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

Office of the General Counsel

7 July 2014

SEC-OGC Opinion No. 14-15
Re: Foreign Equity Limitation

INFORMATION CAPITAL TECHNOLOGY VENTURES, INC.
Unit 5-I, 5/F OPL Building
100 C. Palanca corner Dela Rosa and Gil Streets
Legaspi Village, Makati City

Attention: Ms. Angeline L. Macasaet

Madam:

This is in reply to your letter dated 8 November 2012, written on behalf of Information Capital Technology Ventures, Inc. ("ICTV"), requesting for our opinion as to the applicability of foreign equity limits to ICTV.

ICTV is a domestic corporation registered with the Commission, under Company Registration No. A1996-00179. On 24 July 2008, the Commission approved the amendment of Article II (Primary Purpose) of ICTV to read as follows:

> "To engage in the business of providing telecommunications, media and information technology products and services, such as but not limited to the research, development, production, management, marketing, and operation of the following: telecommunications value added services through companies duly licensed to engage in wired and wireless, fixed and mobile communications; software and hardware technology, business process outsourcing, call center and other information technology applications; digital media and other media except mass media; and to do all activities directly or indirectly connected therewith or incidental thereto."

Your queries are as follows:

1. Whether or not ICTV is subject to foreign equity limit given its current primary purpose.
2. If the company is subject to foreign ownership limitation, up to what extent is foreign ownership of ICTV's equity allowed?

As stated in its primary purpose, the business of ICTV is the provision of "**telecommunications**, **media** and information technology **products and services**." The foreign equity limitations that appear to be relevant are those pertaining to mass media and public utilities.

Under Article XVI Section 11 of the 1987 Constitution, and reiterated in the Ninth Foreign Investment Negative List[1] ("FINL-9"),[2] "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." 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.[3] The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof.[4]

In the case of ICTV, the activities to be undertaken are, among others, production, marketing, and operation of digital media. Basically, digital media are any media that exist in a computer-readable format, and can reside on a local device (CD, DVD, hard drive), or remote location (website). Its difference with the other format of media is the ability to be streamed, downloaded, or stored on media such as CD or DVD.[5] This covers audio, video, images, text, and other kinds of media in other formats, which may come under the purview of mass media. The digital media produced, marketed, and operated by ICTV appears to cover a wide range. As mentioned earlier, it is the dissemination of information and ideas to the public that makes the activity covered within the purview of mass media. It appears that the digital media produced and operated by ICTV are as well marketed by it. This marketing constitutes dissemination of information to the public or a portion thereof.

The latter part of ICTV's primary purpose enumerates the media products and services to be digital media and other media *except mass media*. However, despite this excluding phrase, it is the nature of the activities undertaken by a corporation that will ultimately determine whether or not it is engaged in mass media. In a previous opinion, the Commission ruled that notwithstanding the clause "but in all cases without however engaging in mass media" in the corporation's primary purpose, the nature of the activities the corporation engages in – generally, acting as producer and providing production services including post-production services and facilities, fall within the activities contemplated by mass media.[6] Applying the principle to this case, ICTV produces and operates digital media, and is responsible for marketing the same, i.e., disseminating to the public or a portion thereof. This production and dissemination of media in digital format constitutes mass media activities. Thus, the foreign equity prohibition on corporations engaged in mass media applies to ICTV.

On another note, under Article XII Section 11 of the 1987 Constitution,[7] and reiterated as well in the FINL-9,[8] operation of public utilities are allowed only to Philippine

---

[1] List A, No. 1.
[2] Executive Order No. 98, 29 October 2012.
[3] Ministry of Justice's (MOJ) Opinion no. 24, series of 1986 citing MOJ Opinion No. 163, series of 1973.
[4] MOJ Opinion no. 24, s. 1986 citing MOJ Opinion No. 120, series of 1982.
[5] "Digital Media". *Technology Brief.* University of Guelph. September 2006. http://www.uoguelph.ca/tss/pdfs/TBDigMedia.pdf . Accessed 19 June 2014.
[6] SEC-OGCOpinion No. 11-08, dated 3 March 2011, addressed to Atty. Nelson Leyco.
[7] Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; x x x
[8] List A, No. 19.

Citizens or domestic corporations or associations, at least sixty per cent (60%) of whose capital is owned by Philippine citizens. The Department of Justice already ruled that telecommunications business is a public utility.[9] In this jurisdiction, "public utility" refers to a business or service which is engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation or telephone or telegraph service. It implies a public use and service to the public.[10]

Applying to ICTV's case, while the enumeration of the products and services first mentions "telecommunications value added services," the list does not appear to be exhaustive. It should be noted that the phrase "such as but not limited to" is present, which means that the telecommunications products and services ICTV is providing is not restricted to value added services, allowing ICTV to engage in telecommunications activities. Moreover, we take note of the 2nd Indorsement dated 10 June 2008 issued by the National Telecommunications Commission (NTC). It is provided therein that any issue or transfer of shares of stocks by the Corporation must be in accordance with the provisions of C.A. No. 146, or the Public Service Act, which means that the NTC considers ICTV to be engaged in telecommunications. As ICTV's activities are broad enough to cover telecommunications as a public utility, and in light of the NTC Indorsement, the foreign equity limits on corporations engaged in operation of public utility applies.

Further, we observe the first of the secondary purposes of ICTV. It is stated therein:

> "To **purchase, acquire, own**, lease, sell and convey **real properties such as lands**, buildings, factories and warehouses and machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities, as may be deemed expedient, for any business or property acquired by the corporation."

Under List A, No. 18 of the FINL-9, only those corporations or associations at least 60 *per centum* (60%) of whose capital is owned by Philippine citizens may own private lands in the Philippines. This limitation is a reiteration of Article XII Section 7 of the 1987 Constitution.

It is clear that based on the secondary purposes, among the activities to be undertaken by ICTV is ownership of land, which is a partly nationalized activity. In view of the foregoing, besides the equity limits based on the current primary purpose, ICTV is also subject to the foreign equity limits on corporations owning private lands.

Therefore, no foreign ownership of ICTV is allowed, as it is engaged in mass media activities. Assuming that it is not engaged in mass media, foreign equity is limited to a maximum of forty percent (40%), as it is engaged in the operation of public utility, and one of its purposes is ownership of land.

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

---

[9] DOJ Opinion No. 011, s. 1992, dated 28 January 1992.
[10] Ibid.

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.[11]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

/MPB

[11] SEC Memorandum Cricular No. 15, Series of 2003.