



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 16-17

RE: Business of Leasing or Sub-leasing Advertising Spaces; Mass Media

11 July 2016

MR. DARMO N. CASTILLO

President and General Manager

HDI ADMIX, INC.

159 Ermin Garcia St.,

Brgy. E. Rodriguez St., Cubao

Quezon City 1109

Dear Mr. Castillo:

This refers to your letter dated 05 October 2015 requesting an opinion on whether HDI Admix, Inc.'s (HDI) business of leasing out or subleasing advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed, as embodied in the corporation's primary purpose, is covered by any foreign equity requirement under the 1987 Constitution, the Foreign Investment Act, and other relevant laws.

You further mentioned the primary purpose of HDI, to wit:

"To erect, construct, purchase, lease and acquire fences, billboards, sign boards, buildings or portions thereof, light emitting diode (LED) videoboards, road or highway gantries, waiting shed structures, lamppost banners, and other similar structures for lease or sublease as advertising and commercial spaces, whether as principal or as an agent; and to manufacture on its own or through contractors, cards, signs, posters, handbills, programs, banners and flags to be placed in and on railroad, cars, steam boats, cabs and any and all kinds of conveyances used for passengers or for any other purpose; and to display contents, information and ideas, for and on behalf of its clients through movable or changeable signs, cards, pictures, designs, mottoes, etc. operated by clock work, electricity or any other power or through any other devices and novelties; and to offer advertising and commercial spaces for lease through structures and devices located in depots, hotels, restaurants, airports, halls and other public places, and to do all other acts and things necessary and connected therewith in furtherance of its business as lessor of advertising spaces."

Hence, you seek confirmation of your following positions:

1. That the business of leasing out or subleasing of advertising spaces is not subject to the foreign equity limitations imposed by the 1987 Constitution, the Foreign Investment Act and other relevant laws; and
2. That given the above-mentioned facts, your company can be one hundred percent foreign-owned, subject only to the paid-in capital requirement of Twenty Five Million Pesos (Php 25,000,000.00).

Before delving to the main issues, it is best to discuss first whether or not the foregoing activities fall within the purview of advertising or mass media which are nationalized activities subject to the foreign equity limitations imposed by the 1987 Constitution and other pertinent laws.

Essentially, the function of advertising agencies is to serve as agents or counselors of advertisers by writing, preparing or producing the commercial messages or materials used by advertisers in selling their goods and services and by selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public. Advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc, for this purpose.¹ Under Article 4(c) of Republic Act No. 7394², advertising agency or agent is a service organization or enterprise creating, conducting, producing, implementing or giving counsel on promotional campaigns or program through any medium for and in behalf of any advertiser. The same law defines advertising as "the business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit."³

On the other hand, mass media in the Constitution refers to any **medium of communication** designed to reach the masses and that tends to set the standards, ideals and aims of the masses, the distinctive feature of which is the dissemination of information and ideas to the public, or a portion thereof.⁴ It refers to any means or methods used to convey advertising messages to the public such as television, radio, magazine, cinema, **billboards**, posters, streamers, hand bills, leaflets, mails and the like.⁵ It shall be divided into two groups: Print Media and Broadcast Media. "*Print Media*" includes all newspaper, periodicals, magazines, journals, and publications and all advertising therein, and

¹ DOJ Opinion No. 22, s. 1975; see also SEC Opinion dated 21 September 1987 addressed to Mr. Jose P. Quiambao; SEC Opinion dated 2 September 1988 addressed to the House of Representatives' Committee on Corporation and Franchise.

² The Consumer Act of the Philippines. Approved 13 April 1992.

³ *Ibid.*, Article 4(c).

⁴ DOJ Opinion No. 40 series of 1998.

⁵ Article 4 (a) of Republic Act No. 7394; SEC Opinion dated 08 May 2014 addressed to Atty. Alvin O. Geli and Atty. Regina G. Santos.

billboards, neon signs and the like. "Broadcast Media" includes radio and television broadcasting in all aspects, including all forms of audio, visual, or audio-visual communications such as video tapes, citizens bands, and other electronic devices, and cinematography, to the extent that these forms are utilized as mass media through radio or television broadcasting transmission.⁶

In previous Opinions of the Commission, the Commission has distinguished an advertising agency from a mass media entity for the purpose of determining the extent of allowable foreign equity participation, viz. —

"... Advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc., for this purpose. Advertising agencies falling within this concept are not mass media, considering that they do not operate or control any medium of communication designed to reach or influence the masses, although the activities of such agencies, by their nature, are closely related to those of mass media.

However, where the advertising agency actually disseminates information, or **operates, controls or otherwise engages in the business of mass media, a specific example of which is an outdoor advertising firm which sells billboard space to advertisers**, then such advertising agencies would fall within the purview of the constitutional limitation."⁷

Coming now to the issue as to whether or not HDI is engaged in nationalized activities subject to the foreign equity limitations imposed by the 1987 Constitution and other pertinent laws, the Commission is of the opinion that HDI, by leasing out or subleasing advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed, actually provides a medium to to disseminate or convey advertising messages to the public, hence, is a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution⁸ and List A (1) of Executive Order No. 184 series of 2015.⁹

Consequently, your second argument need not be addressed for obvious reason.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and

⁶ DOJ Opinion No. 11 series of 2007.

⁷ *Supra* Note 5, citing SEC Opinion dated 13 September 2012 addressed to Puno & Puno Law Offices; SEC Corporate Legal Department Opinion dated 02 September 1998.

⁸ Section 11, Article XVI, 1987 Constitution. "The ownership and management of mass media shall be limited to citizens of the Philippines or corporations, cooperatives or associations wholly owned and managed by such citizens."

⁹ Tenth Regular Foreign Investment Negative List.

shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases 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.


CAMILO S. CORREA
General Counsel

/atc/vjbg/

¹⁰ SEC Memorandum Circular 2003-15, No. 7.