualifications. However, a firm, company, partnership, corporation or association may be registered or licensed as such for the practice of architecture under the following conditions:

(a) **Only Filipino citizens properly registered and licensed as architects** under this Act **may, among themselves, or together with allied technical professionals, form and obtain registration as a firm, company, partnership, association or corporation** for the practice of architecture;

(b) Registered and licensed architects shall compose at least **seventy-five percent (75%)** of the owners, shareholders, members, incorporators, directors, executive officers, as the case may be; x x x."

In particular, you would like to know:

---

[1] Republic Act No. 9266, An Act Providing for a More Responsive and Comprehensive Regulation for the Registration, Licensing and Practice of Architecture, Repealing for the Purpose Republic Act No. 545, As Amended, Otherwise Known as "An Act to Regulate the Practice of Architecture in the Philippines," and for other purposes, 17 March 2004

1. Whether the requirement of Filipino citizenship in Section 37 of R.A. No. 9266 applies only to registered and licensed architects (RLAs) or to all incorporators, stockholders, directors and/or officers of the corporation.
2. Whether the seventy-five percent (75%) pertains to number of shares that Filipino RLAs should own or to the total number of stockholders, incorporators and directors.

It is your belief that the requirement of Filipino citizenship in Section 37 of R.A. 9266 only applies to RLAs, and that a foreigner can be an incorporator, a stockholder, director and/or officer of the Corporation, as long as that foreigner is not part of the RLAs composing seventy-five (75%) of the corporation's shares of stocks. You also believe that the "seventy-five percent (75%) of the owners, shareholders, members incorporators, directors, executive officers" refers to the number of shares and not the number of stockholders, incorporators or directors.

We opine 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."[2] This provision clearly states the fundamental principle that the practice of profession in this country is reserved exclusively to Filipinos except when there is a law which provides otherwise.

This constitutional limitation on the practice of professions was reiterated in the Eleventh (11th) Regular Foreign Investment Negative List (FINL)[3] which states that there shall be no foreign equity in the practice of professions, subject to the Annex on Professions attached to the said list. The Annex enumerates the professions where foreigners are allowed to practice subject to reciprocity. It also enumerates the professions where **corporate practice is allowed subject to the requirements and conditions under the pertinent professional regulatory law**.

The law enacted to regulate the practice of architecture is R.A. 9266 which allows a firm, company, partnership, **corporation** or association to be registered or licensed as such for the practice of architecture under the conditions provided in Section 37 thereof. However, there is nothing in Section 37 or elsewhere in R.A. 9266 that expressly and clearly allows foreign participation in a corporation engaged in the practice of architecture, whether as an incorporator, a stockholder and/or director. That the phrase "allied technical professionals" in Section 37(a) is not qualified by the law's citizenship requirement does not necessarily mean that said professionals need not be Filipino citizens. Again, the general rule applies in the absence of a clear intent to the contrary.

---

[2] The 1987 Constitution, Article XII, Section 14, second paragraph.

[3] Executive Order No. 65 Promulgating the Eleventh Regular Foreign Investment Negative List, 29 October 2018.

As regards officers, we believe that they must also be Filipino citizens pursuant to Section 2-A of the Anti-Dummy Law[4] which prohibits aliens from being appointed to management positions such as president, vice president, etc. of corporations engaged in wholly or partly nationalized activities.[5] It 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**; x x x **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:, x x x" (Emphasis ours)

Considering that R.A. 9266 does not expressly allow foreign participation in a corporation engaged in the practice of architecture, no foreigners can be allowed to participate in the management, operation, administration or control of the said corporation, whether as officers or employees.

On your second query, you averred that since the degree of control, influence and liability of the corporation depends on the number of shares that the stockholders hold in the corporation, the requirement that RLAs should compose 75% of the owners, shareholders, incorporators or directors refers to the number of shares and not the number of stockholders, incorporators or directors.

---

[4] Commonwealth Act No. 108, An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges, 30 October 1936

[5] SEC Opinion dated 27 July 1990, Philippine Association of Service Exporters, Inc.

We opine in this wise:

Section 37(b) of R.A. No. 9266 clearly states that:

> "(b) Registered and licensed architects shall compose at least seventy-five percent (75%) of the owners, shareholders, members, incorporators, directors, executive officers, as the case may be;"

What the law requires is that 75% of the owners, shareholders, members, incorporators, directors, executive officers, **as the case may be**, should be RLAs. It simply means that the remaining 25% of the owners, shareholders, members, incorporators, directors, executive officers, as the case may be, need not be RLAs as they could be "allied technical professionals". Again, that 25% of the owners, stockholders, et.al. are allowed to be non-RLAs does not necessarily mean that such 25% may be composed of foreigners as afore-discussed. If the legislative intent is to put a 75% cap on the shareholdings of RLAs as you assert, the law could have been worded as such, i.e. 75% of the outstanding capital stock of the corporation should be RLAs.

In addition, the existence of the "executive officers" in the list of persons stated in the provision negates your assertion that the 75% requirement refers to number of shares to be subscribed by RLAs, because an executive officer of a corporation may or may not be required to have a shareholding in the corporation where he serves as such officer. For example, the Treasurer, under the Corporation Code, may or may not be a director[6], who in turn is required to be a stockholder.[7] Hence, the Treasurer may or may not own a share in the corporation where he serves as such.

The foregoing notwithstanding, we recognize that the Professional Regulation Commission (PRC) has the primary competence to interpret and determine compliance with R.A. No. 9266. Thus, we recommend that PRC's opinion be obtained as it is the lead agency tasked to implement the provisions of R.A. No. 9266.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[8] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

---

[6] B.P. No. 68, The Corporation Code of the Philippines, Section 25, First Paragraph, now Sec. 24 of RA 11232 or the Revised Corporation Code.

[7] B.P. No. 68, The Corporation Code of the Philippines, Section 23, Second Paragraph. The same is true under RA 11232 or the Revised Corporation Code.

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