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

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SEC-OGC Opinion No. 10-07
Effect of Revocation of License to Transact Business in the Philippines

Dear Atty. Balgos,

This refers to your letter dated 4 August 2008 requesting opinion on whether Barclays Bank PLC ("Barclays") has the capacity to enter into a contract and to participate, either as plaintiff or a defendant, in a judicial proceeding, after its license to transact business in the Philippines was revoked, for non-compliance with the reportorial requirements of the Commission.

You stated in your letter that the license of Barclays was revoked by the Commission on 11 August 2003, for failure to comply with the reportorial requirements pursuant to Section 134 of the Corporation Code.

Fletcher noted that the [R]evocation of the license or permit of a foreign corporation to do business in the state and expulsion of such corporation from the state deprives it of its right to transact its ordinary business in the state or to manage its properties therein.[1]

It is likewise noted that [u]pon the issuance by the Secretary of State of a certificate of revocation, where he has revoked the certificate of authority of a foreign business corporation or a foreign nonprofit corporation, the authority of the corporation to transact business or conduct affairs in the state ceases.[2]

The pertinent provisions relative to the issues at hand are Sections 123, 133 and 134 of the Corporation Code, which provide:

> "*Section 123. Definition and rights of foreign corporations.* - For the purposes of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of

1 Fletcher Cyclopedia Corporation, Permanent Edition, Vol. 17, p. 894, citing State v. Brictson Mfg. Co. 114 Neb 341, 207 NW 664, 44 ALR 1172.
2 Ibid, citing Model Bus Corp. Act, 122; Model Nonprofit Corp. Act, 79.

the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state. It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency." (emphasis supplied)

x x x

Section 133. Doing business without a license. - No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

x x x

Section 134. Revocation of license. - Without prejudice to other grounds provided by special laws, the license of a foreign corporation to transact business in the Philippines may be revoked or suspended by the Securities and Exchange Commission upon any of the following grounds:

1. Failure to file its annual report or pay any fees as required by this Code;

2. Failure to appoint and maintain a resident agent in the Philippines as required by this Title;

3. Failure, after change of its resident agent or of his address, to submit to the Securities and Exchange Commission a statement of such change as required by this Title;

4. Failure to submit to the Securities and Exchange Commission an authenticated copy of any amendment to its articles of incorporation or by-laws or of any articles of merger or consolidation within the time prescribed by this Title;

5. A misrepresentation of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this Title;

6. Failure to pay any and all taxes, imposts, assessments or penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions;

7. Transacting business in the Philippines outside of the purpose or purposes for which such corporation is authorized under its license;

8. Transacting business in the Philippines as agent of or acting for and in behalf of any foreign corporation or entity not duly licensed to do business in the Philippines; or

9. Any other ground as would render it unfit to transact business in the Philippines.

x x x".

Relative to the issue on the capacity of Barclays to enter into a contract, in the case of *Home Insurance Company v. Eastern Shipping Lines*,[3] the Supreme Court held that **contracts entered into by a foreign corporation doing business in the Philippines without the requisite license remain valid and enforceable** and that the requirement of registration affects only the remedy. The purpose of requiring a license was to subject the foreign corporation doing business in the Philippines to the jurisdiction of the courts, x x x and not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring domicile for the purpose of business without taking the necessary steps to render it amenable to suit in the local courts.[4]

More so, where there is a prohibition with a penalty, with no express or implied declarations respecting the validity of contracts made by qualified foreign corporations, the contract...are enforceable...upon compliance with the law.[5] The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144[6] of this Code. In line with the foregoing, it is no longer necessary to declare the contract null and void even as against the erring foreign corporation. The penal sanction for the violation and the denial of access to

3 123 SCRA 424 (1983).

