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

OFFICE OF THE GENERAL COUNSEL

21 April 2010

SEC-OGC Opinion No. 10-16

Service of Summons through the Commission

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ATTENTION: Judge David A. Alfeche, Jr. (Ret.)

Gentlemen:

This refers to your 27 January 2010 letter requesting confirmation of your view that IOPC Fund 1992 is doing business in the Philippines without license and can be sued in the Philippines.

I. Alleged Facts

You represent the following:

> "On August 11, 2006, **'MT Solar I'**, an oil tanker, sunk along the shores of the Province of Guimaras, resulting to spillage of an undetermined large quantity of oil slick along the southern and eastern shoreline of Guimaras Island, believed to have come from the sunken **'M/T Solar I'**.
>
> Plaintiffs in the above-captioned Civil Case No. 09-0394, totaling Nine Hundred Sixty Seven (967), filed a complaint for recovery of

damages from defendants for the loss of their daily incomes as a consequences of the oil spill in their respective barangays in the Municipality of Nueva Valencia, Province of Guimaras.

On the other hand, plaintiffs in the aforementioned Civil Case No. 09-0395, totaling Ninety Six (96), filed a complaint against the defendants for compensation for services rendered during the clean-up operations which took place as a result of the oil spill in their respective places in the Province of Guimaras due to the sinking of **'MT Solar I'** on August 11, 2006.

Defendant International Oil Pollution Compensation Fund 1992 ("IOPC Fund 1992", for brevity) is the intergovernmental body that administers the regime of compensation created by the 1992 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (1992 Fund Convention). The Republic of the Philippines is a member to both the 1992 International Convention on Civil Liability for Oil Pollution Damage ("1992 Civil Liability Convention", for brevity); and the 1992 Fund Convention.

Accordingly, IOPC Fund 1992 is the named defendant in both civil cases aforementioned. For the purpose of these Complaints, defendant IOPC Fund 1992 may be served with summons and legal process of the Honorable Court at Portland House, Stage Place, London SWIE 5 PN, United Kingdom.

On the other hand, defendant Steven's Adjusters is the local insurance adjuster and/or authorized representative of defendant IOPC Fund 1992. Defendant Steven's Adjuster receives all claims filed by the claimants of the so-called Guimaras Oil Spill tragedy that took place on August 11, 2006 and acts as the local representative in the Philippines of defendant IOPC Fund 1992."

II. Opinion submitted for Confirmation

Based on your representations, you conclude that:

"IOPC Fund 1992 is thus doing business in the Philippines without license and can be sued in the Philippines. We are of the view that in accordance with Section 12, Rules of Court, in relation to Section 133 of the Corporation Code of the Philippines, service of summons to IOPC Fund 1992 may be made upon the Securities and Exchange Commission who must transmit within ten (10) days by mail copy of the summons or other legal process of the corporation at its home or principal office at Portland House, Stage Place, London SW 1E PN, United Kingdom."

III. The Commission's Opinion

We cannot confirm your conclusion. We opine that service of summons through the Commission is not proper in the situation that you have described.

The subject civil cases are actions *in personam* since these are actions against IOPC Fund 1992 on the basis of its personal liability.

In the case of *Asiavest Limited vs. Court of Appeals, et. al.*,[1] the Supreme Court explained that:

> "In an action *in personam* wherein the defendant is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person.[2] This method of service is possible if such defendant is physically present in the country. If he is not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. An exception was laid down in *Gemperle v. Schenker*[3] wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representatives and attorney-in-fact in a prior civil case filed by him; moreover, the second case was a mere offshoot of the first case."

In other words, in order for the court to acquire jurisdiction over a non-resident defendant, the latter must voluntarily submit to the court's jurisdiction, or summons must be personally served upon him or his representative within Philippine territory.

Meanwhile, the Rules of Court, Rule 14, Section 12 provides:

> "Section 12. Service upon foreign private juridical entities. — When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

In other words, the law may designate a government official as a foreign juridical entity's resident agent for purposes of service of summons.

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[1] G.R. No. 128803, September 25, 1998
[2] Citing *Boudart v. Tait*, 67 Phil. 170, 174-175 1 [1939].
[3] 19 SCRA 45 [1967].

The Corporation Code[4] designates the Commission as a resident agent for foreign corporations who apply for license to transact business in the Philippines in cases where the foreign corporation ceases to transact business here or its original resident agent is absent. Section 128 of the Corporation Code provides:

> "Section 128. Resident agent; service of process. - The Securities and Exchange Commission shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the Securities and Exchange Commission a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office. Any such foreign corporation shall likewise execute and file with the Securities and Exchange Commission an agreement or stipulation, executed by the proper authorities of said corporation, in form and substance as follows:
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> > "The (name of foreign corporation) does hereby stipulate and agree, in consideration of its being granted by the Securities and Exchange Commission a license to transact business in the Philippines, that if at any time said corporation shall cease to transact business in the Philippines, or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then in any action or proceeding arising out of any business or transaction which occurred in the Philippines, service of any summons or other legal process may be made upon the Securities and Exchange Commission and that such service shall have the same force and effect as if made upon the duly-authorized officers of the corporation at its home office."
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> Whenever such service of summons or other process shall be made upon the Securities and Exchange Commission, the Commission shall, within ten (10) days thereafter, transmit by mail a copy of such summons or other legal process to the corporation at its home or principal office. The sending of such copy by the Commission shall be necessary part of and shall complete such service. All expenses incurred by the Commission for such service shall be paid in advance by the party at whose instance the service is made.
>
> In case of a change of address of the resident agent, it shall be his or its duty to immediately notify in writing the Securities and Exchange Commission of the new address."

[4] Batas Pambansa Bilang 68 (1980).

The situation you described is not covered by this provision. From the provision, it is clear that service of summons may be validly made upon the Commission, instead of the foreign juridical entity or its resident agent, only if the foreign entity has applied to the Commission for a license to transact business in our country, and has executed the required agreement or undertaking stipulating that service of summons upon the Commission is equivalent to service upon the officers of the foreign entity at its home office. Absent such a stipulation, service of summons upon the Commission is inutile since the acquisition of jurisdiction over the person of the juridical entity, through the Commission, is based precisely on the juridical entity's prior consent.

Thus, considering that IOPC Fund 1992 has not applied for license with the Commission, and executed the necessary undertaking, there is no legal basis for the service of summons upon the Commission. Service of summons upon the Commission will not be equivalent to service of summons upon IOPC Fund 1992's authorized officers at its home office in the absence of the undertaking.

In order for the court to acquire jurisdiction over IOPC Fund 1992, the latter must voluntarily submit to the court's jurisdiction, or summons must be personally served upon its representative within Philippine territory. If, as you allege, Steven's Adjuster is indeed IOPC Fund 1992's authorized representative here in the Philippines then service of summons upon IOPC Fund 1992 may be made through Steven's Adjuster. Otherwise, summons must be personally served upon IOPC Fund 1992's officers while they are within our country's territorial jurisdiction.

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
General Counsel