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

OFFICE OF THE GENERAL COUNSEL

2 September 2015

SEC-OGC Opinion No. 15-10
Re: Retail Trade

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Madam:

This pertains to your letter, dated 17 April 2015, requesting for legal opinion asking for confirmation of your position that sale of vouchers or gift certificates to individuals by your client, Lyoness Philippines, Inc. (LPI), does not fall within the definition of retail trade under Republic Act (R.A.) No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000.

As stated in your letter, LPI is a domestic corporation duly organized and existing under the laws of the Philippines. Its primary purpose as indicated in the Articles of Incorporation is to provide local and international linkages among consumers/buyers and product/service providers thereby forming them into a cohesive and vibrant shopping community and empowering them through internet and marketing to realize mutual benefits such as but not limited to increased sales and volume based profits for product/service providers and bulk discounts and after sales services for consumers and to do such acts as may be necessary, incidental or conducive to the aforesaid primary objective. Its main revenue generating activity is the sale of vouchers or gift certificates to its individual members. The said vouchers are bought by LPI from 35 different merchants or key accounts. These merchants provide the gift certificates at discounted prices. LPI pays for the gift certificates at net of discounts and sells it to members for the full price.

LPI is categorized as a service provider per registration with the Bureau of Internal Revenue (BIR). It is indicated in its Certificate of Registration that its line of business is classified under "other service activities".

Section 3 (1) of the R.A. No. 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 Supreme Court, in M*arsman & Company, Inc. vs. First Coconut Central Company, Inc.*[1], held that:

> "For a sale to be considered as retail, the following elements should concur:
> (1) The seller should be habitually engaged in selling;
> (2) The sale must be direct to the general public; and
> (3) The object of the sale is limited to merchandise, commodities or goods for consumption.
>
> xxx The last element refers to the subject of the retailer's activities or what he is selling, i.e., consumption goods or consumer goods. **Consumer goods may be defined as goods which are used or bought for use primarily for personal, family or household purposes.** Such goods are **not intended for resale or further use in the production of other products**. In other words, **consumer goods are goods which by their very nature are ready for consumption**."

Rule I, Section 1 (b) of the Implementing Rules and Regulations (IRR) of the R.A. No. 8762 defines "**consumption" as the "utilization of economic goods in the satisfaction of want resulting in immediate destruction, gradual decay or deterioration or transformation into other goods.**"

As previously opined by the Commission, R.A. No. 8762 covers only the **sale of goods for consumption to the general public as end-user.** The term "retail" is associated with and limited to goods for personal, family, or household use, consumption and utilization. **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, the law covers only the sale of goods for consumption to the general public as end-user.[2]

The Department of Trade and Industry (DTI) defines "*gift check/ certificate/ card*" as "*an instrument issued by a supplier to an individual, partnership or a juridical entity for monetary consideration evidencing a promise by the issuer that consumer goods or services will be exchanged in favor of the bearer upon presentation of said gift certificate/ check/ card to the value, credit, specific good, service or event shown in the instrument.*"[3]

On the basis of the foregoing, this Office is of the position that the sale of vouchers or gift certificates is not considered as retail trade within the purview of R.A.

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[1] G.R. No. L-39841, June 20, 1988
[2] SEC-OGC Opinion No. 14-34 dated November 18, 2014 addressed to Atty. Erwin S. Herrera
[3] DTI Department Administrative Order No. 10- 04, Series of 2010

No. 8762. Vouchers or gift certificates are not goods for consumptions. They are intended to be used by the bearer to purchase goods or services from merchants and not as an end-use for consumption to satisfy human wants and desires.

However, we would like to call your attention to the previous opinion[4] of the Commission regarding marketing and sale of discount coupons through the internet, which provides that if the corporation is engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service, it, in effect, disseminates information to the general public through the internet. Hence, it may be considered as a mass media entity. Consequently, the entity must be wholly owned by Filipino citizens, in compliance with the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and List A (1) of Executive Order Number 858.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.[5] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

[4]SEC Opinion No. 12-16 dated 13 September 2012 addressed to PUNO & PUNO LAW OFFICES
[5] SEC Memorandum Circular 2003-15, No. 7