Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

31 August 2016

SEC-OGC Opinion No. 16-21
RE: Entities engaged in mass media and advertising.

ATTY. ROSARIO S. BERNALDO
Managing Partner
Bernaldo Directo & Po Law Offices
Unit 1807 Cityland Condominium
10 Tower 1, H. V de la Costa Street
Ayala North, Makati City

Dear Atty. Bernaldo:

This refers to your letter dated 08 June 2015 requesting for confirmation of your opinion that the proposed company of Phar Partnerships (Phar) does not fall within the scope of the citizenship requirements imposed on mass media and advertising under the Foreign Investment Act or Republic Act No. 7042 ("FIA"); hence, it may establish a 100% foreign-owned corporation here in the Philippines.

In your letter, you state that Phar is a privately-owned entrepreneurial company focused on an international media, marketing and sponsorship consultancy. You also express that Phar intends to establish a corporation called Phar Philippines, which will have a primary purpose of leasing and sub-leasing indoor, outdoor and digital advertising materials, sites and spaces, and engaging in sponsorship consultancy. In addition, your letter includes a detailed description of the proposed activities:

1. "To lease fences, billboards, sign boards, buildings and other structures suitable for advertising purposes and consequently sub-lease them to third parties;
2. To lease digital space from media owners, invest in the technologies (e.g. video, search, banner display), and serve clients by sub-leasing the digital space to post their advertisements
3. To sell sponsorship and to provide services to clients by measuring the effectiveness of the sponsorship via research (e.g. Olympics, Asian Games)."

Furthermore, you clarify that Phar Philippines will not own any media, hence, will only be engaged as a media representation or brokerage company. Therefore, you claim that Phar Philippines should not be classified as a company engaged in "mass media" or "advertising." To support your position, you cite the definitions of mass media and advertising as provided in the Consumer Act of the Philippines or Republic Act No. 7394 ("Consumer Act").

In Article 4 (b) of the Consumer Act, "advertising" is defined as, "the business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data, or information about the attributes, features, quality or availability of consumer products, services or credit."[1]

On the other hand, "mass media" is referred to in Article 4 thereof as, "any means or methods used to convey advertising messages to the public such as television, radio, magazines, cinema, billboards, posters, streamers, hand bills, leaflets, nails, and the like."[2]

You argue that the proposed activities of Phar Philippines are not covered by the definitions since they do not include the creation of advertisements or messages, dissemination of information, or operation or control of the business of advertising and mass media; rather, they merely involve the sublease of advertising materials, sites and spaces. In addition, you also claim that the sponsorship consultancy is not covered by the definition of advertising. Hence, the proposed Phar Philippines should not be subjected to the pertinent Constitutional restrictions as provided under FIA.

We do not confirm your position.

The proposed activities are covered by nationality restrictions. With respect to the first activity (i.e., "to lease fences, billboards, sign boards, buildings and other structures suitable for advertising purposes and consequently sub-lease them to third parties"), the same is covered under mass media, consistent with SEC-OGC Opinion No. 16-17, to wit:

> "Coming now to the issue as to whether or not HDI is engaged in nationalized activities subject to the foreign equity limitations imposed by the 1987 Constitution and other pertinent laws, the Commission is of the opinion that HDI, **by leasing out or subleasing advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed, actually provides a medium to disseminate or convey advertising messages to the public, hence is of a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and List A(1) of Executive Order No. 184 series of 2015."** [3] (Emphasis and underscoring supplied.)

To reiterate the stand of the Commission, the act of subleasing the advertising space or structure to others is well within the activity of a mass media entity for it still provides a medium to disseminate or convey advertising messages to the public.

The second activity (i.e., "to lease digital space from media owners, invest in the technologies and serve clients by subleasing the digital space to post their advertisements") also falls within the purview of mass media. The Commission already discussed in its previous opinions that platforms for mass media are not limited to the physical structures

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[1] Article 4(b), Republic Act No. 7394, Consumer Act of the Philippines.
[2] *Ibid.*, Article 4 (at).
[3] SEC-OGC Opinion No. 16-17, 11 July 2016, addressed to Mr. Darmo N. Castillo.

and printed materials. It covers other forms of communication and platforms such as the internet. In SEC-OGC Opinion No. 14-06, the Commission opined:

> "With the continuing evolution and proliferation of digital communication technology, i.e. internet and mobile technology, individuals now are exposed to information that are previously restricted to a select group, making them susceptible to the influence of modern mass media techniques such as advertising and propaganda. **Thus, the internet and mobile technology have become a recognized platform for mass media.** In our jurisdiction, the Tobacco Regulation Act of 2003 specifically includes the internet in the definition of "mass media."[4] (Emphasis and underscoring supplied.)

The Commission further provided that:

> "Moreoever your letter states that Komli intends to provide a digital platform to third-party websites to sell and monetize online inventory. **Although Komli will not own or operate any online media outlet nor will affiliate with any internet service provider, online retailer or social networking site and will merely act as a middleman by bringing together the product manufacturers and third-party websites, it will provide an online platform intended to increase the sale of a particular product.** In SEC Opinion No. 12-16, this Commission opines 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 services, it, **in effect disseminates information to the general public through the internet and is thus considered a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and List A(1) of Executive Order No. 858.**"[5] (Emphasis and underscoring supplied.)

In this case, it is proposed that Phar Philippines will lease digital space from media owners and will subsequently sublease such space to clients who will in turn post their advertisements therein. As previously discussed, subleasing the space is also considered as providing a medium to disseminate the advertisements and messages, thus engaging in mass media.

The third proposed activity (i.e., "to sell sponsorship, and to provide services to clients by measuring the effectiveness of the sponsorship via research [e.g. Olympics, Asian Games]"), on the other hand, can be classified under advertising.

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[4] SEC-OGC Opinion No. 14-06, 2 June 2014, addressed to Navarro Amper & Co.
[5] *Id.*, citing SEC Opinion No. 12-16, 13 September 2012, addressed to Attys. Ma. Elizabeth E. Peralta-Loriega, Ranulfo G.V. Payos, Jr., and Bryan A. San Juan.

In a previous opinion, the Commission further explained the functions of an advertising agency, to wit:

> "Essentially, the **function of advertising agencies** is **to serve as agents or counselors of advertisers** by writing, preparing or producing the commercial messages or materials used by advertisers in selling their goods and services **and by selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public.** Advertising agencies do not actually disseminate the materials they prepare as they have utilized or avail of the facilities of mass media, i.e., newspapers, radio, television, etc, for this purpose."[6] (Emphasis and underscoring provided).

In your letter, you explain that Phar Philippines will render services to clients by measuring the effectivity of sponsorship activity of any event and selling opportunity to interested parties. By advising their clients as to the effectivity of a sponsorship in marketing and promotion of their product, Phar Philippines is actually doing an activity of an advertising agency.

Based on the foregoing, the activities of the proposed Phar Philippines are under the activities of entities engaged in mass media and/or advertising. Hence, the foreign restrictions imposed by the Constitution as to mass media (i.e., 100% Filipino-owned)[7] and advertising (i.e., at least 70% Filipino-owned)[8] will apply to it.

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. It 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.[9] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[6] SEC-OGC Opinion No. 16-17 citing DOJ Opinion No. 22 s. 1975.
[7] Sec 11 (1), Article XVI, 1987 Constitution of the Republic of the Philippines.
[8] Sec 11 (2), Article XVI, 1987 Constitution of the Republic of the Philippines.
[9] SEC Memorandum Circular 2003-15, No.7