



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City



27 March 2009
SEC-OGC Opinion No. 09-08
**Re: Ownership, Control, Administration
and Student Population of Educational
Corporations**

PICAZO BUYCO TAN FIDER & SANTOS
17th, 18th & 19th Floors, Liberty Center,
104 H.V. dela Costa Street, Salcedo Village,
Makati City

Attention: Attys. Jonas-Karl V. Perez and Myrvilen L. Alviar

Sir/Madam:

This refers to your letter dated 15 January 2009 requesting opinion on a legal matter stated therein.

You mentioned that your client, Enhance Institute of Technology Pty Ltd ("EIT", for brevity), a company organized and existing in Australia, proposes to establish a technical skills training school in the Clark Special Economic Zone ("the School") which would provide 2-year technical and vocational certificate courses that under Philippine educational system would generally fall under the domain of the Technical Education and Skills Development Authority ("TESDA").

As manifested, the School would cater primarily to **foreign temporary residents** mostly coming from China, India, Nepal, Korea, Taiwan, Thailand and Vietnam. However, for it to be accredited by the Australian Quality Training Framework ("AQTF"), it must: (a) be under the control and administration of Australian nationals; and (b) include Australian citizens in its teaching staff. EIT proposes that the control and administration of the School be undertaken by:

(a) a Philippine corporate subsidiary of EIT, the outstanding capital stock of which shall be shared among EIT and possibly some Philippine nationals, that will enter into a management and technical services agreement with EIT which will provide management and operations by qualified Australian nationals for the purposes of accreditation under AQTF;

(b) in lieu of the above, the establishment of a Philippine branch of EIT, which shall manage and operate the School, whose management and operations personnel shall be composed of qualified Australian nationals.

You thus seek confirmation of your position that the ownership, management and operations of the School can be undertaken by Australian nationals pursuant to Article XIV, Section 4(2) of the 1987 Philippine Constitution.

Article XIV, Section 4(2) of the 1987 Philippine Constitution -- which is a substantial, if not identical, reproduction of Article XV, Section 8(7) of the 1973 Philippine Constitution¹ -- provides:

“Sec. 4. (1) xxx xxx xxx.

(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrolment in any school. **The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.**”

The Department of Justice (“DOJ”), as early as 1990, had already opined that aside from schools established by religious groups and mission boards, those established for foreign diplomatic personnel and their dependents, and for other foreign temporary residents, are likewise exempted from the general rule on ownership of educational institutions. This is because the last sentence of the above-quoted constitutional provision states that the provisions of Subsection (2), Section 4, Article XIV shall not apply to such latter type of schools. The language of the said provisions being too plain, unambiguous and unequivocal, there is no more need to apply the rules on construction.²

In 1998, the DOJ had occasion to elucidate further on the nature and scope of the exemption(s) for foreign diplomatic personnel and their dependents, and for other foreign temporary residents, to wit:

“A cursory reading of the afore-quoted constitutional provisions would clearly reveal that **the requirements or restrictions in the establishment of schools in the Philippines in terms of ownership, control and administration and student population do not apply to schools established for foreign diplomatic personnel, their dependents and other (foreign) temporary residents.** The exemption made in favor of

¹ Section 8. xxx. (7) Educational institutions, other than those established by religious orders, mission boards, and charitable organizations, shall be owned solely by citizens of the Philippines, or corporations or associations sixty *per centum* of the capital of which is owned by such citizens. The control and administration of educational institutions shall be vested in citizens of the Philippines. No educational institution shall be established exclusively for aliens, and no group of aliens shall comprise more than one-third of the enrolment of any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

² DOJ Opinion No. 155, Series of 1990, addressed to Secretary Isidro D. Carino of DECS, quoting Bernas, Commentaries on the 1987 Constitution, 1989 Ed., p. 513.

schools for "foreign diplomatic personnel and their dependents", in recognition of international practice, cannot be repealed by legislation. The exemption made in favor of schools for "other (foreign) temporary residents", on the other hand, may be repealed by legislation. Hence, unless there is a law that **specifically lifts or repeals the exemption** granted in the Constitution for schools established for "other (foreign) temporary residents", such exemption is still obtaining."³

In support of all the foregoing, the DOJ quoted the pertinent proceedings of the 1986 Constitutional Convention, which quotation we are reproducing hereunder for your easy reference:

