Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

05 March 2026

SEC-OGC Opinion No. 26-05
Re: Allowable Activities of a Representative Office

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C & G LAW)
30/F 88 Corporate Center, Sedeño corner Valero Street
Salcedo Village, Makati City 1227 Philippines
cglaw@cagatlaw.com

Attention: **Atty. Albert Vincent Y. Yu Chang**
Partner

Atty. Jose Rafael C. Mendoza
Associate

Dear Sirs:

This refers to your Letter[1] and subsequent Clarificatory Letters[2] (collectively referred herein as "Letters") requesting for an opinion confirming that it is within the permissible activities of K Marine Ship Management Pte. Ltd. (Manila Representative Office) ["MRO"] to engage the services of an independent contractor ("IC"), pursuant to a contract of its principal/head office, K Marine Ship Management Pte. Ltd-Singapore ("KMSM"), and KMSM's client, Kawasaki Kisen Kaisha, Ltd. ("KKK"), a company organized under the laws of Japan.

As stated in your Letters, the relevant facts are as follows:

1.0 KMSM is a corporation registered in Singapore and engaged in the business of providing ship management and other services to tankers and vessels.

2.0 Under its License to Transact Business, the MRO that was established by KMSM has the following purpose: "**[t]o disseminate information and conduct promotional activities about the product of its head office (KMSM).**"

Service Agreement ("SA") between KMSM and KKK.

3.0 KMSM entered into an SA with KKK to provide various services to the latter, which include:

3.1 Recruitment and training to Filipino seafarers for future Liquified Natural Gas ("LNG") projects.

[1] Dated 03 April 2024.
[2] Dated 10 May 2024 and 20 August 2024.

3.2 Effective Crew Rotation Plan of Filipino LNG seafarers for required Matrix construction.

3.3 Conduct pre-boarding/post briefings for Filipino LNG seafarers to maintain safe marine operation.

3.4 Conduct necessary interviews and assessments for new hires.

3.5 Any other matters relating to the Filipino LNG seafarer.

4.0 The foregoing activities are not performed by the MRO but by its principal, KMSM, through other entities, or when possible, through its own entity. For example, the recruitment and training of Filipino seafarers is performed by KMSM's Manning Agency in the Philippines which exclusively serves KKK.

5.0 KMSM will bill KKK for services rendered by the former to the latter, and out-of-pocket costs, which will include the compensation that will be paid by the MRO to the IC, plus a 5% mark-up on the amount to be paid to the IC as compensation for his services.

Independent Contractor Agreement ("ICA") between KMSM, through the MRO, and IC.

6.0 In performing its obligations to KKK under the SA, KMSM, through the MRO, will engage the services of an IC. This engagement will be covered by an ICA, whereby the IC will provide the following services: (i) supervision of a Manning Agent that represents KKK in the Philippines; and (ii) support services in relation to the recruitment and training of the workforce hired by KKK, through the Manning Agent ("Proposed Services").

The Manning Agent must be duly accredited by the Philippine Overseas Employment Agency (*now*, Department of Migrant Workers) that serves the needs of KKK's fleet of LNG vessels.

In providing the Proposed Services, the IC will have dealings with the Manning Agent, as agent for KKK.

The ICA includes the following provisions:

6.1 **Role to be Performed by the IC.** The services that the IC will provide to KMSM shall consist of providing services in support of recruitment and training provided to KMSM by any third-party providers, including, but not limited to:

6.1.1 Reviewing, monitoring, coordinating, and advising on the implementation of a daily and long-term crew rotation plan;

6.1.2 Reviewing, monitoring, coordinating, and advising on the implementation of the "Cadet Program for Filipino Officers;"

6.1.3 Reviewing, monitoring, and advising on the implementation of the training conditions and assessment of training course for operational and management level officers;

6.1.4 Advising the COMPANY [KMSKM] on the Filipino seafarer's viewpoint in the development and implementation of the COMPANY's [KMSM's] Competence Management System & Crewing module on KONeCT system;

6.1.5 Attendance in meeting, whether internal or external, as may be necessary in the performance of the Service;

6.1.6 Research and reporting to the COMPANY [KMSM] on wages and conditions of other company including POEA announcement in the Philippines, etc.;

6.1.7 Visitation of vessels of the COMPANY's [KMSM's] fleet in the Far East to assess and advising the COMPANY [KMSM] on the working condition of officers and crew and vessels compliance to MLC 2006 convention;

6.1.8 Supervising the conduct of seminars in Manila and acting as facilitator in those events;

6.1.9 All other similar, related or incidental services that may be required by the COMPANY [KMSM].

6.2 **KMSM's Role Relative to the Hiring and Supervision of the IC.** The relevant ICA provisions on the matter read:

6.2.1 Article 3(1): xxx In performing the Services, CONTRACTOR must be guided by policies (as modified from time to time) of the COMPANY [KMSM] that will apply to the Services upon notice by the COMPANY [KMSM] to CONTRACTOR.

