Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-03
Re: Exempt Securities under Subsection 9.1(b) of the Securities Regulation Code

26 March 2024

Hongkong and Shanghai Banking Corporation Philippines
HSBC Centre, 3058 5th Avenue West
Bonifacio Global City, Taguig City 1634
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Attention : **Mr. Maroy Garcia**
AVP Regulatory Affairs
maroy.garcia@hsbc.com.ph

Dear Sir:

This refers to your letter[1] requesting, on behalf of Hongkong and Shanghai Banking Corporation ("HSBC") Philippines, for an opinion on exempt securities under Subsection 9.1(b) of Republic Act No. 8799, otherwise known as the "Securities Regulation Code ("SRC")."

You stated that there are two (2) requirements under Subsection 9.1(b) of the SRC in order for foreign bonds to be accessed even by non-qualified buyers without prior registration, *i.e. diplomatic relations and on the basis of reciprocity.*

Your query is, whether a determination that Philippine government-issued or guaranteed bonds are traded in the main exchange/s of another country already meets the reciprocity principle under the SRC.

As a general rule, Subsection 8.1 of the SRC mandates the registration of securities, thus:

> Section 8. *Requirement of Registration of Securities.*– 8.1. *Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission.* Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.
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> xxx xxx xxx[2]

Nevertheless, Subsection 9.1 of the SRC enumerates the classes of securities that are exempt from the abovementioned requirement of registration, *viz:*

> Section 9. *Exempt Securities.* – 9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:
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> (a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.
>
> ***(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: Provided, That the Commission may require compliance with the form and content for disclosures the Commission may prescribe.***
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> (c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory

[1] Received by this Office on 29 January 2024.
[2] Italics supplied.

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body.

(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Rule Regulatory Board, or the Bureau of Internal Revenue.

(e) Any security issued by a bank except its own shares of stock.[3]

Prescinding from the foregoing, there are two (2) types of foreign government security issuances that are considered as exempt securities under Subsection 9.1(b) of SRC, to *wit:*

(1) Securities issued or guaranteed by the government of any country which has ***diplomatic relations*** with the Philippines; or
(2) Securities issued or guaranteed by any state, province or political subdivision of the foreign country which are exempt ***on the basis of reciprocity.***

Thus, we answer your query in the *negative.*

If a party seeks to avail of the exemption on the basis of reciprocity, ***in addition to the proof that there are Philippine government-issued or guaranteed bonds traded in the main exchange/s of another country, that party should also provide competent evidence, such as laws, statutes, rules and regulations, that the Philippine government-issued or guaranteed securities are exempt from registration with the foreign country.***

To provide such competent evidence of said exemption, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Evidence ("RRE") which read as follows:

> Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19,[4] when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
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> If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof,[5] the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.
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> For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his [or her] office.
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> A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)
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> Section 25. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court. (25a)

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[3] Emphasis and italics supplied.

[4] Section 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private. Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
xxx xxx xxx

[5] Section 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private. Public documents are:
xxx xxx xxx
(c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country sources; and
xxx xxx xxx

The rationale behind the foregoing is that Philippine courts do not take judicial notice of foreign laws. As such, it must be proven as facts under our rules on evidence. The Supreme Court's ruling in *EDI-Staffbuilders International Inc. v. National Labor Relations Commission*[6] illuminates:

> In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. ***The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law.*** He is presumed to know only domestic or forum law.[7]

In *Board of Medicine et. al. v. Yasuyuki Ota*,[8] the Supreme Court found that the respondent therein satisfactorily complied and established the existence of reciprocity between Japan and Philippines in admitting foreigners into the practice of medicine. Respondent therein submitted a duly notarized English translation of the Medical Practitioners Law of Japan duly authenticated by the Consul General of the Philippine Embassy to Japan, Jesus I. Yabes; thus, he was allowed to take the Medical Board Examinations in August 1992, which he subsequently passed.

