Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

04 December 2017

SEC- OGC Opinion No. 17-16

Re: Exemption from Retail Trade Liberalization Act, Foreign Investments Act and Anti-Dummy Law

GOAT MANAGEMENT INC.
Casa Blanca Family Village
Northern Junob, Balugo Road
Dumaguete City, Negros Oriental

Attention: Atty. Gayle Marie H. Chiong, CPA
Corporate Secretary/ Authorized Representative

Attorney:

This refers to your letter dated 18 August 2016, requesting the Commission's opinion on the applicability of the Retail Trade Liberalization Act ("RTLA")[1], Foreign Investment Act ("FIA")[2], and the Anti-Dummy Law[3], to your corporation, Goat Management Inc. ("Goat Management").

You stated in your letter that Goat Management is a domestic corporation engaged in the business of goat farming management and processing, production and sale of agricultural products such as, but not limited to, dairy products, livestock and crops. You further stated that Goat Management sells exclusively its own products and does not carry any other brand or product on consignment.

You are requesting for SEC's opinion on the following queries:

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[1] Republic Act No. 8762.
[2] Republic Act No. 7042.
[3] Presidential Decree No. 715, amending Commonwealth Act No. 108, as amended.

1. Whether or not Goat Management's nature of business falls within the exemption of the RTLA, thus exempted from complying with the capitalization requirement of US$2,500,000, should it wish to go into selling exclusively its own products through one outlet.
2. Whether or not Goat Management can accept more than 40% foreign equity if it will increase its capitalization to at least two hundred thousand US dollars (US$200,000), in relation to Section 7 of the FIA.
3. Whether or not Goat Management can elect and appoint foreign nationals as part of its Board of Directors and as officers, respectively, should it be exempt under the RTLA and raise capital equivalent to at least US$200,000.

<u>On exemption from restriction under the RTLA</u>

"Retail trade" is defined as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.[4]

In SEC Opinion No. 09-22[5], the Commission had already settled that sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization, is not considered as retail pursuant to Section 3(1)(d)[6] of the RTLA and Section 2(d)[7] of its Implementing Rules and Regulations (IRR), to wit:

> "In the case of *Adriano vs Untalan, et al.*, the Court of Appeals pronounced that sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines irrespective of capitalization, is not considered as retail, to quote:
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> > Moreover, even if the Court considers PLI as engaging in the Retail Trade, the company would still not fall under R.A. No. 8762. Under Section 2(d) of the Rules and Regulations implementing Republic Act No. 8762, it provides that sales to the general public, through a single outlet owned by a manufacturer of

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[4] Section 3 of the RTLA.

[5] Addressed to Aranas Consunji Barleta dated 19 August 2009.

[6] Section 3(1)"Retail trade" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption, but the restriction of this law shall not apply to the following:
(a) Sales by manufacturer, processor, laborer, or worker, to the general public the product manufactured, processed or products by him if his capital does not exceed One hundred thousand pesos (100,000.00);
(b) Sales by a farmer or agriculturist selling the products of his farm;
(c) Sales in restaurant operations by a hotel owner or inn-keeper irrespective of the amount capital: provided, that the restaurant is incidental to the hotel business; and
(d) Sales which are limited only to products manufactured, processed or assembled by a manufacturer through a single outlet, irrespective of capitalization.

[7] Sales Not Considered as Retail – The following sales are not considered as retail:
xxx
(d) Sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization.
xxx

> products manufactured, processed or assembled in the Philippines irrespective of the capitalization, is not considered as retail. It must be pointed out that as admitted by both parties, PLI does not maintain any other office or display and selling area except in its principal office in Bangkal, Makati. Thus PLI, having a single outlet that manufactures, processes or assembles laminates in the Philippines, is not considered as engaging in retail sales. It is therefore immaterial that the word retail is stated in the primary purpose of PLI since what will govern will be R.A. 8762."

In your case, Goat Management sells exclusively its own products and does not carry any other brand or product on consignment. Therefore, should it sell such products in one outlet, the Commission is of the opinion that it is not considered engaged in retail trade, pursuant to Section 3(1)(d) of the RTLA and its IRR.

As such, Goat Management is not covered by the RTLA, which follows that it is also exempted from complying with the capitalization requirement of US$2,500,000.00.

On Foreign Investments Act

Section 7 of the FIA states that:

> "Non- Philippine Nationals may own up to one hundred (100%) of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution and existing law or the Foreign Investment Negative List under Section 8 hereof. [as amended by Republic Act No. 8179].

It further states that:

> "Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent of two hundred thousand US Dollars (US$200,000) are reserved to Philippine nationals"

Moreover, under List B (6) of the Tenth Regular Foreign Investment Negative List ("FINL-10"), domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000 is limited to forty percent (40%) foreign equity.

In a previous opinion[8], the Commission had held that the increase of a domestic market enterprise's paid-up capital to more than or equal to US$200,000 will remove it from the coverage of List B (6) of the FINL-10, as long as it is not engaged in other nationalized or partly nationalized industry, including ownership of land.

Therefore, in your case, if Goat Management will increase its capitalization to at least US$200,000, it can have more than 40% foreign equity, provided however, that it will not engage in any other nationalized or partly nationalized industry, as stated in List A (e.g., retail) and List B of the FINL-10.

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[8] SEC-OGC Opinion No. 16-13 dated 30 May 2016 addressed to Ariel Arriola.

On Anti-Dummy Law

It is well-settled that Section 2-A[9] of the Anti-Dummy Law prohibits foreigners from being appointed to management positions of corporation engaged in wholly or partially nationalized activities.[10]

As such, given the foregoing opinion and premises pertaining to the first two queries, Section 2-A of the Anti-Dummy Law is inapplicable to Goat Management. Thus, the election and appointment of foreign nationals as part of its Board of Directors and as officers, respectively, are allowed.

It shall be understood 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 similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[11]

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[9]Section 2-A.— Any person, corporation, or association which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by a the Constitution or the laws of the Philippines; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; or in any manner permits or allows any person, not possessing the qualifications required by the Constitution, or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists or abets in the planning consummation or perpetration of any of the acts herein above enumerated shall be punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, That the president, managers or persons in charge of corporations, associations or partnerships violating the provisions of this section shall be criminally liable in lieu thereof: Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege, and the property or business enjoyed or acquired in violation of the provisions of this Act: And provided, finally, That the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities.

[10] SEC-OGC Opinion No. 16-28 dated 23 November 2016 addressed to Mr. Nicanor Evangelista.

[11] SEC Memorandum Circular No.15, Series of 2003