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## **TAX LAW FOR BUSINESS**

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## **Limitations under the anti-dummy law and Foreign Investments Act of 1991**

Based on the Foreign Investments Act (FIA) of 1991, there are, as a general rule, no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as 100-percent equity except in areas included in the negative list. A foreign investments negative list or negative list refers to a list of areas of economic activity whose foreign ownership is limited to a maximum of 40 percent of the equity capital of the enterprises engaged in said activities. In essence, foreign ownership shall be prohibited or limited to industries that are wholly or partly nationalized.

Likewise, the anti-dummy law 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, or 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 citizens of the Philippines or corporations or associations at least 60 percent of the capital of which is owned by such citizens.

Recently, the Office of the General Counsel of the Securities and Exchange Commission (SEC) issued an opinion regarding the application of both laws. The underlying issue is whether a foreign national can assume the position as president or chairman of a domestic company and increase his shareholdings from 25 percent to 40 percent.

In the said opinion, the primary purpose of the domestic entity is to develop real-estate projects in conjunction with modern construction methods and systems, and included in the secondary purposes is the acquisition, lease, purchase and to go into joint venture, borrow, lend and develop subdivision and condominium properties in relation to its business. Consequently, acquisition or ownership of land is incidental to its primary and secondary purposes. The SEC opined that since the purpose of the company involves acquisition or ownership land, therefore, it is partially nationalized and it is required that 60 percent of its capitalization shall be owned by Philippine citizens.

The anti-dummy law also applies in this case and the foreign national cannot act as a president/chairman of the board, nor can he increase his shareholdings to 40 percent if there are other foreign stockholders in the corporation. On the other hand, if there is no other foreign stockholder in the corporation, the foreign national can increase his shareholdings from 25 percent to 40 percent, but he cannot act as president or chairman of the board.

The SEC further noted that even if the company is not covered by the rules of land ownership, it may still be covered by Section 8 of FIA of 1991. As such, if the company is a domestic market enterprise with a paid-in equity of less than \$200,000 or a domestic market enterprise which involves advance technology or employ at least 50 employees with paid-in capital of less than the equivalent of \$100,000, it can be considered as engaged in a nationalized activity. In such instances, the anti-dummy law applies, restricting the officer position only to Filipinos and the foreign ownership to 40 percent.

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