Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

5 December 2019

SEC-OGC Opinion No. 19 - 61
Re: Retail Trade Law

JONATHAN CHEN
KYMCO Philippines, Inc.
Sta. Maria Industrial Estate
Mañalac Avenue, Cor. Sta. Maria Drive
Bagumbayan, Taguig City

Dear Mr. Chen:

This refers to your letter dated 4 October 2019 seeking confirmation from the Commission that the activities of KYMCO Philippines Inc. (KPI) fall outside the coverage of ***Republic Act No. 8762, otherwise known as the "Retail Trade Liberalization Act of 2000 (Retail Trade Law)"***.

In your letter, you mentioned that KPI maintains and operates three (3) service centers providing regular maintenance and / or repair services on motorbikes. You also mentioned that KPI plans to sell: 1) spare parts and other materials reasonably necessary for the performance of the repair services, which will be sold only when needed to fully perform the required services; 2) motorbikes to the general public by setting up a single sales outlet at the existing service center located in its principal office, where said vehicles are assembled; 3) motorbikes to the Government and its agencies; 4) motorbikes in wholesale to industrial / entity users (fleet sales) that use motorbikes for their own services; and 5) motorbikes to its qualified employees at better price and terms not offered to the general public.

Thus, your query.

Section 3 of the Retail Trade Law defines "retail trade" as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.

Thus, for transactions to be considered as retail trade, the following must be present: ***1) The seller should be habitually engaged in selling; 2) The sale must be direct to the general public; and 3) The object of the sale is limited to merchandise, commodities, or goods for consumption.***

In order to properly answer your query, we will identify each activity and determine if it falls within the definition of retail trade or as an exception provided in the law or its implementing rules and regulations (IRR).

1) On the ***sale of spare parts and other materials necessary for the performance of repair service,*** the Commission had previously opined that:

> "xxx [A] firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. It may supply these materials for the convenience of the client or when the materials required are produced exclusively by the same firm. Of course, the client has to pay for the cost of these materials separately from the cost of the service. In the same vein, the activity of repair of motorcycle units may involve replacement of parts, which necessarily must be paid for by the owner of the motorcycle unit being repaired. Although this is a sale, *the same is incidental to the repair* and is not being pursued as an independent business. Thus, the *same is not considered retail trade.* (Emphasis supplied.)"[1]

Applying the foregoing, the sale of spare parts is only incidental to the maintenance or repair of motorbikes. Thus, it does not fall within the concept of retail trade.

2) As to the ***sale of motorbikes to the general public by setting up a single sales outlet at the existing service center located in its principal office,*** the sale is not considered as retail trade.

Section 3 (d) of the Retail Trade Law and Section 2 (d) of its IRR provide 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, are not considered as retail trade.

Here, since no sale will be made in any location or service center other than the principal office, where the motorbikes are assembled, the sale in this single outlet is not within the purview of the retail trade law.[2]

3) About the ***sale of motorbikes to the Government and its agencies,*** the Commission had previously opined that: " [a]s to the sale by KMPC to the government, Section 2 (f) of the IRR provides that *sales to the government and / or its agencies and government – owned and controlled corporations are likewise not considered retail transactions."*[3]

Thus, KPI's sale of motorbikes to the Government and its agencies is likewise not considered as retail trade.

4) As to the ***wholesale to industrial / entity users (fleet sales) that further use***

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[1] SEC – OGC Opinion No. 14- 08 dated 19 May 2014 addressed to Aranas Law Office.
[2] SEC – OGC Opinion No. 16 – 03 dated 15 February 2016 addressed to Platon Martinez Flores San Pedro & Leaño Law Offices.
[3] Ibid.

motorbikes for their own services, "[w]holesaling has been defined as *selling to retailers or jobbers rather than to consumers or a sale in large quantity to one who intends to resell.* (emphasis supplied)."[4]

Furthermore, Section 2(e) of the IRR provides that: "[s]ales 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", are not retail.

Based on the foregoing, such sale is not considered as retail trade because it involves producer goods, not consumer goods for household purposes.

5) On the ***sale to qualified employees,*** the same is not considered as retail trade since the motorbikes are not sold to readily available general public, but only to KPI's qualified employees.[5]

It shall be understood, however, that the above-stated 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 of 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.[6]

Please be guided accordingly.

Very truly yours,

ROMUALD C. PADILLA
OIC - General Counsel

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[4] SEC OGC – Opinion No. 13 – 07 dated 30 July 2013 addressed to Atty. Rosario S. Bernaldo.
[5] SEC OGC Opinion No. 16 – 03 dated 15 February 2016 addressed to Platon Martinez Flores San Pedro & Leaño Law Offices.
[6] SEC Memorandum Circular No. 15, Series of 2003.