Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

04 June 2009

Royal Cargo Combined Logistics, Inc.
Royal Cargo Building, Sta. Agueda Ave.,
Pascor Drive, Parañaque City

SEC Opinion No. 09-14
Freight Forwarding and
Anti-Dummy Law

ATTENTION: **Atty. Roville C. Sunga**
Legal Manager

SUBJECT : Request for Opinion

Gentlemen:

This refers to your letter-request for opinion dated 24 November 2008, with respect to the application of the nationality requirement and the Anti-Dummy Law to your freight forwarding company.

It was provided in SEC -OGC Opinion No. 08-21 dated 29 October 2008 that a freight forwarding corporation is considered an operator of public utility and as such, must comply with Article XII, Section 11 of the Constitution, which provides:

> "No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens;xxx"

This being the case, it naturally follows that the provisions of the Anti-Dummy Law[1] will also apply. Section 2-A thereof provides:

> "Section 2-A. Any person, corporation, or association which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or

[1] Commonwealth Act No. 108 as amended

> the laws to citizens of the Philippines or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, xxx *in any manner permits or allows any person not possessing the qualifications required by the Constitution, or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof,* whether as an officer, employee or laborer therein with or without remuneration xxx who knowingly aids, assist or abets in the planning, consummation or perpetration of any of the acts hereinabove enumerated shall be punished xxx "(underscoring supplied)

Clear from the above provision is the prohibition for aliens to "intervene in the management, operation, administration or control" of corporations whose activities are reserved for Filipinos. Thus, a foreigner as president, which was indicated in your letter and substantiated by the attached General Information Sheet, cannot be sustained.

However, it is your position that your corporation "is not subject to the nationality requirement imposed by law as it is engaged in international freight forwarding. Also, the Anti-Dummy Law finds no application to the present corporate structure and composition of officers and directors of [y]our company as the same only applies to partly nationalized corporations where the constitution requires that foreign equity ownership be limited."

In support thereof, you cited the Department of Justice Opinion[2] dated 9 November 2004 wherein a detailed review of its issuance was made with the following conclusion, to wit:

> "After a careful and exhaustive review of the aforecited opinions, considerations of sound public policy and national interest, side by side with the pertinent constitutional and legal provisions, as well as doctrinal pronouncements on the matter, we revert to our view expressed in our opinion dated September 11, 1946 that the nationality requirement applies only to domestic air commerce and/or air transportation, and does not apply to international air freight forwarders."

While it is clear that the pronouncement made therein is in accordance with the stand you have taken, a reading of the Amended Articles of Incorporation[3] of Royal Cargo Combined Logistics, Inc. shows that you are not covered by the same.

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2 Opinion No. 98 Series of 2004

3 Amended Articles as approved on 30 June 2004

Article 2 thereof provides that the principal purpose for which your corporation was formed is as follows:

> "***To engage in and conduct the business of international and domestic freight forwarding,*** transporting, conveying and carrying goods, wares, merchandise, products and all kinds of cargoes or freights **either by land, sea and air** to any point or place of destination outside the Philippines as may be permitted and authorized by the laws of the Philippines and/ or the laws of any foreign country, and to undertake and attend to all matters necessary and requisite to be done or required by law relative to the business of forwarding and conveyance of goods, wares, merchandise, products and all kinds of cargoes or freight by any of the means herein before mentioned, to act in their own right as cargo or freight accommodation in land, sea or air carrier, to enter into charter parties for the carriage or transportation of all kinds of cargoes of freight, to act as agent of hotels, and land, sea or air cargoes or freight in and outside the Philippines, and to establish and maintain branches and agencies within and outside the Philippines. Xxx" (Emphasis supplied)

Based on the above, your corporation is engaged in both international and domestic freight forwarding business by land, sea or air.

In view thereof, there can be no other conclusion but that your corporation is covered by the Constitutional provisions on the nationality requirements and the prohibition provided in the Anti-Dummy Law.

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

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel