Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

04 September 2008

SEC-OGC Opinion No. 08-19
For: Foreign investment in manufacturing and wholesale of coffee beans

MALCOLM LAW
2nd Floor, Jose Cojuangco & Sons Building
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Legaspi Village, Makati City

Attention: Atty. Cathleen O. Lao

Gentlemen:

This refers to your letter dated 29 July 2008 requesting opinion on whether foreigners can wholly own a company engaged in the business of manufacturing and wholesale distribution of coffee beans.

Pertinent to your query is the provision of Section 5 of Republic Act No. 7042 as amended also known as the "Foreign Investments Act of 1991," which reads:

> "SECTION 5. Registration of Investments of Non-Philippine Nationals. — Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 (a), and not otherwise disqualified by law may, upon registration with the Securities and Exchange Commission (SEC), xxx do business as defined in Section 3 (d) of this Act or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law and/or under the provisions of this Act. The SEC or BTRCP, as the case may be, shall not impose any limitations on the extent of foreign ownership in an enterprise additional to those provided in this Act: provided, however, that any enterprise seeking to avail of incentives under the Omnibus Investment Code of 1987 must apply for registration with the Board of Investments (BOI), which shall process such application for registration in accordance with the criteria for evaluation prescribed in said Code: provided, finally, that a non-Philippine national intending to engage in

the same line of business as an existing joint venture, in which he or his majority shareholder is a substantial partner, must disclose the fact and the names and addresses of the partners in the existing joint venture in his application for registration with SEC. During the transitory period as provided in Section 15 hereof, SEC shall disallow registration of the applying non-Philippine national if the existing joint venture enterprise, particularly the Filipino partners therein, can reasonably prove they are capable to make the investment needed for the domestic market activities to be undertaken by the competing applicant. Upon effectivity of this Act, SEC shall effect registration of any enterprise applying under this Act within fifteen (15) days upon submission of completed requirements."

Further, Section 7 of R.A. No. 7042 as amended provides that:

"SECTION 7. Foreign Investments in Domestic Market Enterprises. — Non-Philippine nationals may own up to one hundred percent (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by existing law or the Foreign Investment Negative List under Section 8 hereof."

The Foreign Investment Negative List ("FINL") covers investment areas or activities which may be opened to foreign investors. The latest one is the Seventh Regular Foreign Investment Negative List, which was promulgated on 08 December 2006. Such system of negative list assumes that so long as foreign investments are not in areas covered by the list, such investments are not detrimental to but are good for the national economy.[1] The latest FINL does not contain any prohibition or limit to the extent of foreign participation in manufacturing and wholesaling of coffee beans. From that, it can be said that foreign investors are allowed to engage in manufacturing and wholesale of coffee beans.

Be that as it may, it is worthy to note that small and medium-sized market enterprises with paid-in equity capital less than the equivalent of Two Hundred Thousand US dollars (US$200,000.00), are reserved to Philippine nationals. If the enterprise: (1) involves advanced technology as determined by the Department of Science and Technology; or (2) employs at least fifty (50) direct employees, then a minimum paid-in capital of One Hundred Thousand US dollars (US$100,000.00) shall be allowed to non-Philippine nationals.[2]

Manufacturing of coffee beans[3] may even qualify under the 2008 Investment Priorities Plan[4] in which one of the preferred activities listed in the Priority Investment Areas is agriculture/agribusiness and fishery, which covers production and processing of agricultural and fishery products (including their by-products and wastes). The

[1] Garcia v. The Executive Secretary, G.R. No. 100883, 02 December 1991.
[2] Section 8, R. A. No. 7042 as amended. In the two instances, foreign equity is limited up to 40% only.
[3] Coffee processing is also one of the activities enumerated under the ARMM List.
[4] Memorandum Circular No. 284 dated 09 May 2008.

(54)

processing of agricultural products by the firm must be integrated with its own production/plantation or with contract growing arrangement.[5]

In line with the policy to promote foreign investments in the Philippines, this Office is of the opinion that foreigners can wholly own a corporation engaged in the business of manufacturing and wholesale distribution of coffee beans considering that the activities are not nationalized industries and aliens are not prohibited from engaging therein.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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[5] Ibid.