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

Office of the General Counsel

19 May 2014

SEC-OGC Opinion No. 14-08
Re: Retail Trade, R. A. 8762

ARANAS LAW OFFICES
Ground Floor, Le Metropole Building
Corner De La Costa and Tordesillas Streets
Salcedo Village, Makati City 1227

Attention: Mr. Jesus Clint O. Aranas

Sir:

This is in response to your letter dated 9 January 2014, concerning the legal ramifications of your client's plans to open a service shop. In particular, you seek our confirmation of the following opinions:

1. That Yamaha Motor Philippines, Inc. ("YMPH") may open a service/repair shop without violating the provisions of Republic Act 8762, otherwise known as the Retail Trade Liberalization Act of 2000 ("RA 8762"); and
2. That YMPH does not need to amend its Articles of Incorporation ("AOI") if it will open such service/repair shop because the same is already covered by YMPH's primary purpose.

As disclosed in your letter, the following are the pertinent facts:

1. YMPH is a domestic corporation organized and existing under the law of the Philippines, and is a subsidiary of Yamaha Motor Co., Ltd., Japan ("Yamaha Japan");
2. YMPH is the sole entity in the Philippines duly licensed by Yamaha Japan to manufacture, assemble and distribute Yamaha motorcycles and other related products;
3. In 2009, YMPH opened a single outlet termed as 3S (Sales, Service, Spare Parts) Shop, to sell, on wholesale, to dealers, the operation of which was held by this Commission in a previous opinion[1] as not constituting retail trade;
4. YMPH intends to set up a service/repair shop which will undertake routine maintenance and servicing, tune-up procedures and repairs on ignition and electrical systems , brakes, wheels and tires of the motorcycles bought by its customers from YMPH's 3S Shop and other dealers; and
5. YMPH, through said service/repair shop, will be supplying spare parts and other products that are necessary for and/or incidental to the repairs to be undertaken by duly licensed and accredited YMPH staff.

We shall first tackle your second query, which we answer in the affirmative.

[1] SEC Opinion No. 09-22, 19 August 2009.

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The primary purpose of YMPH, as embodied in the AOI, includes the repair, preservation, maintenance, enhancement and refining any articles of commerce, and to sell at wholesale, the manufactured products.[2] Further, among the secondary purposes of YMPH is the establishment and operation of repair center/s or customer center/s.[3] As such, the main activities that are to be conducted by the service shop, mainly the repair and service of YMPH products along with the incidental selling of parts, are in consonance with the said purposes. Thus we confirm your position that there is no more need to amend YMPH's AOI.

As to the first query, RA 8762 defines "retail trade" as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption." The law covers only the sale of goods for consumption to the general public as end-user.

Based on your representation, the main activities of the shop, namely, routine maintenance, tune up, repairs, and other related services to be done on YMPH products makes it a service enterprise. As such, its activities are not covered by RA 8762 because YMPH does not sell goods to the public. It is now settled that a person who renders services for hire or pay, or leases services, is not engaged in the retail business because he does not sell goods to the general public[4].

That said, a firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. It may supply these materials for the convenience of the client or when the materials required are produced exclusively by the same firm. Of course, the client has to pay for the cost of these materials separately from the cost of the service. In the same vein, the activity of repair of motorcycle units may involve replacement of parts, which necessarily must be paid for by the owner of the motorcycle unit being repaired. Although this is a sale, the same is incidental to the repair and is **not being pursued as an independent business**. Thus, the same is not considered retail trade.

The Commission already had an occasion to declare that the proposed sale and distribution by PLDT, of wire-based telephone handsets, accessories, and other related telecommunications equipment through its various business offices nationwide are necessary

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[2] The primary purpose stated in YMPH AOI reads: "To manufacture, develop, produce, assemble, process, fabricate, **repair, preserve, maintain, enhance, refine** and pack, **any articles of commerce**, including but not limited to transportation vehicles of all kinds and types, utilizing all kinds and types tools and components, other general mechanical, electric or hydro machinery, equipment, raw materials and supplies required for such manufacturing operations and to export, **sell at wholesale**, distribute, trade, deal in, or otherwise dispose of **its manufactured products**; and to do all such acts as may be necessary and proper to conduct **business of manufacturing and selling at wholesale the said products** and other lawful objects of commerce throughout the Philippines and elsewhere." (emphasis supplied)

[3] No. 7 of the secondary purposes stated in the AOI reads: "To **establish and operate one or more** branch offices, showrooms, **repair centers**, industrial waste processing facilities, or corporate/**customer centers** and to carry out any or all of its operations and business without any restrictions as to place or amount including the right to hold, purchase or otherwise acquire, lease, mortgage, pledge and convey or otherwise deal in any such property anywhere within and outside the Philippines." (emphasis supplied)

[4] SEC Opinion No. 05-08, 23 June 2005, citing DOJ Opinion No. 275, s. 1954

and incidental to, and form an integral component of providing telecommunications services within the Philippines.[5] The "sale" of the mobile phone parts and, accessories, being only incidental and reasonably necessary to the repair, assembling, maintenance and support services, cannot be considered as sale by retail.[6]

Applying the same to YMPH's case, the sale and supply of products that are necessary and incidental to the business of repairing motorcycle units sold by YMPH are not considered as retail trade.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[5] Ibid.
[6] Ibid.; SEC Opinion No. 11-34, 3 August 2011, citing SEC Opinion No. 11, 13 November 2002.

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