Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City

31 January 2006

SEC Opinion No. 06-07
Retail Trade: Qualification to
Engage in Retail Trade

Atty. Daisy L. Parker
Orion Maxis, Inc. (OMI)
20/F LKG Tower
6801 Ayala Avenue, Makati City

Madam:

This refers to your letter dated 26 August 2005 requesting opinion on whether Orion Maxis, Inc. (OMI), a domestic corporation with a paid-up capital of P14,000,000.00, may be allowed to engage in retail trade.

Records with the SEC disclose the following:

Orion Maxis, Inc. is a corporation duly registered with the SEC under Company Registration No. A200017060. Its primary purpose is to engage in and undertake the business of establishing, developing, operating, maintaining and providing management and logistical infrastructure service and technical support, with application/access to commercial website for the facilitation of retail and wholesale operations of all types of merchandise, as well as the management of enterprise and market incentive systems solutions, as well as to engage in other allied businesses and services, and to acquire and dispose of any property real or personal as shall be deemed necessary or convenient for the conduct of business.

OMI's General Information Sheet filed with the SEC on 25 November 2005 shows authorized capital of P50,000,000.00, and subscribed capital, as well as paid-up capital, of P14,500,000.00. It has five stockholders on record. Of the five stockholders, Tutuban Properties, Inc., a domestic corporation, holds almost 100% or 14,999,996 shares of OMI.

Section 5 paragraph 2 of the Retail Trade Law provides:

(22)

"SECTION 5. Foreign Equity Participation. -- Foreign-owned partnerships, associations and corporations formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign-owned single proprietorships, with the DTI, engage or invest in the retail trade business, subject to the following categories:

Category A – Enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two million five hundred thousand US dollars (US$2,500,000.00) ***shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.***

Category B – Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of Two million five hundred thousand US dollars (US$2,500,000.00) but less than Seven million five hundred thousand US dollars (US$7,500,000.00) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity. x x x

(underscoring ours)"

It was established in a previous SEC opinion[1] that Tutuban Properties Inc. (TPI), the major stockholder of OMI, is a duly registered corporation under Philippine laws engaged in real estate business, with a paid-up capital of P200M[2] or US$3,571,428[3] and wholly owned by Orion Land Inc. (OLI). OLI is a domestic holding company which in turn is 100% owned by Prime Orion Philippines, Inc. (POPI), a publicly listed company of which 26% of its outstanding capital is owned by **foreigners** as of 17 December 2004. As of said date, POPI's total holdings subscribed amounted to P2,141,826,456.00 or US$40,576,422.39.[4] Hence, OMI is not a corporation wholly owned by Filipino citizens.

OMI has a paid-up capital of **US$274,699.25**[5] or Two Hundred Seventy-Four Thousand Six Hundred Ninety-Nine US dollars and Twenty-Five Cents; hence, it has a paid-up capital of **less than US$2,500,000.00**. Category A enterprises, or enterprises with paid-up capital of the equivalent in Philippine Pesos of less than US$2,500,000.00 shall be reserved **exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.**

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[1] SEC Opinion No. 04-35, 14 June 2004
[2] paid-up capital is still the same as of 26 November 2005 per GIS on file with the Commission
[3] US$1.00=P56.00
[4] US$1.00 = P52.785 (as of 20 January 2006)
[5] P14,500,000.00=$ 274,699.25 at US$1.00 = P52.785

(21)

For OMI to be qualified to engage in the retail trade business, it has to increase its minimum paid-up capital to Two million five hundred thousand US dollars (US$2,500,000.00) and it should amend its articles of incorporation to include the intended "retail trade business" in its purpose clause.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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