Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

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SEC-OGC Opinion No. 13-02
Capacity to sue or be sued by a Foreign Corporation

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Dear Atty. Niño:

This refers to your letter dated 21 May 2012, requesting for our opinion on the following queries:

1. May the foreign corporation with representative office maintain any suit in the Philippines against its competitor for not complying with the laws and rules governing the goods that the competitor is selling and other causes of action that it may have against that competitor?;

2. May that foreign corporation apply for a permit or license from the Food and Drugs Administration (FDA) or any government agency to advertise in the Philippines its products being sold in the Philippines and defend in court or government agency said application?; and

3. May that foreign corporation with a representative office only maintain a suit or defend or intervene in Court or government agency involving its trademarks or intellectual properties being actually used in the Philippines or in any action for collection of money due the foreign corporation or in any suit?

As a background, it is alleged in your letter that a foreign corporation is doing business in the Philippines but it only obtained from the Commission a license to transact business as a representative office and not a branch office. It is further alleged that the Certificate issued by the Commission specified the purpose/s of the representative office, that is "to deal directly with the clients/customers of the applicant company in undertaking activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of the products."

Section 133 of the Corporation Code provides:

> "No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws." (Underscoring supplied)

The rule is that before a foreign corporation can transact business in the Philippines, it must first obtain a license to transact business in the Philippines, and a certificate from the appropriate government agency. Thus, if the **foreign corporation is doing business in the Philippines without license**, the foreign corporation is barred from maintaining or intervening in any action, suit, or proceeding in any court or administrative agency of the Philippines. It may, however, be sued on any valid cause of action recognized under Philippines laws.[1] Of course, a **foreign corporation doing business in the Philippines with license** may sue or be sued before Philippine courts.

Estoppel, however, may set in. This means that a foreign corporation doing business in the Philippines may sue in Philippine courts a Philippine citizen or entity who had contracted with the foreign corporation, although it is not authorized to do business in the Philippines.[2] A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it.[3] This would prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract.[4]

If, on the other hand, the **foreign corporation is not doing business in the Philippines**, it does not need a license to sue before Philippine courts. This is

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1 *Communications Materials and Design v. Court of Appeals,* 329 Phil. 487. The purpose of the law is to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object is not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking steps necessary to render it amenable to suit in the local courts. *Marshall-Wells Co. v. Elser and Co.,* G.R. No. 22015, 1 September 1924, 46 Phil. 71. The doctrine of lack of capacity to sue based on the failure to acquire a local license is based on considerations of sound public policy. The license requirement was imposed to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. This was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country. *National Trading Corporation v. Court of Appeals,* G.R. No. 110910, 17 July 1995, 246 SCRA 465. The object of requiring a license is not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring domicile for the purpose of business without taking the steps necessary to render it amenable to suits in the local courts. Put differently, the foreign corporation is merely prevented from being in a position where it takes the good without accepting the bad. *European Resources and Technology, Inc. v. Ingenieuburo Birkhahn + Nolte,* G.R. No. 159586, 26 July 2004.

2 *Merryl Lynch Futures v. Court of Appeals,* G.R. No. 97816, 24 July 1992, 211 SCRA 824.

3 *Georg Grotjahn GMBH v. Isnani,* G.R. No. 109272, 10 August 1994, 235 SCRA 216.

4 *Sherwood v. Alvis,* 83 Ala. 115, 3 So 307. The is anchored in the time-honored axiom of *commodum ex injuria sua non habere debet* — no person ought to derive any advantage of his own wrong. *Communications Materials and Design v. Court of Appeals, supra.*

so because what the law prevents is a foreign corporation doing business in the Philippines without a license from gaining access to Philippine courts.[5] It is not therefore the absence of the prescribed license, but "doing business" in the Philippines without the proper license which bars the foreign corporation from gaining access to Philippine courts. In other words, although a foreign corporation has no license to do business in the Philippines, it does not necessarily follow that it has no capacity to bring an action because a license is not necessary if the foreign corporation is not doing business in the Philippines.[6]

Notice that it does not really matter for purposes of determining whether a foreign corporation may sue or be sued before Philippine courts, if such corporation is "doing business"[7] in the Philippines through a "branch office"[8] or a "representative office."[9] Whether a foreign corporation is doing business in the Philippines through a branch or representative office would only determine the extent allowed by law as to what such foreign corporation can do in the Philippines. Instead, the determinative factor for purposes of determining whether a foreign corporation can sue or be sued before Philippine courts is whether the foreign corporation is doing business in the Philippines and if it is licensed to do so.

Thus, the foreign corporation that is registered with the Commission and is doing business in the Philippines as a representative office may bring and defend suits before Philippine courts and other government agencies in order to protect its rights and interests. It necessarily follows that such foreign corporation may also

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[5] *Huang Lung Bank v. Saulog*, G.R. No. 73765, 26 August 1991, 210 SCRA 137; *La Chemise Lacoste, S.A. v. Fernandez*, 129 SCRA 373; *Atlantic Mutual Ins. v. Cebu Stevedoring Co.*, Inc., G.R. No. L-18961, 31 August 1966, 17 SCRA 1037; *Pacific Vegetable Oil Corporation v. Singson*, 96 Phil. 986; *The Swedish East Asia Co., Ltd. v. Manila Port Service*, G.R. No. L-26332, 26 October 1968, 25 SCRA 633; *Central Bank & Trust Co. v. Bustamante*, 71 Phil. 359; *Eastboard Navigation Ltd. v. Ysmael & Co.*, 102 Phil. 1.

[6] Antham Consolidated, Inc. v. Court of Appeals, G.R. No. 61523, 31 July 1986, 143 SCRA 288; Converse Rubber Corporation v. Universal Rubber Products, Inc., G.R. No. 27906, 8 January 1987, 147 SCRA 154.

[7] Section 3(d) of the Foreign Investments Act (R.A. 7042) says that "doing business" "shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however,* That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account."

[8] A Branch Office of a foreign corporation "carries out the business activities of the head office and derives income from the host country." (Section 1(c) of the Implementing Rules and Regulations of the Foreign Investments Act (R.A. 7042).

[9] A Representative or Liaison Office of a foreign corporation "deals directly, with the clients of the of the parent company but does not derive income from the host country and is fully subsidized by its heal 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 products." *Id.*

apply for a permit or license from the FDA or any government agency to advertise in the Philippines its products being sold in the Philippines, since the promotion of the products of its parent company is actually the underlying function of a representative office.

The foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission whether of similar or dissimilar circumstances.[10] If, upon investigation, it is disclosed that the facts relied upon are different, this opinion shall be rendered void.

Very truly yours,

CAMILO S. CORREA
General Counsel

[10] SEC Memorandum Circular No. 15, series of 2003.