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

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SEC Opinion No. 09-32
Increase of Foreign Equity in a Domestic Corporation engaged in online casino

MS. HEIDE D. C. PAYUMO
Corporate Secretary
Running Mate, Inc.
Unit #20A #22 Wynsum Corporate Plaza,
Emerald Avenue, Ortigas Center, Pasig City

Madam:

This refers to your letter dated 26 November 2008 requesting opinion on whether Running Mate, Inc. ("RMI") can increase its foreign equity in accordance with the Foreign Investment Negative List (FINL)[1].

You stated in your letter that RMI is engaged in the business related to its secondary purpose, and currently operating eleven (11) branches of PAGCOR E-Games Station (PEGS), which offer online casino to the public. RMI is composed of sixty percent (60%) Filipino equity and forty percent (40%) foreign equity. It is planning to offer the unsubscribed shares of stock of the corporation to foreign investors.

Being one of the operators of PEGS, RMI directly undertakes the activity of the Philippine Amusement and Gaming Corporation (PAGCOR) by offering online casino through various computer games. RMI primarily derives its income from said activity by way of service fee.

In order to determine whether RMI can increase its foreign equity investment to more than forty percent (40%) of the subscribed capital stock, reference should be made to the purpose or activity that may be carried out by the corporation in relation to the FINL.

The primary and secondary purposes of RMI as stated in the Articles of Incorporation of RMI are as follows:

"SECOND: That the primary purpose of this corporation is:

[1] Executive Order No. 584 dated 08 December 2006.

To engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law all kinds of goods such as but not limited to computers and all other commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise, broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial.

SECONDARY PURPOSES

A. To operate amusement centers for various computer games.

x x x"

It is well settled that a corporation has only such power as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express powers.[2] This is in accord with Section 36 of the Corporation Code which provides:

"SEC. 36. Corporate powers and capacity. Every corporation incorporated under this Code has the power and capacity:

x x x

11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in its Articles of Incorporation.

x x x"

Anent its primary purpose, RMI can increase its foreign equity to more than forty percent (40%) of the outstanding capital stock under the FINL. However, relative to its secondary purpose, it is necessary to establish whether the business to which RMI is currently engaged in is in accord with its secondary purpose. Thus, it is significant to resolve whether the operation of amusement centers includes the operation of an online casino. In this wise, distinction should be made between "operating an amusement park/center" and an online casino using computer games.

"An amusement park/center is a commercially operated park/center having various devices for entertainment (as a merry-go-round and roller coaster) and usually booths for sale of food and drink.[3]

On the other hand, online casino is a form of online gambling, more commonly known as internet gambling. Since online gambling

[2] SEC Opinion dated 20 January 1999 addressed to Ms. Zenaida Cuison Maglaya citing 13 Am Jur. Sec.740.
[3] Webster's Third New International Dictionary, p.74, 1981 Edition.

pertains to a whole gamut of gambling over the internet, it is not only limited to playing card games online. In fact, online gambling is a broad term used to describe anything and everything that requires the placing of bet. That includes online casino, online sports betting, online bingo and mobile gambling.[4]

The business concept of an amusement center is mainly for entertainment purposes. On the other hand, an online casino is primarily for gambling activity, the amusement aspect being merely incidental. It is noteworthy to consider that PAGCOR ventured into the Internet Casino Business not only to widen the gambling market of casino games like poker, and baccarat, but also to raise revenue. Through this, e-games offer a different gambling and gaming experience from walk-in casinos. E-games cannot be played in an ordinary Internet café but can only be accessed in PAGCOR established e-Games cafés.[5]

From the foregoing, we opine that the type of business RMI is engaged in, which is the operation of PAGCOR E-Games stations, is not within the scope of its secondary purpose as stated in its Articles of Incorporation. Thus, RMI is not allowed to engage in the online casino business. In this regard, the nationality requirement becomes irrelevant and RMI may increase its foreign equity provided that it is not engaged in a business that limits foreign equity, such as gambling.

This now leads us to the issue of whether the nature of the business of RMI as an operator of PAGCOR E-Games stations may be considered as "engaged in the gambling business."

List B, Number 5 of the FINL restricts foreign equity participation up to forty percent (40%) of the outstanding capital stock of certain business firms, to wit:

> "List B. Foreign Ownership is Limited for Reasons of Security, Defense, Risk to Health and Morals and Protection of Small and Medium Scale Enterprises
>
> x x x
>
> 5. All forms of gambling, e.g. race track operation (R.A. 7042 as amended by R.A. 8179)
>
> x x x"

In reference to the various operational responsibilities[6] of RMI as operator of

[4] Definition of Online Gaming, http://iskwiki.upd.edu.ph/index.php/Online_Gambling.com .
[5] Definition of Online Gaming, http://iskwiki.upd.edu.ph/index.php/Online_Gambling.com.
[6] Operational Responsibilities of RMI as Operator of PEGS:

1. The PEGS operator shall provide all personnel including but not limited to Cashiers and Gaming Assistants for product demonstrations and undertake the daily operation of the PEGS.
2 The PEGS operator shall conduct marketing activities necessary to promote and improve the performance of the PEGS subject to the approval of PAGCOR.
3. The PEGS operator shall not copy or modify the operating configuration of any of the equipment of the

PEGS, we opine that RMI is clearly engaged in the business of gambling. The enumerated responsibilities of RMI as operator of PEGS generally comprise significant components in the operation of a gambling business.

In view of the above premises, RMI should refrain from the business of operating online casinos because it is not within its powers to engage in gambling activities. In the alternative, RMI may amend its Articles of Incorporation specifically its primary and secondary purposes to cover the operation of online casino. In the latter case, RMI shall not be allowed to increase its foreign equity investment to more than forty percent (40%) of its outstanding capital stock pursuant to the FINL.

It shall be understood that the opinion rendered is based 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.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

ICS. Only PAGCOR shall have access to this equipment.

4. The ICS operator shall shoulder all space rentals, utility expenses, office supplies and other miscellaneous expenses associated with the operation of the ICS.
5. The ICS operator shall be responsible for the supply, repair, and maintenance of all the equipment of the ICS. The operator shall be required to restore any defective equipment to operational status within 72 hours either by repair or replacement. Otherwise, PAGCOR shall have the right to temporarily suspend the ICS operations until the defective equipment is returned to operational status.
6. The ICS operator shall provide one (1) armed and licensed security guard with metal detector to secure the ICS during operating hours.
7. The ICS operator shall sell betting PINs which shall be debited from his Betting Credit Fund. The operator is responsible for replenishing the Betting Credit Fund as often as may be necessary to ensure the continuous sales of Betting PINs.
8. The ICS operator is responsible for advancing redemptions from betting accounts and shall be reimbursed by Philweb the next banking day. The cut-off for determining the redemption reimbursement is 6:00 A.M. of the following day.