6.2.2 Article 3(3): CONTRACTOR shall comply with the COMPANY's [KMSM's] policies, rules and procedures as they may be established, stated and/or modified from time to time.

KMSM also performs the following:

6.2.3 KMSM shall have the final decision in hiring the IC and shall provide the necessary instructions to the MRO.

6.2.4 KMSM formulates all policies and procedures that the IC must follow.

6.2.5 Under the ICA, the authority to make decisions resides solely with KMSM, and the MRO is "tasked only with implementing those decisions."

Specifics of the Capacity and Extent of Participation of the MRO in the Hiring or Supervision of the IC and in the Implementation of the SA and the ICA.

7.0 As culled from the Letters:

7.1 The MRO shall "engage the services of an IC."

7.2 The MRO's role is "limited to the practical aspects of hiring of the IC, such as providing facilities, tool, and equipment so the IC may perform the Proposed Services."

7.3 The MRO's role "in the implementation of the SA and ICA is limited to complying with the instructions of KMSM and performing the practical aspects of the services as set out in the ICA and SA."

7.4 "The MRO is limited to executing instructions of KMSM in relation to the services provided by the IC and the Manning Agent."

7.5 "The compensation of the IC will be paid by the MRO to the IC."

7.6 The MRO will or intends to, on behalf of KMSM:

7.6.1 Provide to the IC information relating to KMSM and the services provided thereby to KKK, and KKK's requirements;

7.6.2 Coordinate the activities of KMSM, the IC, and the Manning Agent; and

7.6.3 Report to KMSM the activities, challenges encountered by and accomplishments of the IC and the Manning Agent.

Hence, this request for an Opinion.

I. Nature of a Representative Office.

Section 1(q), Rule I of the Implementing Rules and Regulations ("IRR") of Republic Act No. 7042 or the Foreign Investments Act ("FIA") ("FIA-IRR"), as amended,[3] defines a representative or liaison office as one that deals directly with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities, such as, but not limited to, information dissemination and promotion of the company's products as well as quality control of product.

In *Commissioner of Internal Revenue v. Shinko Electric Industries Co. Ltd.*,[4] the Supreme Court provided an enumeration of a representative office's characteristics, to wit:

a. It is fully subsidized by its head office;
b. **It deals directly with the clients of its parent company**;
c. It undertakes activities such as but not **limited to information dissemination, promotion of the parent company's products as well as quality control of products**; and
d. **It does not derive income in the Philippines**.[5]

II. Analysis of the MRO.

We answer your query in the ***negative*** and provide our discussion below.

A. The MRO's activities are not permitted under the law and its license.

In the *Shinko Case,* the Supreme Court ruled as follows:

> As discussed, a representative office is **only allowed** under the law to undertake activities such as but not limited to **information dissemination, promotion of the parent company's products as well as quality control of products.**
>
> xxx xxx xxx
>
> Second, Shinko **deals directly with the clients of its head office as it undertakes activities limited to information dissemination, promotion of the parent company's products, including the conduct of quality control.** Records show that all inquiries from Philippine clients are routed to its Japan head office, which, in turn, makes the final decisions. As a representative office, Shinko promotes and provides information about the products offered by its Japan head office, **but it does not enter into contracts on its own. Instead, such contracts are referred to its parent company, which then enters into a contract with the clients within the Philippines.** Japan parent company is responsible for all negotiations regarding the price, payment terms, and delivery of the product. In fine, **Shinko's role is limited to introducing the parent company's products to clients in the Philippines.** Nothing more. Nothing less.[6]

In evaluating whether activities conducted by a representative office are permissible, this Office has applied the statutory construction principle of *ejusdem generis.* Under the principle of *ejusdem generis,* "where a general word or phrase follows the former, the general word or phrase is to be construed to include or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class those specially mentioned."[7] Thus, this Office has opined that, "**any permissible act of a representative office should be akin to or resemble the same kind or class as those of information dissemination and promotion of the company's products, or any passive act that does not involve the earning of any income.**"[8]

