Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

December 5, 2005

SEC OPINION No. 05 - 18

Re: Foreign Corporations to engage in the business of Operating dormitories, boarding houses and hotels.

Ms. Genevieve Tabada
University of Cebu
College of Law
genct5@yahoo.com
Cebu City

Madam:

This refers to your letter of November 25, 2005 sent through electronic mail requesting the opinion of this Commission on the queries posed therein.

As stated in your letter, your query is: Does the paragraph provided in the license issued by SEC, which states:

> *"To acquire, purchase, exchange, assign, own, manage, hold, sell, transfer, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of real and personal properties of every kind and description and wherever situated, to the extent permitted by law, including buildings, tenements, warehouses, factories, edifices and structures and other improvements except for land."* [Underscoring supplied]

allow branches of foreign corporations to operate and derive income from the operation of hotels, dormitories or boarding houses considering its general and all encompassing tenor?

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Please be advised that the Commission does not, as a matter of settled policy, render opinions on matters, which are hypothetical, abstract,

speculative and anticipatory in character and those pertaining to undisclosed principals.[1]

However, for purposes of information and guidance of the academe, the following may be imparted.

As per Executive Order no. 389[2] (Promulgating the Sixth Regular Foreign Investment Negative List), operation of hotels, boarding houses and dormitories are not one of those activities where foreign participation is regulated.

In general, it can be said that foreign corporations can engage in such business activity (operation of hotels, boarding houses and dormitories), provided it secures from the SEC the necessary license to engage in such line of business in the Philippines.[3]

To discuss in depth, however, the term "operation" does not necessarily connote "ownership". Aliens are not allowed ownership of real estate properties as explicitly provided in Article XII, Sec. 7 of the 1987 Constitution.[4]

Thus, although foreign corporations can be allowed to engage in the operation of hotels, boarding houses and dormitories, the law forbids them from acquiring ownership over such real properties.

To answer directly your query, whether the subject paragraph in the license provides the necessary authority for the branches of a foreign corporation to engage in the business of operating hotels, boarding houses and dormitories, a previous SEC Opinion[5] may clearly shed light into the matter:

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> It is well-settled that a corporation has only powers as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express powers. (13 Am. Jur. Sec. 739) Only such powers as are reasonably necessary to enable corporations to carry out the express powers granted and the purposes of the creation are to be implied as are to be deemed incidental. (Am.

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[1] SEC Memorandum Circular 15, series of 2003

[2] issued by President Gloria Macapagal-Arroyo on Nov. 30, 2004, pursuant to sec. 8 of R.A. 7042 as amended.

[3] Section 123, The Corporation Code of the Philippines

[4] Section 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 the public domain."

[5] SEC Opinion dated September 1, 1993, addressed to Mr. Jose O. Villanueva

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Jur. Sec. 740) Powers merely convenient or useful are not implied if they are not essential having in view the nature and object of incorporation. (Ibid. citing Planters Bank v. Sharp. 6 How (vs) 301, 12L, ed 447) Thus, in the determination of what businesses may be carried on by a corporation, reference must be made to its articles of incorporation, and unless the power to carry a particular business is either expressly or impliedly conferred thereby it does not exist. (Chivacla Line v. Disnukes, 8 Ala 344, 650, 122, 5 LRA 100, Cited in Am. Jur. Supra. sec. 743) Thus, there should be a specification of the corporation's intended purposes with sufficient clarity and elucidation in the articles of incorporation to define with more certainty the scope of its business.

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Applying the above authorities, it is clear that the said paragraph cannot be stretched to include the operation of hotels, dormitories and boarding houses. It merely relates to acquisition, development and disposition of all kinds of real and personal property, which are necessary and incidental for the accomplishment of a more specific purpose or business activity of the corporation.

Hence, it is necessary that the foreign corporation must clearly show that it is authorized in its articles of incorporation (which was approved in its home country) to engage in the business of operating hotels, dormitories and boarding houses and likewise specify such purpose in its license application with the SEC, before the said foreign corporation can engage in such line of business.

Thus, the branches of said foreign corporation cannot, merely on the basis of the subject provision in its license, engage in said line of business.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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