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

OFFICE OF THE GENERAL COUNSEL

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SEC-OGC Opinion No. 09-33

Activities that a foreign-owned corporation may engage in

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Attention: Attys. Rico V. Domingo and Ma. Cecilia A. Gironella

Gentlemen:

This refers to your letter dated 28 September 2009, requesting this Office's opinion on whether or not your client namely, Sony Music Entertainment (Philippines), Inc. ("SMEP," for brevity), may expand into certain business activities.

You allege that SMEP's is a 99.99% foreign-owned corporation currently engaged in the "development, production, marketing, rental, and sale on a wholesale basis of records, cassette tapes, compact disks, laser disks, computer software, and other audio and audio-visual carriers for entertainment and education; the acquisition, origination and exploitation of musical copyrights; the business of music publishing in any media; and other activities incidental to the foregoing." It now wants to expand its business by engaging in artist management, live productions, short and full-length television shows and movies, and direct to audience.

The Commission opines that SMEP cannot engage in the activities of live productions, short and full-length television shows and movies, and direct to audience.

The Constitution mandates that a corporation must be wholly-owned and managed by Filipino citizens so that the corporation can validly undertake mass media activities.[1] The term "mass media" in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses.[2] The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof.[3] The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.[4]

The activities of live productions, short and full-length television shows and movies, and direct to audience, all constitute the dissemination of information and ideas to the public, and tend to influence the public's standards, ideals, aims and opinion. In other words, these activities are mass media. Thus, SMEP, a foreign-owned corporation, cannot engage in these activities considering that the Constitution limits the ownership and management of mass media to Filipino citizens.

For additional guidance on allowable foreign investment in film, movie and television production and distribution business, refer to SEC Opinion dated 18 April 1996 addressed to Atty. Marievic G. Ramos-Anonuevo, et. al, in which then Associate Commissioner Gloria opined that the Commission cannot allow foreign ownership in such business.

Further, the Commission opines that SMEP cannot engage in artist management.

The Labor Code[5] provides that only corporations with not more than twenty-five percent (25%) foreign equity can engage in the recruitment and placement of workers, locally or overseas. The Labor Code defines recruitment and placement of workers as:

> "'Recruitment and placement' refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a free

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[1] Constitution, Article XVI, Section 11 provides:

> *"Section 11. [1] The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens."*

[2] Ministry of Justice's (MOJ) Opinion no. 24, series of 1986 citing MOJ Opinion No. 163, series of 1973.
[3] MOJ Opinion no. 24, s. 1986 citing MOJ Opinion No. 120, series of 1982.
[4] MOJ Opinion no. 24, s. 1986 citing Quisumbing-Fernando, Constitutional Law, 1984 ed., p. 345.
[5] Presidential Decree No. 442, as amended.

employment to two or more persons shall be deemed engaged in recruitment and placement."[6]

You stated that artist management involves contracting with local and foreign talents and sharing in the earnings, among others. Plainly, artist management falls within the definition of "recruitment and placement of workers," and is subject to the citizenship restriction under the Labor Code. Thus, SMEP cannot engage in artist management since it is more than twenty-five percent (25 %) foreign owned.

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. Further, if an investigation reveals that the actual facts are different from the ones disclosed and relied upon, then this opinion shall be rendered null and void.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[6] *P.D. 442, Article 13 (b).*