



**BOARD RESOLUTION NO. 605
Series of 2011**

**IMPOSITION OF AT LEAST 60 % - 40% FILIPINO-FOREIGN EQUITY
PARTICIPATION (PESO VALUE) AND EQUIVALENT MANAGEMENT CONTROL
AS PREREQUISITE REQUIREMENTS FOR THE GRANT OF THE REGULAR
CONTRACTOR'S LICENSE BY THE PCAB**

WHEREAS, Sec. 5 of RA 4566 has expressly clothed the Board the duty and power to issue the Rules and Regulations (IRR) of RA 4566 as may be deemed necessary to carry out the provisions of this Act;

WHEREAS, pursuant to the rule-making authority granted by the law, the Board promulgated the IRR;

WHEREAS, construction contracting is a practice of profession as could be gleaned from the Explanatory Note of RA 4566 and from RA 465 as amended by RA 6511 which included contractors among its enumeration of professionals;

WHEREAS, construction contracting, being a practice of profession must verily comply with the provisions of the Philippine Constitution under Art. 12, Sec. 14 which states that "the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law";

WHEREAS, the Philippine Constitution, under Art. 2, Sec. 19 declared it a state policy to develop a self-reliant and independent national economy **effectively controlled by Filipinos**;

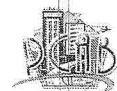
WHEREAS, **effective control by Filipinos** is translated by the Board as shares in the corporate profits or surplus, corporate assets and corporate control;

WHEREAS, construction contracting is imbued with a tremendous amount of public interest, owing to the huge investments poured into infrastructure projects by both the government and private sector;

WHEREAS, to make effective the provisions of Art. 1723 of the Civil Code and Rule 62.2.3.1 of the Revised IRR of RA 9184 on contractor's liability and warranties, safeguards need be instituted to protect public interest against project abandonment, project delay, substandard quality of work and the like;

WHEREAS, in consideration of all the foregoing, the Board established the criteria for the issuance of the license, to classify and limit the operations of contractors under Sec. 17 of RA 4566;

WHEREAS, one among others of the criteria for the grant of the regular license is the nationality requirement which is at least 60% - 40% Filipino-foreign equity participation in terms of peso value with the seat of foreigners in the Board of Directors not exceeding 40% as the maximum limit set on foreign shareholdings;



WHEREAS, corporate control is likewise measured through voting rights exercised by stockholders of the corporation;

WHEREAS, the Authorized Managing Officer (AMO) holds a position of control and responsibility in the organization;

WHEREAS, a license is a mere privilege granted by the State which must conform to certain requirements;

NOW THEREFORE, in view of the foregoing, the Board RESOLVES as it is hereby RESOLVED to maintain, for purposes of the grant of the regular license, the 60% - 40% Filipino-foreign equity participation in terms of peso value of the total contribution based on shares subscribed, whether common or preferred, voting or non-voting and based on the total paid-up or paid-in capital.

It is hereby understood that all shares held by Filipinos within the required ratio of at least 60% shall not be assigned or encumbered in favor of foreigners and should any of the shareholders be a juridical person the 60%-40% requirement on the corporation as stockholder shall also be applied.

For purposes of determining corporate control the Board further RESOLVES as it is hereby RESOLVED that along with the 60%-40% required Filipino-foreign equity participation is the exercise of equivalent management control in the Board of Directors and to include stockholder's voting rights and the appointment of a Filipino AMO as prerequisite requirements before an applicant may be further evaluated on the criteria established for the grant of the regular license.

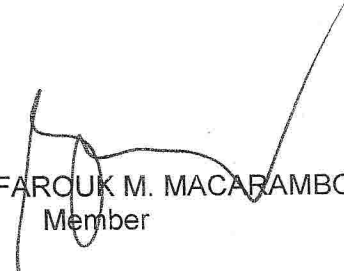
In case where the existing AMO is a foreigner the Board furthermore RESOLVES as it is hereby RESOLVED to give the corporation a grace period of until 30 June 2014 to replace the foreigner with Filipino AMO. In exceptional cases as may be determined by the Board, new applicants may be allowed to nominate a foreign AMO for a maximum of two years from the grant of the license, after which a Filipino AMO should be appointed.

SO ORDERED.

Makati City, Philippines, August 11, 2011.


RAMON F. ALLADO
Chairman


VICTORINO V. LAHOZ
Member


FAROUK M. MACARAMBON
Member

Attested by:


RENE E. FAJARDO
Charge


CONSOLACION C. VILLAFUERTE Officer-in-
Board Secretary

Guidelines for 60%-40% Filipino-foreign equity participation in terms of peso value with equivalent management control

A. Capital Structure

1. Filipino participation must be at least 60% of the total shares Subscribed
2. Filipino paid-up capital must be at least 60% of the total paid-up capital.
3. Filipino peso value contribution shall be at least 60% of the total capital contributions including paid-up and paid-in; and value of all types of shares including common and preferred shares; voting and non-voting.
4. All shares held by Filipinos shall not be assigned to or encumbered in favor of foreigners.
5. Should any of the shareholders be a juridical person, the 60%-40% rule as per these guidelines will apply in the determination of shareholdings.

B. Management Control

1. The composition of the Board of Directors shall be at least 60% Filipino.
2. Total voting stockholders shall be composed of at least 60% Filipino.