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

OFFICE OF THE GENERAL COUNSEL

23 November 2009

SEC-OGC Opinion No. 09-30

Exemption of 100% foreign owned holding company from minimum paid-up capital requirement

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ATTENTION: Atty. Eduardo M. Pangan

Gentlemen:

This has reference to your letters dated 20 March 2009, 03 April 2009, and 15 July 2009, requesting confirmation of the following statement:

> "xxx that a Philippine Corporation, 100 % of the shares of which will be owned by a foreign company, which will have the primary purpose
>
> > To own shares of stock of companies registered outside the Philippines; provided that, the corporation shall neither produce goods nor render services for the domestic market.

will not be deemed a domestic market enterprise, and therefore, is not subject to the minimum paid-up capital requirement of the Philippine Peso equivalent of USD 200,000."

You allege that the Company Registration and Monitoring Department's officer-of-the day repeatedly advised you that a Philippine corporation, 100% of the shares of which will be owned by a foreign company, whose primary purpose is to own property outside the Philippines, must have a paid-up capital of the equivalent of at least US $ 200,000.

The Implementing Rules and Regulations of the Foreign Investments Act of 1991,[1] Section 1(k) provides:

> "'Domestic market enterprise' shall mean an enterprise which produces goods for sale, or renders service or *otherwise engages in any business in the Philippines.*" (Emphasis added.)

Further, Section 1(f) of the same rules provides:

> "'Doing business' shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period totaling one hundred eighty [180] days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; *and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organization.*" (Emphasis supplied.)

Under Executive Order No. 584[2], domestic market enterprises, with paid-in equity capital of less than the equivalent of US$200,000, are restricted to a maximum of forty percent (40%) foreign equity.

The dominant character of a holding company is the ownership of securities by which it is possible to control or substantially influence the policies

[1] Republic Act No. 7402, as amended by Republic Act No. 8179.
[2] PROMULGATING THE SEVENTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST, 08 December 2006.

and management of one or more operating companies in a particular field of enterprise.[3]

In the 25 March 1997 Letter-Opinion addressed to Atty. Demosthenes B. Donato, the Commission's then Chairman, Perfecto Yasay, affirmed the Commission's previous Opinion dated 12 November 1996 stating that a holding company is deemed a domestic market enterprise subject to the minimum capitalization in the amount equivalent of US $ 200,000.00 as required under the Foreign Investments Act of 1991, as amended. Pertinently, the 25 March 1997 Letter-Opinion provides:

> "Please be advised that the exception of a holding company in the definition of a domestic market enterprise under the old Implementing Rules and Regulations of the Foreign Investments Act (FIA) is now deleted under the present Amended Rules and Regulations. The reason for such deletion is that the FIA itself does not provide for such exception. Take note that holding companies are not included in the exceptions enumerated under Sec. 4 of FIA quoted hereunder:
>
> > '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.'
>
> It is a generally accepted principle in statutory construction that the express mention of one thing in a law will, as a general rule, mean the exclusion of others not expressly mentioned. Thus, the Implementing Rules and Regulations was amended deleting the exception of a holding company and instead, inserted the phrase 'or otherwise engages in any business in the Philippines.' The pertinent provision now reads:
>
> > 'K Domestic market enterprise shall mean an enterprise which produces goods for sale, renders service or otherwise engages in *any business* in the Philippines.' (Emphasis supplied)
>
> Further, the formation of a holding company is not covered under the phrase *'mere investment as a shareholder'* as contemplated by the Foreign Investments Act for purposes of exemption under the term *'doing business.'* A mere *'investment'* can easily be differentiated from the business of a 'holding company' in terms of control. In the former transaction, the investor merely aims at the employment of funds for profit without having the intention to assume direct responsibilities of control and management. Whereas the dominant character of a 'holding company' is the ownership of securities coupled with an element of

[3] North American Co. v. Securities and Exchange Commission, 327 US 686, 90 L Ed 499, 6 S Ct 194.

control and power to influence the policies and management of one or more operating companies in a particular field of enterprise. In other words in the case of a 'holding company' the intention is not merely to invest in securities but to put up a corporation *engaged in the business of owning, operating and managing its subsidiaries or affiliates.*"

The fact that the proposed Philippine-registered holding company will own shares of stock of foreign-registered corporations only, does not exclude it from being a domestic market enterprise since it still engages in business in the Philippines. Being a Philippine-registered corporation, its principal office must be located within the Philippines.[4] Necessarily, its acts of owning, operating and/or managing its foreign subsidiaries or affiliates will be done in the Philippines, and thus, constitute doing business in the Philippines.

In view of the foregoing, a one hundred percent (100%) foreign-owned Philippine-registered corporation, whose sole purpose is to own shares of stock of companies registered outside the Philippines, and shall neither produce goods nor render services for the domestic market, is still deemed as a domestic market enterprise as defined under R.A. No. 7402, and is subject to the minimum paid-up capital requirement of the equivalent of US $ 200,000.

This *Opinion* is rendered based solely on the facts and circumstances disclosed 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.

VERNETTE G. UMALI-PACO
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[4] Corporation Code, Section 14.