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

21 July 2015

SEC Opinion No. 15-06
Investment by a
Representative Office
in Stocks of a
Domestic Company

FORTUN, NARVASA & SALAZAR
23F Multinational Bancorporation Ctr.
6805 Ayala Ave.
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Attention: Attys. Roderick R.C. Salazar III
Yashneira A. Lalia

Dear Attorneys:

This pertains to your letter dated 17 December 2014 requesting confirmation of your position that Inserve Marine Technical Services Ltd. (Inserve), a representative office in the Philippines of Inserve Marine Technical Services Ltd. (Company), a foreign corporation duly organized and existing under the laws of England, is allowed to invest in shares of stock of a domestic corporation and earn dividend income therefrom.

You are of the opinion that based on the Foreign Investment Act (FIA), it is implied that the income that should not be derived by a representative office from the Philippines pertains only to income received from carrying out the business activities of the head office, as this is allowed only for a branch office. In other words, a representative office should not get income from activities which constitute as "doing business" in the Philippines.

You posit that Inserve may invest in shares of stock of a Philippine company and earn dividend income therefrom, without violating its license, because the dividend is a passive income that would not be derived from carrying out the business activities of the Company or from doing business in the Philippines.

Section 1 (c) of the Implementing Rules and Regulations of the FIA reads:

> "Section 1 (c): Representative or liaison office deals directly with the clients of the parent company but ***does not derive income from the host country and is fully subsidized by its head office***. It undertakes activities such as but not ***limited to information dissemination and promotion of the company's products as well as quality control of products.***" [1] (Emphasis ours.)

The letter of the law is very clear that a representative office cannot derive any income from the host country. Where the law does not distinguish, neither should we distinguish.[2] Thus, the second sentence of the afore-quoted definition should, pursuant to the principle of *ejusdem generis*[3], be interpreted to mean that any permissible act of a representative office should be akin to or resemble the same kind or class as those of information dissemination and promotion of the company's products, or quality control for the parent company, or any other passive act that does not involve the earning of any income. To hold otherwise would run counter to the very nature of a representative or liaison office.

Thus, in a previous opinion[4], the Commission opined that:

> "In its application for the establishment of a Representative Office it is explicitly required to state therein the specific 'purpose or purposes' of the corporation which it intends to pursue in the transaction of its business in the Philippines. In your application and license, it is clearly stated therein that Makino Asia (Phils.) 'proposes to establish a representative office in the Philippines to act as a liaison office for advertisement of its products.'
>
> Further, the implementing rules and regulations of Republic Act 7042, as amended, clearly defined a representative office or liaison office as distinguished from a branch office. The **former** deals directly with the client of the parent company **but does not derive income from the host country** and is fully subsidized by its head office while the latter carries out the business activities of the head office and derives income from the host country.
>
> Thus, your query is answered in negative. **The functions of a foreign corporation are limited to what is stated in its license and specifically, a Representative Office cannot generate income and carry out the business activities** (which may include installation and warranty servicing of machines) of the head office from within the Philippines." (Emphasis ours.)

A perusal of the corporate records of Inserve reveals that it was duly licensed with the Commission, merely as a representative office "*to act as communication office for Inserve Marine Technical Services Limited, and to promote and disseminate information about the company with marine insurance companies, insurance brokers*

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[1] Rule 1 Section 1 (c), IRR of FIA
[2] Land Bank v. De Leon, 437 Phil. 324 (2002)
[3] Miranda v. Abaya, 370 Phil. 642 (1999)
[4] SEC Opinion, dated 02 February 2001 addressed to Mr. Jaime Diaz

and shipping companies in the Philippines", which purpose does not include investment in shares of stock.

From the foregoing, we do not confirm your position.

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.[5] 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

[5] Paragraph 7, SEC Memorandum Circular No.15, Series of 2003