Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

05 June 2017

**SEC-OGC Opinion No. 18-11**
RE: Effect of Merger On An Existing License as ROHQ.

**PICAZO BUYCO TAN FIDER & SANTOS LAW OFFICES**
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Attention: **ATTY. MA. ADELINA S. GATDULA**
**ATTY. KRISTA JOYCE C. CARO-GANGAN**

**Attorneys:**

This refers to your letter dated 17 March 2017, requesting an opinion on the effects of a planned merger on the SEC registration of the Regional Operating Headquarters (ROHQ) of Langdon & Seah Asia Company Limited (LSACL).

You mentioned in your letter that LSACL is a company organized under Hong Kong laws and licensed by this Commission to do business in the Philippines as ROHQ under the name of "Langdon & Seah Regional Operating Headquarters". You further mentioned that LSACL is contemplating a merger with its affiliate, Arcadis Asia Limited (AAL), a company also organized under Hong Kong laws. Under the proposed merger, AAL will be the surviving corporation while LSACL will be the absorbed corporation. All of the businesses, assets and liabilities of LSACL will be transferred to AAL as a result of the merger.

Hence, you ask confirmation that "Langdon & Seah Regional Operating Headquarters" may continue to do business in the Philippines as the ROHQ of AAL, subject to an amendment of its Certificate of Registration to reflect the change in the name of the registered foreign entity to AAL and a corresponding change in the name of the ROHQ.

A ROHQ is a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia Pacific Region and in other foreign markets. [1]

ROHQs is governed by the Omnibus Investment Code of 1987 ("Omnibus Code"). However, the Omnibus Code does not provide for the terms, conditions and requirements on the

[1] Section 2, No.3, Republic Act 8756. "An Act Providing for the Tenns, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the purpose certain Provision of Executive Order No. 226, Otherwise known as The Omnibus Investment Code of 1987."

merger of a ROHQ and a foreign corporation in which the ROHQ is the absorbed corporation. Section 4 of the Corporation Code ("Code") provides:

> **"Sec. 4.** ***Corporations created by special laws or charters.*** - Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, **supplemented by the provisions of this Code, insofar as they are applicable."**

Since the Omnibus Investment Code has no provision to govern the merger of a ROHQ and a foreign corporation, Section 132 of the Code is deemed applicable.

Thus, a merger involving foreign corporations licensed to do business in the Philippines is governed by Section 132 of the Code, to wit:

> "Section 132. Merger or consolidation involving a foreign corporation licensed in the Philippines. - xxxx
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> Whenever a foreign corporation authorized to transact business in the Philippines shall be a party to a merger or consolidation in its home country or state as permitted by the law of its incorporation, such foreign corporation shall, within sixty (60) days after such merger or consolidation becomes effective, **file with the Securities and Exchange Commission, and in proper cases with the appropriate government agency, a copy of the articles of merger or consolidation duly authenticated by the proper official or officials of the country or state under the laws of which such merger or consolidation was effected: Provided, however, that if the absorbed corporation is the foreign corporation doing business in the Philippines, the latter shall at the same time file a petition for withdrawal of its license in accordance with this Title."**

In a previous Opinion[2] on merger of two foreign corporations, the Commission held that:

> "xxxx. CCMGI and ERMI are both foreign corporations; xxxx. Inasmuch as CCMGI is the surviving corporation, ERMI which is the **absorbed corporation is in effect, dissolved because of the merger**. Paragraph two, Section 132 of the Code reproduced above applies to the merger of CCMGI and ERMI.
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> 'The section covers the merger of a licensed foreign corporation with another corporation in its home country which is not doing business in the Philippines. xxxxxx if the licensed foreign corporation is absorbed by the merger, it must ask for withdrawal of its license to do business in the Philippines. Should the foreign absorbing corporation wish to continue the business of the absorbed corporation in the Philippines, it will have to file its own application for a license to do so in accordance with the provisions of the Philippine law.'
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> As prescribed by paragraph two, Section 132 of the Code, ERMI shall file with the Commission within sixty (60) days after such merger becomes effective, a copy of the articles of merger duly authenticated by the proper official or officials of the country or state under the laws of which merger was effected. **Inasmuch as the absorbed corporation, ERMI, is the foreign corporation doing business in the Philippines, it shall at the same time file a petition for withdrawal of its license in accordance with Title XV on Foreign Corporations of the Code.**
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> If the surviving foreign corporation CCMGI, will continue the business of the absorbed corporation in the Philippines, it must file its own application for a license to do business in the Philippines in compliance with Sections 123, 124, 126 and 128 of the Code. In complying with the said license, CCMGI must comply with all the requirements prescribed by the Company Registration and Monitoring Department of the Commission (CRMD)."

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[2] SEC Opinion No. 12-14 dated 28 August 2012 addressed to Du-Baladad and Associates

Thus, Section 132 applies to the circumstances presented. The proposed merger between LSACL and AAL is, between a foreign corporation doing business in the Philippines as a ROHQ and an existing foreign corporation, respectively, both organized under Hong Kong laws. LSACL, which is licensed to do business in the Philippines as a ROHQ, shall file with the Commission within sixty (60) days after the merger becomes effective, a copy of the articles of merger duly authenticated by the proper official or officials of the country or state under the laws where the merger was effected.

Considering that LSACL will be the absorbed corporation, it is, in effect, dissolved because of the merger. Hence, it shall file a petition for withdrawal of its license in accordance with Section 136[3] of the Code, and submit documents required by the Commission to legally effect the withdrawal of a foreign corporation's license to transact business in the Philippines.

If AAL will continue the business of LSACL in the Philippines, it must file its own application as stated in the abovementioned opinion for a license to do business in the Philippines in compliance with Sections 123, 124, 126 and 128 of the Code. It must also comply with all the requirements prescribed by the Company Registration and Monitoring Department of the Commission (CRMD).

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

Please be guided accordingly.

Very truly yours,

**CAMILO S. CORREA**
General Counsel

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[3] Sec. 136. *Withdrawal of foreign corporations.* - Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the Securities and Exchange Commission unless all the following requirements are met;

1. All claims which have accrued in the Philippines have been paid, compromised or settled;
2. All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions have been paid; and
3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines.

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