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

16 May 2016

SEC-OGC Opinion No. 16-10
RE: Retail Trade of Pest Control Chemicals, Machines, Equipment and Accessories

JIPANG GROUP OF COMPANIES
Jipang Building, Roxas Boulevard
corner Perla Street, Pasay City

Attention: Atty. Rico J. De Guzman
Chief Finance and Compliance Officer

This refers to your letter dated 31 July 2015 requesting the Commission to render an opinion on whether the corporation which you are proposing to incorporate should comply with any foreign ownership requirements.

As disclosed in your letter, you intend to form, incorporate and register a corporation in the Philippines with a proposed corporate name of Philippine Sakudory, Inc. (Sakudory), where foreign investors are interested in investing in. Sakudory, as provided in the attached draft Articles of Incorporation, will be engaging in the business of importation, distribution, trading, leasing, service maintenance and other related activities, of any item or merchandise, relative to pest control chemicals and machines, equipment and accessories, for local distribution. You also stated that the proposed authorized capital stock to be applied will be 16,000,000 pesos divided into 16,000 shares at 100 pesos per share, per the proposed Articles of Incorporation of Sakudory. Likewise, the draft Articles of Incorporation reflects that the paid-up capital is One Million Pesos (P1,000,000.00).

To answer your query, it is necessary to look into your proposed Articles of Incorporation to determine whether the proposed corporation should follow any foreign equity limitations as prescribed by law. The draft Purpose of Sakudory provides:

> 1.) To engage in the business of importation, distribution, trading, leasing, service maintenance and other related activities, of any item or merchandise, relative to pest control chemicals and machines, equipment and accessories, for local distribution, **in whole or retail basis**; and
>
> 2.) To cooperate with other organizations of similar aims.

Notably, the proposed purpose of Sakudory states that, the items (i.e. pest control chemicals, machines, equipment and accessories) will be for local distribution, in whole or retail basis.

Thus, we answer your query in the affirmative, that is, Sakudory should be governed by the foreign ownership limitations under the Retail Trade Liberalization Act of 2000 (RTLA).[1]

"Retail Trade" shall mean any act, occupation or calling of habitually selling direct to the general merchandise, commodities or goods for consumption.[2] For sale transactions 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.[3]

In connection therewith, Section 5, paragraph 2, of the RTLA[4] provides:

"Section 5. Foreign Equity Participation. – Foreign-owned xxx corporations, formed and organized under the laws of Philippines may, upon registration with the Securities and Exchange Commission and the Department of Trade and Industry, xxx engage or invest in the retail trade business, subject to the following categories:

Category A – Enterprises with paid-up capital of the equivalent in Philippine Pesos of **less** than Two million five hundred thousand US dollars **(US$2,500,000) shall be reserved exclusively for Filipino citizens and corporation wholly owned by Filipino citizens.**

Category B – Enterprises with a **minimum paid-up capital** of the equivalent in Philippine Pesos of Two million five hundred thousand US dollars **(US$2,500,000)** but less than Seven million five hundred thousand US dollars (US$7,500,000) **may be wholly owned by foreigners** except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity.

The proposed authorized capital stock of Sakudory is Sixteen Million Pesos (P16,000,000.00). On the other hand, its proposed paid-up capital is One Million Pesos (P1,000,000.00), which is less than the Peso equivalent of Two Million Five Hundred Thousand US Dollars (US$2,500,000.00). As such, it falls under Category A above-described.

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[1] R.A. 8762, An Act Liberalizing the Retail Trade Business, Repealing for the Purpose Republic Act No. 1180, as Amended and for Other Purposes.
[2] Id. Section 3, Paragraph 1.
[3] SEC-OGC Opinion No. 16-03, 15 February 2016 addressed to Platon, Martinez, Flores, San Pedro & Leaño Law Offices citing SEC Opinion dated 11 July 1995 addressed to Mr. Moises Villanueva.
[4] Id. Note 1.

Thus, if Sakudory, as mentioned, has foreign stockholders, it has to increase its proposed paid-up capital to the Peso equivalent of Two Million Five Hundred Thousand US Dollars (US$2,500,000.00), in order to be qualified to engage in the retail business. [5]

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

CAMILO S. CORREA
General Counsel

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[5] SEC-OGC Opinion No. 06-07, 31 January 2006 addressed to Atty. Daisy L. Parker.