Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

14 July 2025

SEC OGC Opinion No. 25-12

Re: Incorporated Joint Ventures

SARMIENTO LORIEGA LAW OFFICE
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Attention	:	**Atty. Maria Elizabeth Peralta Loriega** **Atty. Bryan A. San Juan** **Atty. Recolito Ferdinand N. Cantre Jr.** **Atty. Cristina Marie T. Bello** **Atty. Jaulyne Tyndyl S. Sison** **Atty. Brian Earl A. Leshen**
Re	:	**Request for opinion**

Dear Attorneys:

This refers to your letter dated 26 June 2024[1] requesting, on behalf of an undisclosed foreign corporation incorporated in Japan, for an opinion on the applicability of the provisions on partnership of Republic Act (R.A.) No. 386 or the Civil Code of the Philippines (Civil Code) to the proposed Entity X.

In your letter, you disclosed that Corporation A and Corporation B:

a) are foreign corporations with the former being incorporated under the laws of Japan;
b) intend "to engage in various businesses in the Philippines through a domestic corporation (Entity X)";
c) "shall form Entity X to own and hold the shares and/or interests in other various corporations engaged in power generation and electricity supply businesses";
d) will enter into a written agreement (the Agreement) covering "the terms of ownership, governance, and management of Entity X";
e) shall include in the Agreement the following clauses or terms:
    i. Both Corporation A and Corporation B shall own equal number of shares in Entity X;
    ii. Corporation A and Corporation B shall have equal representation in the board of directors (i.e. each shall have the right to nominate the same number of directors to the board);
    iii. The presence of at least one (1) director nominated by each of Corporation A and Corporation B shall be required for the quorum for the meeting of the board of directors;
    iv. In the stockholders' meetings, Corporation A and Corporation B shall take action by simple majority vote;
    v. Entity X shall distribute all unrestricted retained earnings to Corporation A and Corporation B, subject to appropriate reserves; and
    vi. Neither Corporation A nor Corporation B can sell, assign, transfer, pledge, encumber, hypothecate, or dispose all or any portion of its shares of stock without prior written consent of the other. (Emphasis and underscoring supplied); and
    vii. Corporation A and Corporation B do not intend to form a partnership, the provisions on joint control notwithstanding; and
f) intend "that the laws of Japan shall govern the Agreement xxx as they meant to prevent the application of [the Civil Code] or the Partnership Laws to the relationship between the Parties."

You are now asking for an opinion on the following questions:

[1] Received by this Office through e-mail on 27 June 2024.

i. "Will Philippine laws (i.e., the Partnership Laws and the Corporation Laws) apply to Entity X, established under Philippine laws, regardless of the choice of law provision stipulated in the Agreement and the explicit contractual clause that the parties do not intend to form a partnership";
ii. "Assuming that the response to (i) is in the affirmative, whether Corporation A and Corporation B will be deemed as joint venture [(JV)] partners"; and
iii. "Whether the Partnership Laws will be applied to govern the respective rights, duties, and liabilities of Corporation A and Corporation B as stockholders of Entity X."

Formation of a Corporation

Section 10 of R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCCP) provides who may be incorporators, *viz.*:

> Any person, partnership, association or ***corporation***, singly or jointly with others but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes: *xxxx* (Emphasis supplied)

The RCCP removed the previous limitation under Batas Pambansa (B.P.) Blg. 68 or the Corporation Code which only allowed natural persons to be incorporators. Thus, ***the RCCP now allows corporations to become incorporators of a new corporation which has a distinct and separate juridical personality from them.***

Further, corporations have the power to enter into a partnership, JV, merger, consolidation, or any other commercial agreements with natural and juridical persons under Section 35(h) of the RCCP.

In ***SEC-OGC Opinion No. 16-22***,[2] the Commission discussed the nature of JVs and Joint Venture Agreements (JVAs), to wit:

> [A JV] is essentially a partnership arrangement, although of a special type, since it pertains to a particular project or undertaking. ***What determines an agreement as a [JV] 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 [JV] when it is limited to a particular project that will allow the Boards of the co-venturers to anticipate and evaluate the corporations' responsibilities and liabilities.
>
> With respect to [JVAs], the Commission has a long-standing opinion that a corporation may enter into a [JV] provided it is in line with the business authorized by its charter xxx (Citations omitted, emphasis supplied)

Indeed, in ***Carlos Valdes, et. al. vs. La Colina Development Corporation (LCDC), et. al.***,[3] the Supreme Court reiterated that "[a JV], therefore, is akin to a partnership, the essential elements of which are as follows: (1) an agreement to contribute money, property, or industry to a common fund; and (2) an intent to divide the profits among the contracting parties."