"FR. BERNAS. This is a question addressed to Commissioner Villacorta. First of all, an observation. I do not think that we should try to determine which schools are covered by this provision because that depends on a factual situation. Whether or not Brent School is covered will depend on the factual situation of that school. *Secondly, the chairman said that the provisions of this paragraph, in answer to the question of Commissioner Rigos, have reference only to the provisions starting with line 1. In other words, he is changing the provisions of the 1973 Constitution. Under the 1973 Constitution, the exceptions covered ownership, administration and student population. Whereas, it is the chairman's intention to exempt them only from the requirements of student population.*

MR. VILLACORTA. *We get the Commissioner's point, Madam President. I think what he is saying is that in the original 1973 provision, the exemption also applies to ownership.*

FR. BERNAS. *Yes, and also administration.*

MR. VILLACORTA. The Commissioner's point is well-taken, Madam President. This paragraph actually refers to subsection (a).

MR. BENGZON. I wish to call the attention of the body to lines 5 and 6 with respect to the provisions of this sentence regarding the establishment of schools for foreign diplomatic personnel and their dependents. If we leave the phrase "UNLESS OTHERWISE provided by law" at the end, it will appear that Congress can enact measures that would prohibit the establishment of schools for foreign diplomatic personnel. Therefore, I propose that the phrase "UNLESS OTHERWISE provided by law" be transported to line 6 after the word "and" so that the sentence will read: "The provisions of this paragraph shall not apply to schools established for foreign diplomatic personnel and their dependents and, "UNLESS OTHERWISE provided by law", for other FOREIGN temporary residents."

³ DOJ Opinion No. 055, Series of 1998, addressed to Chairman Angel C. Alcalá of CHED.

MR. VILLACORTA. Just a clarification, Madam President. Is the Honorable Bengzon saying that Congress may prohibit schools established only for temporary residents?

MR. BENGZON. It is the other way around; it should not.

MR. VILLACORTA. It should not?

MR. BENGZON. *Yes. The way it is worded now, Congress can prohibit the establishment of schools which would be strictly for diplomatic personnel.*

MR. VILLACORTA. *But the Commissioner is saying that if we place "UNLESS OTHERWISE provided by law" before "for other FOREIGN temporary residents", then that means that Congress may prohibit the establishment of schools for foreign temporary residents. Is that right, Madam President?*

MR. BENGZON. *Yes, it may for other foreign temporary residents.*

MR. VILLACORTA. It may.

MR. BENGZON. I do not want Congress to have the power to prohibit the establishment of schools for foreign diplomatic personnel because that is a reality. That is part of life.

MR. VILLACORTA. Actually, the original wording of the 1973 Constitution is what the Commissioner is proposing now

MR. BENGZON. Yes, I am going back to that.

MR. VILLACORTA. May I just know, for information what was the intention of the 1971 constitutional convention with respect to this matter?

MR. BENGZON. The intention of the 1971 constitutional convention with respect to this matter is that it did not want Congress to prohibit the establishment of schools for foreign diplomatic personnel.

MR. VILLACORTA. But the Commissioner was open to prohibiting the establishment of schools for temporary residents.

MR. BENGZON. For other temporary residents, because we have foreign diplomats, and that is because of our relations with other nations.

MR. VILLACORTA. With that clarification, Madam President, we accept the amendment of Commissioner Bengzon.⁴

⁴ Records of the Constitutional Convention, Volume IV, p. 389-390, September 8, 1986, as quoted in DOJ Opinion No. 055, Series of 1998, addressed to Chairman Angel C. Alcala of CHED.

Hence, unless there is a law that specifically lifts or repeals the exemption granted in the Constitution for schools established for other foreign temporary residents, we confirm your position.

It bears emphasis, however, that the above-quoted constitutional provisions merely exempt schools established for foreign temporary residents from the restrictions on ownership, control and administration of educational institutions. They do not by any stretch of imagination authorize doing away with any and all requirements as may be prescribed by the Corporation Code or any other statute and applicable rules and regulations. Thus, since its establishment of a school and/or branch office in this jurisdiction would constitute doing business in the Philippines, EIT must obtain a license to do business herein, pursuant to Section 123 of the Corporation Code.⁵

The opinion is based solely on the facts disclosed in the queries and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.⁶

Please be guided accordingly.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel

⁵ "Sec. 23. Definition and rights of foreign corporations. -- For the purposes of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency."

⁶ Section 7, SEC Memorandum Circular No. 15, Series of 2003.