



**Republic of the Philippines
Department of Finance
Securities and Exchange Commission**

OFFICE OF THE GENERAL COUNSEL

22 November 2017

SEC- OGC Opinion No. 17-15

Re: Compensation of Trustees;
Acquisition of Land by a Non-
Stock, Non-Profit Religious
Corporation

Rodolfo G. Palattao & Associates Law Office

Counsel

Sokka Gakkai International Philippines
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ATTENTION: ATTY. RODOLFO JOHN ROBERT C. PALATTAO IV

Attorney:

This refers to your letter dated 10 January 2017 requesting the Commission's legal opinion on certain issues regarding the nationality of a non-stock, non-profit religious corporation, and the compensation of its trustees.

You stated that your client, Sokka Gakkai International Philippines, is a non-stock, non-profit religious corporation. The members of its Board of Trustees were formerly serving the corporation as employees and officers concurrently with their position in the Board. As ministers or preachers, they are likewise tasked to perform religious activities for their members which qualify them as employees. They were advised that as trustees, they cannot be given compensation even as employees.

You further stated that the majority of your client's Board of Trustees is currently composed of Japanese citizens. They were advised that this may affect the religious corporation's right to own and acquire land which they actually, directly and exclusively use for religious purposes. "Hence, a question arises whether the nationality of a Religious corporation is bound and affected by the limitation of foreigners holding the directorship/trusteeship despite the fact that majority of the total membership of the religious association are Filipinos."¹

¹ Page 2 of letter-request.

Thus, you raised the following queries:

1. Whether or not SEC OGC Opinion No. 15-12, particularly the prohibition on giving trustees an employee's compensation, applies to a non-stock, non-profit religious corporation, and
2. Whether or not Section 22 and 23 of Commonwealth Act No. 141, also referred to as Public Land Act, apply to a non-stock, non-profit religious corporation.

Relevant to your first query, SEC-OGC Opinion No. 15-12² discusses the limitations on compensation of trustees, to wit:

"Under [Section 30³ of the Corporation Code], there are two requisites before members of the board of directors can be granted compensation aside from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special meeting agree to give the directors compensation, which shall not exceed 10% of the net income before income tax for the preceding year. Since Section 30 is likewise applicable to non-stock non-profit corporations, it is reasonable to conclude that, in general, the trustees of non-stock non-profits corporations can be given compensation, aside from reasonable per diems, **(1) when there is a provision in the by-laws fixing their compensation; and (2) when the majority of the members agree, at a regular or special meeting, to give compensation to the trustees.**"

The foregoing Opinion applies also to a non-stock non-profit religious corporation. Section 109, Chapter 2, Title XIII of the Corporation Code (the "Code"), which governs religious corporations, provides:

"Section 109. xxx - Religious corporations shall be governed by this Chapter and by **the general provisions on non-stock corporations** insofar as they may be applicable."

In this relation, Section 87, a general provision for non-stock corporations, provides that:

"Section 87. xxx – The **provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations**, except as may be covered by specific provisions of this Title."

² Dated 22 September 2015 addressed to Capt. Eusebio V. Perez (Ret.).

³ Sec. 30. Compensation of Directors. – In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems; Provided, however, that any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholder's meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year.

Since there is no particular provision in Chapter 2, Title XIII of the Code which governs the compensation of Board of Trustees, Section 30 likewise applies to a religious corporation, pursuant to Section 87 in relation to Section 109 of the Code.

However, this prohibition against granting compensation to directors/trustees of a corporation is not absolute. Note how Section 30 is worded: xxx [T]he directors shall not receive any compensation, **as such directors**, xxx. The phrase *as such directors* is not without significance for it delimits the scope of the prohibition to compensation given to them for services performed purely in their capacity as directors or trustees. **Members of the board, therefore, may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors/trustees.**⁴

With regard to your second query, the 1987 Constitution restricts the ability of a corporation to acquire land in the Philippines, to wit:

"Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of public domain."⁵

The determination of whether a corporation may acquire real estate is laid down in Sections 22⁶ and 23⁷ of Commonwealth Act No. 141.