In your client's case, Corporation A and Corporation B will form Entity X as a "domestic corporation" and not a partnership. ***This choice to form Entity X as a corporation instead of a partnership or a JV has legal consequences beyond mere choice of name or nomenclature.*** Partnerships and corporations have the following differences:

1. ***As to governing law.***
   a) Partnerships are governed by the Civil Code;
   b) Corporations are governed by the RCCP;
   c) An unincorporated JV, being a form of partnership, may be governed by partnership laws and other contractual stipulations among the Parties while an incorporated JV, being a corporation, shall be governed by the RCCP;
2. ***As to creation.***
   a) Partnerships and unincorporated JVs are created by mere agreement of the Parties;
   b) Corporations and incorporated JVs are created by operation of law;
3. ***As to management.***
   a) For partnerships, unless otherwise stipulated, every partner is an agent of the partnership[4];
   b) For corporations, the power to do business and to manage a corporation's affairs is vested in the board of directors or trustees[5];

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[2] SEC-OGC Opinion No. 16-22 addressed to Mr. Fred Dela Cruz dated 04 October 2016.
[3] G.R. No. 208140, 12 July 2021. [Per J. Hernando, Third Division]
[4] Article 1818, Republic Act (R.A.) No. 386, *Civil Code of the Philippines*, 30 August 1950.
[5] Section 22, R.A. No. 11232, *Revised Corporation Code of the Philippines (RCCP)*, 23 February 2019.

c) For JVs, as a general rule, the relation of the parties is governed by their Agreement; when the Agreement is silent on any particular issue, the general principles of partnership may be resorted to[6] unless it is formed as a JVC[7];

4. ***As to liability.***
   a) Partners are generally liable solidarily with the partnership for everything chargeable to the partnership under Articles 1822 and 1823 of the Civil Code, except if the partner is a limited partner[8];
   b) Stockholders are liable only to the extent of shares subscribed by them;
   c) Co-venturers' liabilities are generally determined by the stipulation of the parties in the JVA and if the JV is incorporated, the liabilities under the RCCP apply;
5. ***As to dissolution.***
   a) Partnerships may be dissolved voluntarily or involuntarily for causes enumerated under Articles 1830 and 1831 of the Civil Code;
   b) A corporation's dissolution generally requires the consent or an action of the state through a certificate of dissolution or an order of revocation issued under Sections 134 to 136 of the RCCP; and
   c) JVs are usually dissolved after the accomplishment of their purpose, upon the lapse of time stipulated in the JVA, or upon termination under the grounds provided under the JVA, *provided* that if the JV is incorporated, the same may be dissolved in accordance with the RCCP.

Notably, while JVs are ***akin*** to a partnership, it does not automatically follow that partnership laws will govern as JVs may take the form of a corporation. To be clear, a JV does not need to be incorporated but once the JV is incorporated, it will be formed under and governed by the RCCP.

In ***Mabuhay Holdings Corporation vs. Sembcorp Logistics Limited,*** [9] the Supreme Court illustrated that the choice to incorporate as a Joint Venture Corporation (JVC) is **material** in the determination of the applicable law, *viz.*:

> At any rate, Mabuhay's contention is bereft of merit. The [JV] between Mabuhay, IDHI, and Sembcorp was pursued under the [JVC], WJSC and WJNA. ***By choosing to adopt a corporate entity as the medium to pursue the joint venture enterprise, the parties to the [JV] are bound by corporate law principles under which the entity must operate.*** Among these principles is the limited liability doctrine. The use of a [JVC] allows the co-venturers to take full advantage of the limited liability feature of the corporate vehicle which is not present in a formal partnership arrangement. In fine, Mabuhay's application of Article 1799 [of the Civil Code] is erroneous. (Emphasis supplied)

General laws authorizing the formation of corporations are general offers to any persons who may bring themselves within their provisions; and if conditions precedent are prescribed in the statute, or certain acts are required to be done, they are terms of the offer, and must be complied [with] substantially before legal corporate existence can be acquired.[10] Thus, ***incorporated JVs being creatures of the law, can only come into existence in the manner prescribed by law.***

In this relation, in ***Concept Builders Inc. vs. The National Labor Relations Commission, et. al.,***[11] the Supreme Court laid down the doctrine that a corporation is an entity **separate and distinct** from its stockholders and **from other corporations** to which it may be connected.

Under the doctrine of separate corporate personality, Corporation A, Corporation B, and Entity X are all corporations which have a distinct and separate personality from each other. ***The fact that Corporation A and Corporation B entered into an agreement to form Entity X does not diminish the latter's separate corporate personality and the fact that it is a domestic corporation governed by the law under which it was created.***

Nature of the Shareholders Agreement

A shareholders' agreement is a contract between and/or among the shareholders of a corporation separate and distinct from the Articles of Incorporation (AOI) and the by-laws of a corporation.

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[6] *Primelink Properties and Development Corporation and Rafaelito Lopez vs. Ma. Clarita Lazatin-Magat, et. al.*, G.R. No. 167379, 27 June 2006.

[7] *See Mabuhay Holdings Corporation vs. Sembcorp Logistics Limited*, G.R. No. 212734, 05 December 2018.

