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

Office of the General Counsel

2 June 2014

SEC-OGC Opinion No. 14-12
Re: Retail Trade

REYES ESGUERRA BALUYUT BENITEZ & BONGCO LAW OFFICES
3rd Floor Reliance Center
99 E. Rodriguez Jr. Avenue
Bo. Ugong, 1604 Pasig City

Attention: Mr. Paul J. Bongco

Sir:

This is in response to your letter dated 23 December 2013, requesting this office to affirm your position that the activity intended to be undertaken by your client, Biosystems Reagents & Instruments, Inc. ("Biosystems") does not constitute retail trade.

Biosystems is a domestic corporation with SEC Registration No. CS201112823, that is a wholly-owned subsidiary of Biosystems S.A. of Spain.

According to you, Biosystems intends to sell Biosystems S.A. equipments, reagents and instruments **directly to hospitals and laboratories**. It is your position that Biosystems' planned sale of chemical reagents, equipments and instruments to laboratories and hospitals does not constitute "retail trade" within the purview of the Retail Trade Liberalization Act of 2000 ("RA 8762"), hence Biosystems may engage in the same without violating said law. You thus seek confirmation of that position.

Under Section 3(1) of RA 8762, "retail trade" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption. Further, Rule I, Section 2(e)[1] of the Implementing Rules and Regulations of RA 8762, reiterating Section 4(c)[2] of Republic Act No. 1180 or the Retail Trade Nationalization Law as amended by Presidential Decree No. 714, considers sales to

---

[1] Sec. 2. *Sales Not Considered As Retail.* – The following sales are not considered as retail:
x x x
(e) **Sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public** and/or produce or manufacture of goods which are in turn sold by them;
x x x. (emphasis supplied)

[2] Section 4. As used in this Act, the term 'retail business' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:
x x x
(c) a manufacturer or processor **selling to the industrial and commercial users or consumers who use the products bought by them to render service to the general public** and/or to produce or manufacture goods which are in turn sold to them.
x x x. (emphasis supplied)

SEC-OGC

consumers who use the products bought by them to render service to the general public as non-retail sales.

As you correctly pointed out, the Supreme Court ruled in the case of *Balmaceda vs. Union Carbide Philippines*[3] that to be covered by RA 8762, the items sold must be "the final and end (uses) of a product which directly satisfy human wants and desires and are needed for home and daily life." Moreover, RA 8762 covers only the sale of goods for consumption to the general public as end-user.[4]

The Commission had opined that the sale of door control, automatic and revolving door, glass fittings and systems, room dividing systems, etc., to the real estate developer, which shall be used by the same in the construction of buildings and other infrastructure, is not considered as retail trade.[5] In another opinion, the sale of "Network Box" to industrial and commercial users to provide computer network security for the said business firms and not for personal, family or household use, consumption and utilization is not embraced in the category of retail sale.[6]

Applying the abovementioned principles to your case, the sale of chemical reagents, equipment and instruments directly to hospitals and laboratories cannot be considered as retail trade because it is not a sale of goods for consumption to the general public as end-user. The buyers (i.e., hospitals and laboratories) will use the products to render service to the general public.

We therefore opine that Biosystems, a foreign-owned domestic corporation, may engage in the business of selling reagents and equipments directly to laboratories, hospitals and distributors, without violating RA 8762.

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.[7]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

/mpb

[3] G.R. No. L-30442, 30 September 1983.
[4] SEC Opinion No. 06-32, 2 August 2006, citing SEC Opinion dated 23 June 2005 addressed to De Borja Medialdia Bello Guevarra & Gerodias.
[5] SEC Opinion No. 13-07, 30 July 2013 addressed to Atty. Rosario S. Bernaldo.
[6] SEC Opinion No. 06-32, 2 August 2006 addressed to Cayetano Sebastian Ata Dado & Cruz.
[7] SEC Memorandum Cricular No. 15, Series of 2003.

SEC - OGC