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[3] Implementing Rules and Regulations of Republic Act No. No. 11647 or An Act Promoting Investments, Amending thereby Republic Act No. 7042, otherwise known as the "Foreign Investment Act of 1991", As Amended, and for Other Purposes. 11 July 2022.
[4] G.R. No. 226287, 06 July 2021. Hereafter, the "*Shinko Case.*"
[5] Emphasis and underscoring supplied.
[6] Emphasis and underscoring supplied.
[7] *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, G.R. No. 186155, 17 January 2023.
[8] SEC-OGC Opinion No. 15-06 dated 21 July 2015, addressed to Fortun, Narvasa & Salazar.

In relation to the foregoing, the Commission previously opined:[9]

> In its application for the establishment of a Representative Office it is explicitly required to state therein the specific 'purpose or purposes' of the corporation which it intends to pursue in the transaction of its business in the Philippines. In your application and license, it is clearly stated therein that Makino Asia (Phils.) 'proposes to establish a representative office in the Philippines to act as a liaison office for advertisement of its products.
>
> XXX XXX XXX
>
> Thus, your query is answered in negative. The functions **of a foreign corporation are limited to what is stated in its license** and specifically, a Representative Office cannot generate income and carry out the business activities (which may include installation and warranty servicing of machines) of the head office from within the Philippines.[10]

Based on the foregoing, a representative office's scope of functions and activities is **limited and restricted** only to what is specified and allowed in its license as issued by the Commission. While the law permits the performance of the activities therein enumerated, the **MRO's license** may nonetheless further limit and restrict its performance **to only some of the activities** allowed by such law.

Applying the principle of *ejusdem generis* in the case of the MRO, its activities should be construed to include or to be restricted to the activities akin to or resembling, or of the same kind or class to those of, information dissemination and conduct of promotional activities of the products of KMSM.

We reiterate that per the MRO's license, its purpose is "to disseminate information and conduct promotional activities about the product of its head office." Glaringly, this license does not include quality control, which is the characterization you made of the MRO's activities.[11] This alone already establishes that the MRO's activities are not permissible under its license.

Further, the MRO's activities, as will be elaborated elsewhere in this Letter Opinion, are already in **active execution** of KMSM's business, in furtherance of its SA with KKK. Consequently, by no stretch of the imagination can these activities be considered as "ensuring the quality of products and services of KMSM" or akin to "information dissemination and conduct of promotional activities."

When the MRO enters into the ICA with the IC and implements the same, these acts are not passive nor merely in support of KMSM's operations; rather, they indicate a deliberate and **active** exercise of authority and discretion acting as an active agent of or proxy for KMSM in the Philippines. More, these constitute business acts, forming part and parcel, and the very essence, of the commercial transaction between KMSM and KKK done within the usual course of KMSM's business and operations.

Relatedly, the signature portion of the ICA visibly indicates that the signatories will be the MRO and the IC. To reiterate for emphasis' sake, in the *Shinko Case*, the Supreme Court ruled that being a representative office, **it cannot enter into a contract on its own**, noting that therein subject representative office merely refers such contracts to its parent company, which then enters into a contract with the clients.

The foregoing stems from fact that under Philippine law, a representative office is **strictly limited in both its purpose and authority**, as it is merely an extension of a foreign corporation and does not have a legal personality separate from its parent company.

Aside from signing and executing the ICA, the MRO's active participation in implementing the SA, and thus, in carrying out the business of KMSM in the Philippines, is exemplified by the powers and authority exercised by it at multiple levels, *viz:*

i. Power to Choose the IC.

As represented, "KMSM shall have the **final decision** in hiring the IC and shall provide the necessary instructions to the MRO."

It can be logically deduced that the MRO wields the essential power to ***initially*** choose and select

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[9] *Supra*. Note 8.

[10] Emphasis supplied. Citations omitted.

[11] As represented, the MRO's activities "are intended to ensure the quality of the products and services that KMSM provides or will provide to its client, particularly, KKK."

the IC. While KMSM has the final say as who to hire, the MRO has the authority to evaluate the qualifications, capabilities, and credentials of an IC applicant that it sees fit for the job. Necessarily, the MRO makes its recommendation to KMSM by conceivably providing it with a shortlist of potential IC candidates for the latter to finally deliberate who to hire. This is indicative of the MRO's strategic and operational judgment and discretion.

ii. Power to Engage the Services of the IC.

