Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 September 2017

SEC-OGC Opinion No. 17- 12
RE: Retail Trade; Ticketing Activity

QUISUMBING TORRES
12/F Net One Center
26th Street corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City, Philippines

Attention: Atty. Elizabeth B. Opeña; Atty. Ramon Miguel E. Bacani

Gentlemen:

This refers to your letter dated 02 March 2017 requesting for confirmation from the Commission that the ticketing activity described in the letter does not constitute "retail trade" under Republic Act No. 8762, otherwise known as Retail Trade Liberalization Act of 2000 (RTLA).

In your letter, you stated that a domestic corporation (Phil Co) is engaged in providing ticketing services to venues across Manila through a variety of sales channels that includes venue box offices, physical outlets in shopping malls (or similar channels, some of which Phil Co owns) and on line (Ticketing Activity). It also sells ticket printers and paper ticket stock as well as providing support services to other unrelated ticketing companies in the Philippines.

You disclosed that Phil Co essentially sells tickets on behalf of event producers and venue owners, to the general public to events such as musical performances, concerts, theater, sporting events and the like. In return, Phil Co receives commissions for its services. Specifically, Phil Co remits to event producers and venue owners revenues collected from ticket sales less its corresponding commission on the revenue. At no time does it purchase or own the tickets that it is selling to the general public.

You now seek confirmation of your position that (1) the Ticketing Activity of Phil Co, as well as (2) the selling of ticket printers and paper ticket stock to other ticketing companies, do not constitute "retail trade," thus, not covered by any limitation on foreign equity ownership imposed by RTLA.

Section 3 of the RTLA defines "retail trade" as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption."[1]

The Supreme Court, in ***Marsman & Company, Inc. v. First Coconut Central Company, Inc.,***[2] provided the following elements of retail trade:

1. "The seller should be habitually engaged in selling;
2. The sale must be direct to general public;
3. The **object of the sale** is limited to **merchandise, commodities or goods for consumption**." (Emphasis and underscoring supplied)

As to the last element, the Court held:

> "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 nature are ready for consumption.**"[3] (Emphasis and underscoring supplied.)

In another case, ***Balmaceda vs. Union Carbide,***[4] the Supreme Court discussed that goods for consumption refer to the "**final and end [uses] of a product** which directly satisfy human wants and desires and are **needed for home and daily life."**

The Commission had also posited in several opinions that the RTLA covers only sales of goods for consumption to the general public as end-user, to wit:

> "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.**"[5] (Emphasis and underscoring supplied).

---

[1] "An Liberalizing the Retail Trade Business, Repealing for the Purpose Repealing for the Purpose Republic Act No. 1180, As Amended, and for Other Purposes" (RETAIL TRADE LIBERALIZATION ACT), Republic Act No. 8762, Section 3, (2000).

[2] *Marsman & Company, Inc. v. First Coconut Central Company, Inc.,* G.R. No. L-39841, June 20, 1988.

[3] *Ibid.,*

[4] *Balmaceda vs. Union Carbide,* G.R. No. L-30442, 30 September 1983.

[5] SEC-OGC Opinion No. 15-10, dated 02 September 2015, addressed to Atty. Rosario S. Bernaldo citing SEC-OGC Opinion No. 14-34 , dated 18 November 2014, addressed to Atty. Erwin S. Herrera.

Applying the foregoing, the Commission opines that a ticket is not a good for consumption. A ticket, as defined by Black's Law, is a "certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege."[6]

Specifically, in Philippine jurisprudence, ticket is classified as a **document or an evidence of a contract.** In ***United States vs. Damian Orera***,[7] the Supreme Court ruled that **a "Chinese theater ticket" is a private document, "evidencing an agreement for the rent of a place in a theater to enable the possessor to witness a theatrical performance."**[8] In this connection, private document was recognized as a "deed or instrument executed by a private person, without the intervention of a public notary or other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth."[9]

In this regard, a concert or event ticket is not what is being contemplated in the last element of a retail trade.

It is not a merchandise or good that can on its own be consumed for personal gratification or satisfaction of the holder. Rather, a ticket is a document or an evidence of contract ensuring the holder the right of access or a seat reservation to the venue or theatrical performance. Its utility, therefore, is not the direct source of human satisfaction since what it only confers to the holder is a future right or privilege to enter a place or participate in an event provided by the event producers and venue owners.

While the events (i.e. music concerts, sporting events, theatrical performance) may be considered as the real objects of sale, the last element is still absent because they do not fall under the category of goods or merchandise used primarily for home and daily life.

Based on the foregoing, the Ticketing Activity of Phil Co should not be considered as retail trade under the RTLA because the "ticket" being sold by Phil Co is not a merchandise or good for consumption; thus, the last element is absent.

With respect to the selling of ticket printers and paper ticket stock to other ticketing companies in the Philippines, these activities are also not "retail trade."

Under the Rules and Regulations Implementing the RTLA, **sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them is not considered retail.**[10]

---

[6] Black's Law Dictionary (9th ed. 2009).
[7] *United States v. Damian Orera*, G.R. No. 3810, October 18, 1907.
[8] *Id.*,
[9] *Id.*,
[10] Rules and Regulation Implementing the Act Liberalizing the Retail Trade Business, Republic Act No. 8762, Section 2 (e).

Thus, the selling of ticket printers and paper ticket stock to ticketing companies which in turn use the same to produce tickets and sell them to event-goers is not a retail.

Accordingly, since the activities of Phil Co do not constitute retail trade the foreign ownership restriction imposed therein finds no application in the case of Phil Co.

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.[11] 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

/jmc/akg/vjbg/

[11] SEC Memorandum Circular 2003-15, No.7