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

26 June 2006

SEC-OGC Opinion No. 06-30
Remittance Companies & the Foreign Investment Act

NISCE MAMURIC GUINTO
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Attention: **Atty. Bob L. Guinto**

Sir:

This refers to your letter dated 18 January 2006, requesting confirmation of the following views relative to the establishment by your client, "**6279414 CANADA, INC.**", of a Philippine branch or subsidiary **money remittance service** in the Philippines for the purpose of primarily serving the money remittance requirements of Philippine Nationals based in Canada.

1. That remittance agents or "RAs" or money remittance companies are excluded from the coverage and application of the FIA because of Sec. 4 thereof, which provides that: "This Act shall not apply to banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the Central Bank."

2. Assuming an affirmative answer to item #1 above, if our client proceeds to set up a Philippine branch or subsidiary that will engage in money remittance services in the Philippines, such Philippine branch or subsidiary will not be required to be a Philippine National even if its paid-in capital is less than US$200,000.00. In other words, our client can set up a 100% foreign-owned branch or subsidiary in the Philippines even if its paid-in capital is less than US$200,000.00, provided that it fully complies with all the requirements set by the BSP under BSP Circular No. 471 (s. 2005).

BSP Circular No. 471 defines remittance agents in Section 1 thereof, as follows:

> "Section 1. Registration. Qualified persons or non-bank institutions wishing to act as foreign exchange dealers (FXDs)/money changers (MCs) and/or remittance agents (RAs) are required to register with the Bangko Sentral ng Pilipinas (BSP) before they can operate as such.
>
> For this purpose, the term MCs, interchangeably referred to as FXDs, shall refer to those regularly engaged in the business of buying and/or selling foreign currencies.
>
> RAs, on the other hand, shall refer to persons or entities that offer to remit, transfer or transmit money on behalf of any person to another person and/or entity. These include money or cash couriers, money transmission agents, remittance companies and the like.
>
> x x x"

By virtue of the abovementioned circular, this query was indorsed to the BSP for comment.

In its 2nd Indorsement dated 19 April 2006, the BSP, through its Assistant Governor and General Counsel, Juan de Zuñiga, Jr., stated that:

> x x x **Be that as it may, we wish to point out that the authority of BSP over RAs does not stem from the General Banking Law; neither is such authority derived from other laws governing institutions under BSP supervision.** x x x
>
> x x x
>
> In other words, Circular No. 471 did not intend to diminish or shift existing supervisory authority presently being exercised by other government agencies, **nor to modify the applicability of the FIA.**" (underscoring ours)

On the basis of the comment of BSP, it follows that remittance agents/companies are not the entities referred to in Section 4 of R.A. 7042, otherwise known as the Foreign Investments Act (FIA), wherein said section states:

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"Section 4. *Scope.* – This Act shall not apply to banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the Central Bank."(underscoring ours)

Therefore, we regret to inform you that we cannot confirm your views relative to the establishment by your client of a Philippine branch or subsidiary money remittance service in the Philippines for the purpose of primarily serving the money remittance requirements of Philippine Nationals based in Canada. The exclusion from the application of FIA of banking and other financial institutions governed and regulated by the General Banking Act and other laws under the supervision of the Central Bank does not extend to remittance agents/companies as explained by the BSP in its letter to the Commission.

For your information and guidance.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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