Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

02 July 2024

SEC OGC Opinion No. 24-19
Re: **Wholly or Partly Nationalized Activity; Anti-Dummy Law**

SIGUION REYNA MONTECILLO & ONGSIAKO
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Attention: **Atty. Antonio C. Pido**
Atty. Edgardo Roman Manuel C. Balois

Gentlemen:

This is in response to your letters[1] requesting an opinion on whether ABM Global Solutions, Inc. ("AGS") is a corporation engaged in a wholly or partially nationalized business activity.

You stated in your letter that AGS is a corporation duly registered with the Commission since 8 August 2000. Based on its ownership structure, AGS is a wholly-owned subsidiary of ePLDT, Inc., which in turn, is a wholly-owned subsidiary of PLDT, Inc.

Per the Amended Articles of Incorporation attached to your letter, AGS's primary purpose is:

> "to engage in the business of consulting which includes but is not limited to providing application support services in relation to sourcing, procurement, spend management, contract management, implementation of IT based business solutions relating to finance, manufacturing, logistics, construction and engineering while also offering training and education services, and IT Business Application as a channel, reseller, implementation and support partner while also offering training and education services in relation to such function, to provide electronic catalogue purchasing facilities over the internet to buyers and suppliers for maintenance, repair, operations of products and services and standard office supplies and equipment; to provide online bidding services for negotiating typically large value and volume transactions over the internet and to provide such facilitating and ancillary services incidental to the business."

You believe that the stockholdings of AGS do not need to be wholly or partially Filipino-owned since its primary purpose and business of providing Information Technology (IT) solutions, training, and consulting services to its clients are not covered by any nationality requirement.

Hence, your query.

To determine whether AGS is engaged in a wholly or partially nationalized activity, the primary purpose of the corporation must be examined. As can be gleaned from the above-quoted purpose clause, AGS is engaged in the business of providing IT solutions, training, and consulting services to its clients. Specifically, the IT products and consulting services that AGS provides to its customers consist of the following: 1) IT Consulting and Implementation, 2) Enterprise Resource Planning Software, 3) Human

[1] Letters dated 4 March 2019 and 10 July 2019.

Capital Management Software, 4) Customer Relationship Management Software; and 5) Spend Management Software.[2]

The 12th Regular Foreign Investment Negative List[3] (12th FINL) provides a specific list of activities, businesses, and enterprise in which foreign ownership is limited by mandate of the Constitution and specified laws (List A)[4], and those in which foreign ownership is limited for reasons of security, defense, risk to health and morals and protection of small and medium scale enterprises (List B)[5].

Based on the enumeration under List A, the business of AGM is not among those listed. The next question is whether it is included in List B.

Sections 5 and 6 of List B limit foreign ownership up to forty percent (40%) in the following enterprises:

> "5. Micro and small domestic market enterprises with **paid in equity capital of less than the equivalent of US$200,000** (RA No. 7042, as amended by RA No. 11647).
>
> 6. Micro and small domestic market enterprises: (i) that involve advance technology as determined by the Department of Science and Technology (DOST); or (ii) are endorsed as startup or startup enablers by the lead host agencies, namely the Department of Trade and Industry, Department of Information and Communication Technology or DOST, pursuant to RA No. 11337, otherwise known as the "Innovative Startup Act"; or (iii) with a majority of their direct employees as Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), with **paid in equity capital of less than the equivalent of US$100,000** (RA No. 7042, as amended by RA No. 11647)."

A Domestic Market Enterprise (DME) is an enterprise that produces goods for sale, or renders services to the domestic market entirely or not exporting sixty (60) percent or more of its output.[6]

Accordingly, a foreign entity may own more than 40% of a DME only if the paid-in capital of the enterprise is at least US$200,000.00. However, this minimum paid-in capital is reduced to US$100,000.00 if the DME involves advanced technology, is endorsed as startup pursuant to the "Innovative Startup Act", or employs at least 15 Filipino employees.[7] Otherwise, if the minimum paid-in capital is not complied with, the corporation becomes partly-nationalized and now becomes covered by the Anti-Dummy Law.

Based from the above, we lack information on whether AGS serves the domestic market entirely, or does not export 60% or more of its output.

Assuming that AGS is a DME, if its minimum paid-in capital is equivalent to at least US$200,000[8], it may be 100% foreign-owned, provided it does not own land. However, if AGS's minimum paid-in capital is less than the equivalent of US$200,000[9], its foreign participation is limited to 40% and is now covered by the Anti-Dummy Law.

A perusal of the 2018 General Information Sheet (GIS) you submitted shows that the paid-up capital of AGS is Ninety Nine Million Nine Hundred Twenty One Thousand and Forty One Pesos (Php 99,921,041.00) as of 2018 which exceeds the US$200,000 threshold under the 12th FINL. Hence, should AGS be classified as a DME, the above restriction on foreign ownership would not apply to it.

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[2] As stated in your Letter dated 10 July 2019.
[3] Executive Order No. 175, 12th Foreign Negative List, dated 27 June 2022.
[4] *Ibid*, List A.
[5] *Ibid*, List B.
[6] Implementing Rules and Regulations of Republic Act No. 11647.
[7] Supra note 5.
[8] *or US$100,000 if: (i) it involves advance technology as determined by the Department of Science and Technology (DOST); or (ii) are endorsed as startup or startup enablers by the lead host agencies, namely the Department of Trade and Industry, Department of Information and Communication Technology or DOST, pursuant to RA No. 11337, otherwise known as the "Innovative Startup Act"; or (iii) with a majority of their direct employees as Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15).*
[9] Ibid.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[10] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly

Respectfully yours,

fr **ROMUALDO C. PADILLA**
General Counsel

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