Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 September 2019

SEC-OGC Opinion No. 19-35
Re: E-Commerce mode of Retail Trade

ATTY. ROMEO LL. ALCANTARA
4th Floor, Oppen Building
349 Senator Gil Puyat Avenue
Makati City

Atty. Alcantara:

This refers to your letter dated 06 November 2018 requesting for an opinion on whether Rustan Commercial Corporation (Rustan's) needs to further amend its Amended Articles of Incorporation to include Electronic Commerce (E-Commerce) as part of its purposes as a retail business.

In your letter, you represented that new technologies and marketing strategies brought about by E-Commerce have so much affected the retail industry worldwide. While its Amended Articles of Incorporation does not mention E-Commerce as among its authorized purposes, Rustan's is among the retail establishments affected by the new-age of marketing and selling of goods, merchandise, and services. In view of the foregoing, Rustan's launched its E-Commerce program and is now in the process of updating its systems and process. Hence, your query.

We answer your query in the negative.

Based on its Amended Articles of Incorporation, Rustan's is engaged in retail trade[1]. Section 3 of the Retail Trade Liberalization Act (RTLA)[2] defines retail trade as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption."

Based on the above definition, the law, for purposes of regulation, does not distinguish between retail trade carried on through physical stores and through online channels. Thus, as long as a corporation is authorized to engage in retail trade, it may do so by any means or mode available. At most, Rustan's act of selling online through the use of E-Commerce is just a new mode of delivering its retail services, and could be more appropriately considered as necessary or incidental to the power of a corporation to engage in retail trade, pursuant to a previous opinion of the Commission, to wit:

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[1] *Primary Purpose: "To carry on a general mercantile and commercial business of importing, buying, acquiring, holding, selling or otherwise disposing of and dealing in any goods, wares, merchandise and commodities of all kinds, and products, natural or artificial, of the Philippines or other countries, which are or may become articles of commerce."* (Attached to the Letter)

[2] Republic Act No. 8762

> "It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. **But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in such business** (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p.54). As a matter of fact, it is even legal to "stretch" the meaning of the purpose clause to cover new and unexpected situations.
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> There will always be instances when doubts may arise as to whether an act may be reasonably implied from the purposes of the corporation. These doubts will sometime be due to poor draftsmanship or lack of foresight on the part of the original incorporators or their legal counsel or, as is oftentimes the case, situations or circumstances may come up which could not have been foreseen at the time of the incorporation. **Many times the purpose clause can be reasonably 'stretched' as to impliedly cover these new and unexpected situations.** But in those cases where it cannot, a proper amendment thereof would be necessary (Campos and Lopez Campos, Notes and Selected Cases on Corporation Law, p.247)."[3]

Thus, does not need to amend its Amended Articles of Incorporation to include E-Commerce as part of its purposes as a retail business.

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. 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.[4] 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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[3] SEC Opinion dated 24 March 1982 addressed to Mr. Amado J. Lansang, Jr.
[4] SEC Memorandum Circular 2003-15, No.7