The purpose of the sixty per centum (60%) requirement is obviously to ensure that corporations or associations allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.⁸

In a previous opinion⁹, the Commission held:

"The nationality of a non-stock corporation, in relation to the constitutional provision on land acquisition, is computed on the basis of the nationality of its members and not premised on the membership contribution.

⁴ Western Institute of Technology vs. Salas, 278 SCRA 216 (1997).

⁵ Section 7, Article XII of the 1987 Constitution of the Philippines.

⁶ SECTION 22. Any citizen of lawful age of the Philippines, and any such citizen not of lawful age who is a head of a family, and any corporation or association of which at least sixty per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of Philippines, and corporate bodies organized in the Philippines authorized under their charters to do so; may purchase any tract of public agricultural land disposable under this Act, not to exceed one hundred and forty-four hectares in the case of an individual and one thousand and twenty-four hectares in that of a corporation or association, by proceeding as prescribed in this chapter, xxx

⁷ SECTION 23. No person, corporation, association, or partnership other than those mentioned in the last preceding section may acquire or own agricultural public land or land of any other denomination or classification, which is at the time or was originally, really or presumptively, of the public domain, or any permanent improvement thereon, or any real right on such land and improvement: xxx.

⁸ THE REGISTER OF DEEDS OF RIZAL, vs. UNG SIU SI TEMPLE, G.R. No. L-6776, May 21, 1955.

⁹ SEC-OGC Opinion No. 16-15 dated 01 June 2016 addressed to Atty. Geneses R. Abot.

In computing the above required ratio, the extent of voting power of the members should also be taken into consideration, not only the number of members. This is because it is the power to vote that determines control in a corporation.

Thus, in a non-stock corporation, the general rule is that each member shall be entitled to one vote, regardless of the amount of contribution. The exception is when the right of members of any class to vote is limited, broadened, or denied to the extent specified in the articles of incorporation or the by-laws."

In view of the foregoing, if the voting right of each member is not limited, broadened, or denied by the corporation's articles of incorporation or by-laws pursuant to Section 89¹⁰ of the Code, each member is entitled to one vote. Therefore, 60% of the members must be Filipinos in order for the corporation to acquire land. However, if the voting right of each member is limited, broadened, or denied, 60% of the total voting rights must belong to Filipino members.

Corollarily, since ownership of land is a partly nationalized activity/undertaking, the number of foreigners in the Board of Trustees must be in proportion to their allowable participation in the corporation pursuant to Section 2-A¹¹ of the Anti-Dummy Law. This provision prohibits the employment by any person, corporation, or association of an alien, who shall intervene in the management, operation, administration or control thereof, whether as officer, employee, laborer, when the exercise or enjoyment of the property or of the franchise, privilege, or business engaged in by such person, corporation or association "is expressly reserved by the Constitution or the law to the citizen of the Philippines" or "corporations or

¹⁰ Sec. 89. *Right to vote.* - The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.

¹¹ **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 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: 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.

associations at least 60% of the capital of which is owned by such citizens", however, it allows such alien to be elected as director in proportion to his allowable participation or share in the corporation's capital.¹² Thus, foreigners should not constitute more than 40% of the members of Sokka Gakkai's Board.

Please be advised, however, that while aliens cannot own lands, they may, however, be granted temporary rights such as in a lease contract of lands, which is not forbidden by the Constitution. Presidential Decree No. 471 has fixed the maximum period for leases of private lands to aliens or alien-owned corporations, associations, or entities not qualified to acquire private lands in the Philippines, to twenty-five years, renewable for another period of twenty-five years upon mutual agreement of both lessor and lessee. The religious corporation may also be a possessor in the concept of holder who is such by virtue of a juridical title, such as a usufructuary, or hold such lands in trust for the equitable title-holders.¹³

It shall be understood 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. 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.


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¹² SEC Opinion No. 16-02 addressed to Atty. Peter Anthony V. Rafanan dated 12 February 2016.

¹³ See Note 8.