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

OFFICE OF THE GENERAL COUNSEL

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SEC-OGC Opinion No. 14-26
Tour Operators as Export Market Enterprises under the Foreign Investment Act

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Madam:

This is in reference to your letter dated February 13, 2014, concerning the queries you made therein on behalf of your principal, All Things Mos Travel cc (hereinafter "All Things"), a foreign corporation based in South Africa that seeks to obtain license here in the Philippines.

You stated in your letter that All Things, using the trading names "Madbookings" and "Mozambique Travel Service", is a South African and British-based Tour Operator founded way back in 2005 that provides hotel bookings, tours and travel-planning services to individuals and businesses, particularly catering and communicating to European, American and Australian tourists through internet online services and electronic mail (e-mail) through the advice of their travel experts. You further stated that the purpose of All Things in establishing a branch office here in the Philippines is to provide its foreign tourists/customers convenience to pay their accommodation during their stay here in the Philippines, for them to easily pay their local suppliers here in the Philippines; and to be able to hire personnel in the Philippines to give reliable information about the Philippines for their foreign tourists/customers.

Your query is whether or not the services of your principal could be considered as an "export market enterprise" under the Foreign Investments Act of 1991 (FIA), as amended.

This Commission, as a matter of policy, refrains from rendering opinions on queries which are too general in scope, or hypothetical, abstract, speculative and

anticipatory in character, as well as matters which entail the gathering of legal materials for the requesting party, since this Commission should not function as legal counsel of the one requesting such opinion.[1]

However, for **purposes of guidance and information** only, and in line with promoting foreign investments in the country, the following may be imparted.

Section 4 (p) of Republic Act (RA) No. 9593, otherwise known as the "Tourism Act of 2009", defines "tourism enterprises", thus:

> **"Tourism enterprises"** refers to facilities, **services** and attractions **involved in tourism**, such as, but not limited to: **travel and tour services** xxx
>
> (Emphasis and underscoring supplied)

Section 3 (q) of the Implementing Rules and Regulations (IRR) of RA 9593 further defines "primary tourism enterprises" in this wise:

> **"Primary Tourism Enterprises"** – facilities and services that are directly related to tourism such as, but not limited to, **travel and tour services**: inbound travel agencies and tour operators.
>
> (Emphasis supplied)

Relative thereto, the FIA specifically includes "tourism" as one of the services that may be undertaken by an export enterprise. Section 3 (e) of the FIA elucidates as follows:

> "e) the term "**export enterprise**" shall mean **an enterprise wherein a** manufacturer, processor or **service (including tourism) enterprise exports sixty percent (60%) or more of its output**, or wherein a trader purchases products domestically and exports sixty percent (60%) or more of such purchases;
>
> (Emphasis and underscoring supplied)

Moreover, please find instructive the definitions of **"export enterprise", "exports", "output"** and **"export ratio"** in Rule I, Section 1 of the IRR of the FIA, thus:

> "g. **"Export enterprise"** shall mean an enterprise wherein a manufacturer, processor or **service (including tourism)** enterprise **exports sixty percent (60%) or more of its output xxx**

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[1] SEC Memorandum Circular 2003-15 (No. 5.4 and 5.10)

> "h. ***"Exports"*** shall mean xxx the **value of services including tourism sold by service-oriented enterprises to non-resident foreigners** xxx;
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> "i. ***"Output"*** shall refer to **the export enterprise's total sales in a taxable year.** The term sales shall refer to the value in case of heterogeneous products and volume in case of homogeneous products. xxx"
>
> "j. ***"Export ratio"*** shall refer to: xxx (2) the percentage share of the **peso value of services sold to foreigners** to total earnings or receipts from the sale of its services from all sources in any taxable year if the export enterprise is service-oriented; xxx"
>
> (Emphasis and underscoring supplied)

In addition, Item 11 of SEC Form No. F-103 (Application of a Foreign Corporation to Establish a Branch Office in the Philippines) requires the applicant foreign corporation to indicate its "Projected Sales Volume/Value" for both domestic and export sales, for at least three (3) years, and undertakes to export at least sixty per cent (60%) of its total output as projected.

Depending on whether your principal complies with the export percentage/ratio and three-year projection requirements, it may apply for a license to do business in the Philippines under the category of export enterprise.

Thereafter, the locally registered enterprise should also register and submit reportorial requirements with the Board of Investments (BOI). In this regard, please find instructive Section 6, in relation to Section 14, of the FIA:

> "***Section 6. Foreign Investments in Export Enterprises.*** - Foreign investment in export enterprises whose products and services do not fall within Lists A and B of the Foreign Investment Negative List provided under Section 8 hereof is allowed up to one hundred percent [100%] ownership.
>
> "Export enterprises which are non-Philippine nationals **shall register with BOI** and **submit the reports that may be required to ensure continuing compliance** of the export enterprise with its export requirement. BOI **shall advise SEC or BTRCP, as the case may be, of any export enterprise that fails to meet the export ratio requirement.** The SEC or BTRCP shall thereupon order the non-complying export enterprise to reduce its sales to the domestic market to not more than forty percent [40%] of its total production; failure to comply with such SEC or BTRCP order, without justifiable reason, shall

> subject the enterprise to cancellation of SEC or BTRCP registration, and/or the penalties provided in Section 14 hereof."
>
> (Emphasis and underscoring supplied)

Likewise, the IRR of the FIA further clarifies the reportorial requirements of such export enterprise:

> "SECTION 3. Submission of reports. - All duly-registered export enterprises under this Rule **shall submit to the Board of Investments a duly accomplished form within six [6] months after the end of each taxable year**.
>
> "**Failure of export enterprises to submit the required reports within the prescribed period of time or the submission of fraudulent reports shall be a ground for the SEC or BTRCP to impose appropriate sanctions as provided for under Rule XVII, Section 1, of these Rules and Regulations**.
>
> "SECTION 4. Monitoring of compliance with the export requirement. - Upon receipt of the report submitted by the export enterprise, **the BOI shall determine compliance of the enterprise with the export requirement**. **If the enterprise fails to comply with the export requirement, the BOI shall advise the SEC or BTRCP of said failure. The SEC or BTRCP shall require the firm to immediately increase its export to at least sixty percent [60%] of total sales.** If the firm fails to comply with the order of the SEC or BTRCP without any justifiable reason, it shall be penalized in accordance with the provisions of Rule XVIII, Section 1 of these Implementing Rules and Regulations. The BOI, in consultation with the SEC and BTRCP, shall issue guidelines for this purpose."
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> (Emphasis and underscoring supplied)

Hence, if based on the above, All Things shall qualify as an export market enterprise, you may inquire with the Commission's Company Registration and Monitoring Department (CRMD) or the Cebu Extension Office as to the requirements for the filing in the said offices of your application as an export market enterprise, attaching or accomplishing all the documentary requirements therefor (i.e., SEC Form F-103, etc.).

We hope you find the above information useful.

CAMILO S. CORREA
General Counsel

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