[8] Articles 1824 and 1848, *Civil Code, supra* Note 4. *See* also *Wolfgang Aurbach, et. al. vs. Sanitary Wares Manufacturing Corporation, et. al*, G.R. No. 75875, 15 December 1989. [Per J. Gutierrez Jr., Third Division]

[9] *Mabuhay Holdings vs. Sembcorp, supra* Note 7.

[10] *Cagayan Fishing Development Co., Inc. vs. Teodoro Sandiko*, G.R. No. 43350, 23 December 1937. [Per J. Laurel, Second Division]

[11] G.R. No. 108734, 29 May 1996. [Per J. Hermosisima Jr. First Division]

It is doctrinal that a contract that is freely executed has the force of law between and among the parties in line with the principle of autonomy in contracts. This principle is, however, not absolute. The Supreme Court explains this in ***Pakistan International Airlines Corporation vs. Blas Ople, et. al.***[12], to wit:

> A contract freely entered into should, of course, be respected xxx since a contract is the law between the parties. The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of [the] Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, "provided they are not contrary to law, morals, good customs, public order or public policy." Thus, counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest.

From the foregoing, it is clear that parties may enter into a shareholders' agreement and may stipulate whatever provisions they may deem proper, provided that the same is not contrary to law, morals, good customs, public order, or public policy, and provided further that by choosing to incorporate, such contractual provisions may not do away with the provisions of the RCCP.

Conclusion

To answer your ***first query***, Entity X shall be subject to Philippine laws, particularly the RCCP, as it is a **domestic corporation** distinct and separate from foreign Corporations A and B. Corporation A and Corporation B, in this instance, are **incorporators and stockholders** of Entity X. Entity X, being a corporation, is a creature without any existence until it has received the imprimatur of the state acting according to law. As was pronounced by the Supreme Court in ***Testate Estate of Idonah Slade Perkins vs. Benguet Consolidated Inc.***[13], "[i]t is logically inconceivable therefore that it will have rights and privileges of a higher priority than that of its creator. More than that, it cannot legitimately refuse to yield obedience to acts of its state organs, certainly not excluding the judiciary, whenever called upon to do so."

To answer your ***second and third queries***, Corporation A and Corporation B may freely enter into a shareholders' agreement pursuant to their autonomy to contract. However, it is worthy to reiterate that Entity X is a creature of the RCCP. As such, the provisions of the RCCP, more notably, those providing the rights, duties, liabilities, qualifications, and disqualifications of stockholders, directors/trustees, and officers, are deemed written into the shareholders' contract and provisions contrary to the RCCP and other relevant or related laws, rules, and regulations on corporations cannot be stipulated as contracting parties may not stipulate away such relevant provisions of law. In short, the RCCP and other corporation laws take precedence over, and shall prevail when in conflict with, any shareholders' agreement.

On a final note, your letter states that Entity X will "own and hold the shares and/or interests in other various corporations engaged in power generation and electricity supply business." While your letter does not specifically state that Entity X is a holding company, please take note of ***SEC-OGC Opinion No. 22-09***[14], *viz.*:

> A holding company has been defined as "a corporation organized to hold the stock of another or other corporations." Its essential feature is that it holds stock.
>
> xxxx
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> As a general rule, a holding company has a separate corporate existence as is to be treated as a separate entity unless:
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> a) such corporate existence is a mere sham; or
> b) has been used as an instrument for concealing the truth; or
> c) where the organization or control is shown to be such that it is but an instrumentality or adjunct of another corporation.
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> A holding company was previously opined as a domestic market enterprise. Micro and small domestic market enterprises with paid-in equity capital of less than the equivalent of two hundred thousand US dollars (US$200,000.00), are ***reserved to Philippine nationals at sixty percent (60%), the maximum allowable foreign equity being limited to forty percent (40%)***, provided, that if:
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> 1) they involve advanced technology as determined by the Department of Science and Technology; or
> 2) they are endorsed as startup or startup enablers by the lead host agencies pursuant to R.A. No. 11337, otherwise known as the Innovative Startup Act; or
> 3) a majority of their direct employees are Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15).

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[12] G.R. No. 61594, 28 September 1190. [Per J. Feliciano, Third Division] as cited in *I-People Manpower Resources, Inc., et. al. vs. Court of Appeals and Joel Monton*, G.R. No. 246410, 25 January 2023. [Per J. J.Y. Lopez: Second Division]

[13] G.R. No. L-23145, 29 November 1968. [Per J. Fernando: En Banc]

[14] SEC-OGC Opinion No. 22-09 addressed to Prime Infrastructure Capital Inc. dated 28 June 2022.

then a minimum paid-in capital of one hundred thousand US Dollars (US$100,000.00) shall be sufficient to allow ownership by non-Philippine nationals of more than forty percent (40%) equity.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[15] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[15] Section 7, SEC MC No. 15, Series of 2003, *supra* Note 13.