4 C. Villanueva, Philippine Corporate Law, 2001 Edition, pp. 790-791.

5 Peter & Burghard Stone Company vs. Carper, 172 N.E. 319 (1930).

6 Section 144. Violations of the Code.- Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00)pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided*, that such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, that nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

our courts and administrative bodies are sufficient from the viewpoint of legislative policy.[7]

Hence, the revocation of the license to transact business of a foreign corporation shall not affect the validity of contracts entered by it **after the revocation**. The only effect is that such foreign corporation cannot seek redress from the court to enforce such contracts. It seems clearly implied from the language of Sections 133 and 134, that the failure of a foreign corporation to obtain a license to do business when one is required, does not affect the validity of the transactions of such foreign corporation, but simply removes the legal standing of such foreign corporation to sue.[8]

In *Columbia Pictures, Inc. v. CA (GR No. 110318, August 28, 1996)*, the Supreme Court explained the necessity of a license for a foreign corporation to sue in Philippine courts:

> "x x x The obtainment of a license prescribed by Section 125 of the Corporation Code is not a condition precedent to the maintenance of any kind of action in Philippine courts by a foreign corporation. However, under the aforequoted provision, no foreign corporation shall be permitted to transact business in the Philippines, as this phrase is understood under the Corporation Code, unless it shall have the license required by law, and until it complies with the law in transacting business here, it shall not be permitted to maintain any suit in local courts. x x x" (underscoring supplied)

On the issue whether Barclays can file or defend a suit in the Philippines, it is opined that although the Corporation Code does not provide a specific provision stating the effects of revocation, it may be implied that pursuant to Sections 123 and 133, such corporation can no longer transact business in the Philippines, and it cannot maintain any suit or action in any court or administrative agency in the Philippines although it may be sued on any valid cause of action.[9]

With regard to actions brought based on contracts entered by a foreign corporation **prior to the revocation of its license**, it may be opined that such corporation may still bring or maintain an action based on such contracts. The revocation of the license of a foreign corporation cannot affect the validity of contracts entered into by it before the revocation, nor its right to maintain an action to enforce them.[10] It is well settled that it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license which debars

7 Home Insurance Company v. Eastern Shipping Lines, 123 SCRA 424 (1983).
8 Ibid., p. 789.
9 De Leon, The Corporation Code of the Philippines Annotated, 2006 Edition, p. 806.
10 De Leon, The Corporation Code of the Philippines Annotated, 2002 Edition, p. 824, citing Billmeyer Lumber Co. vs. Merchant's Coal Co. 69 S.E.1073.

a foreign corporation from access to our courts.[11] Simply put, a contract cannot be considered void or even unenforceable when such contract was entered into by a foreign corporation while its license to transact business is subsisting. Hence, Barclays may institute or maintain an action arising from contracts entered into by it before the revocation of its license to transact business.

However, a foreign corporation without a license is not ipso facto barred from bringing an action in Philippine courts.[12] A foreign corporation is allowed to gain access to our courts even without the prescribed license to transact business in the Philippines in the following instances:

1. when the corporation seeks redress for an isolated transaction;[13]
2. to protect its corporate reputation, name and goodwill, such as an action for infringement of trademark and unfair competition;[14]
3. to enforce its right not arising out of a business transaction;[15]
4. when a party is estopped to challenge the personality and capacity of a foreign corporation by having acknowledged the same by entering into a contract with it (Principle of Estoppel).[16]

Anent the issue on whether Barclays may participate as a party defendant in judicial proceedings, it is well settled that foreign corporations, with or without a license, may be sued in Philippine courts. Therefore, even with the revocation of Barclays' license, it is still amenable to process under the jurisdiction of local courts. The rule is necessary for the protection of the citizens because otherwise, a foreign corporation illegally doing business here, because of its neglect or refusal to obtain the corresponding license and authority to do business, may successfully, though unfairly, plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.[17]

The foregoing opinion is based solely on the facts disclosed in the query and relevant only to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.[18] If, upon investigation, it will be declared that the facts relied upon are different, this opinion shall be rendered void.

11 Supra, Note 9, p. 797, citing Universal Shipping Lines vs. Intermediate Appellate Court, 188 SCRA 178 (1990).
12 Ibid, p. 797.
13 New York Marine Managers Inc., vs. Court of Appeals, et. al., G.R. No. 111837, October 24,1995.
14 Western Equipment & Supply Co. vs. Reyes, 51 Phil. 115 (1927).
15 Swedish East Asia Co., Ltd. vs. Manila Port Service, G.R. No. L-26332, October 26, 1968.
16 Merill Lynch Futures, Inc. vs. Court of Appeals, G.R. No. 97816, July 24, 1992.
17 Gen. Corp. of the Phils. v. Union Society of Canton, Ltd., 87 Phil. 313 (1950).
18 Section 7, SEC Memorandum Circular No. 15, Series of 2003.

Very truly yours,

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