As represented, the MRO shall "engage the services of an IC."

By engaging the services of an IC through the execution of the ICA, the MRO effectively implements the SA in the Philippines, as elaborated elsewhere in this Letter Opinion. Consequently, this transforms the MRO's supposed "passive acts" into an "operational, contractual, and/or commercial activity.

iii. Power to Implement KMSM's Decisions.

The word "implement" is defined "the act of fulfilling or performing: as, in implement of a contract. Whatever may supply a want; especially, an instrument, tool, or utensil; and instrumental appliance or means."[12]

By implementing KMSM's decisions, the MRO effectively and actively participates in KMSM's commercial operations, reinforcing the contravention of the MRO's authority as limited by its license.

Certainly, alongside implementing KMSM's decisions, the MRO exercises supervisory discretion and authority over the IC's performance. This inevitably includes monitoring progress, and reviewing performance and deviations. Accordingly, the MRO exercises active management rather than passive cascading of information or instruction.

iv. Power to Pay the Services of the IC.

The Commission has previously opined that a representative office **cannot receive payments** in behalf of its parent company considering that it is not one of nor akin to the allowable activities under the FIA-IRR.[13]

Accordingly, if a representative office is not permitted to receive payments, it follows, *a fortiori*, that it cannot give payments.

B. The MRO is engaged in an income generating activity.

The Commission espoused that a representative office should not derive income from its activities in the Philippines, thus:

> Based on the foregoing, the allowed activities of a Representative Office are those aligned with information dissemination, promotion and quality control of the company's products. ***In other words, a Representative Office may only engage in activities which support the business activities of the parent company. In addition, it is imperative that a Representative Office does not derive income from activities performed in the Philippines.*** All the expenses to establish and maintain the Representative Office will therefore come from the parent company's remittances.[14]

By its very essence, entering into a business contract is a core commercial corporate act. It is one of the predominant means by which a corporation carries its purpose and derives economic benefits. Considering that: (a) the ICA is made and entered between KMSM, through the MRO, and the IC; and (b) the MRO exercises various powers as discussed in Item A hereof, the MRO effectively implements the SA and carries out KMSM's business in the Philippines. Collectively, these acts are intrinsically commercial and/or economic in nature and income-oriented—thereby, exceeding the MRO's permitted scope.

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[12] *La Central de la Carlota v. Coscolluela*, G.R. No. 19766, 20 February 1923.
[13] SEC-OGC Opinion No. 23-05 dated 15 March 2023, addressed to CTI Engineering International Co., Ltd.
[14] SEC-OGC Opinion No. 16-20 dated 25 August 2016, addressed to Atty. Gilbert Mario A. De La Cruz. Emphasis and italics supplied.

C. The MRO does <u>not</u> deal directly with the clients of its parent company.

The ICA envisions the following **multifarious relationships** amongst the concerned parties:

1. The ICA is made and entered between KMSM, through the MRO, and the IC.

2. The **IC** will: (a) supervise a Manning Agent that represents KKK in the Philippines; and (b) provide support services in relation to the recruitment and training of the workforce hired by KKK, through the Manning Agent.

   In short, the IC will have dealings with the **Manning Agent.**

3. **KMSM** shall: (a) have the final decision in hiring the IC and shall provide the necessary instructions to the MRO; and (b) formulate all policies and procedures which the IC must follow.

4. The **MRO** shall comply with KMSM's instructions and perform the practical aspects of the services as set out in the ICA and SA.

As can be gleaned from the execution of the ICA, the MRO does **<u>not</u>** directly deal with KKK, the client of KMSM. Instead, there are several parties involved and intercede with the MRO's dealings.

The foregoing is bolstered by the fact that KKK itself does not even directly play any role in the circumstances described. In this case, the MRO deals directly with the IC who, in turn, shall have direct dealings with the Manning Agent. **To stress, the IC and the MRO are the main parties and signatories to the ICA.** Taken together, these circumstances clearly and unequivocally **negate any direct connection linking the MRO with KKK.**

III. Conclusion.

Having sufficiently established that the MRO's activities are not merely "[dissemination of] information and conduct [of] promotional activities about the product of its head office" nor passive acts in support of KMSM, it goes to follow that the same are not allowed under the law.

It shall be understood that the foregoing opinion is rendered based solely on 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 or upon the courts whether of similar or dissimilar circumstances.[15] 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.

Very truly yours,

Romuald C Padilla
General Counsel

[15] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.