Applying the foregoing and for ease of reference, please see below the abridged outline of the process for establishing reciprocity:

1. ***Official Publication or Certified True Copy.*** The record of public documents under paragraph (a) of Section 19, Rule 132 of the RRE may be evidenced by either: (a) an official publication thereof; or (b) by a copy *attested* by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a *certificate* that such officer has the custody.

2. ***Apostille Convention.*** The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, otherwise known as the "Apostille Convention," was concluded on 05 October 1961 and entered into force on 21 January 1965. On 14 May 2019, the Philippines became a party to the Apostille Convention. Accordingly, please refer to the following process, as applicable:

    a. ***Apostille:***[9] ***If both the country where the public document***[10] ***was issued and the country where the public document is to be used are Parties to the Apostille Convention***, a foreign public document will only need to be Apostillized[11] by the designated Competent Authority in the country of origin in order to be recognized and used in the Philippines and *vice-versa*, save for some exceptions as will be discussed hereunder. Legalisation[12] by the Philippine Embassy or Consulate (as the receiving country) located in that country is *no longer needed.*

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[6] G.R. No. 145587, October 26, 2007.
[7] Emphasis and italics supplied.
[8] G.R. No. 166097, July 14, 2008.
[9] *See* https://dfa-oca.ph/quick-facts-on-apostille/ - last accessed on 11 March 2024 at 8:39 a.m.
[10] For the purposes of the present Convention, the following are deemed to be public documents:
a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");
b) administrative documents;
c) notarial acts;
d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:
a) to documents executed by diplomatic or consular agents;
b) to administrative documents dealing directly with commercial or customs operations. (Article 1, Apostille Convention)

The term "public document" extends to all documents other than those issued by persons in their private capacity. Therefore, any document executed by an authority or person in an official capacity (*i.e.*, acting in the capacity of an officer authorised to execute the document) is a public document. (*See* Apostille Handbook No. 103)
[11] An Apostille is the Certificate issued under Article 3(1) of the Convention to certify the authenticity of the origin of a public document.
[12] Legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. (Article 2, Apostille Convention)

b. ***Authentication and Legalisation:***[13] ***If the public document originates from a foreign country which is not a contracting party to the Apostille Convention,*** the public document executed or issued overseas needs to be: (1) *authenticated* by the designated Competent Authority in the country of origin; and (b) *legalized* before the Philippine Embassy or Consular Office located in the document's country of origin, before the same can be recognized and used in the Philippines.

Further, kindly note that, even if the receiving country is a party to the Apostille Convention, the Apostille may not be recognized by the said receiving country if it raised an objection to the accession of the State of Origin of the public document and *vice versa* under Article 12 of the Apostille Convention.[14] In case of the Philippines, the countries that objected to its accession are: (a) Austria; (b) Finland; (c) Germany; and (d) Greece. Consequently, the public documents to and from such countries shall undergo authentication ***and*** legalization as discussed above.

3. ***Translation into English or Filipino.*** Documents written in an unofficial language shall likewise be *accompanied with a translation into English or Filipino*[15] by a registered/official translator.

Please take note that the foregoing shall constitute as general guidelines and shall be subject to relevant rules and regulations that the Commission may hereafter prescribe apropos to compliance with the reciprocity requirement as well as the form and content for disclosures for offerings subject of Subsection 9.1(b) of the SRC. Finally, the relevant and detailed processes related to notarization, apostille, authentication, and/or legalization, as well as the submission of the documents related thereto, should still be verified with the appropriate authority or office.

It shall be understood that the foregoing opinion is rendered on the basis solely of the facts, circumstances and documents disclosed/submitted, 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.[16] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Very truly yours,

Romuald C Padilla
General Counsel

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[13] *Supra* at 9.
[14] Article 12. Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph d) of Article 15. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands. The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.
[15] *See* Rule 132, Section 33 of the Revised Rules of Evidence.
[16] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.