



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

2 June 2014

SEC-OGC Opinion No. 14-11
Re: Domestic market enterprises;
Mass media

NAVARRO AMPER & CO.
19th Floor Net Lima Plaza
5th Avenue Corner 26th Street
Bonifacio Global City, Taguig 1634

Attention: Ms. Myra V. Torres and Mr. Richard R. Lapres

Madam and Sir:

This is in response to your letter dated 6 August 2013, requesting for confirmation of your position that your client AEON Fantasy Co., Ltd. ("AEON") may obtain a license from the Commission to conduct and operate a business, through the incorporation of a Philippine entity, without limitation or restriction to foreign ownership.

AEON is a foreign company existing under the laws of Japan. It is mainly engaged in the establishment and operation of indoor theme parks which include entertainment and amusement facilities as well as attached shops located in shopping centers. It consists of both arcade style games and non-electronic games for children.

You presented that AEON is planning to expand its business in the Philippines through the incorporation of a proposed Philippine entity, whose primary purpose would be as follows:

"To carry on the business of karaoke, amusement parks, games and entertainment centers, including to promote, organize, manage, and operate all kinds of activities, including but not limited to operate all kinds of activities, including but not limited to video games, playground, gymnasium sports and other recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other performances, dancing, skating, and other forms, and types of enterprise generally, whether indoor or outdoor."

We observe the inclusion of "other recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other performances, dancing, skating, and other forms, and types of enterprise" among the activities aimed to be carried on by AEON. In our opinion, these activities are too broad and encompassing, making possible the undertaking of mass media activities, such as live productions and film/motion pictures.¹

¹ SEC Opinion 11-08, 3 March 2011, addressed to Atty. Nelson G. Leyco

SEC-OGC



The 1987 Constitution provides that "(t)he ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly named and managed by such citizens."² The term "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.³ The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof.⁴ The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.⁵

In a previous opinion, the Commission ruled that the activities of live productions, short and full length television shows and movies, and direct to audience, all constitute dissemination of information and ideas to the public, and tend to influence the public's standards, ideals, aims and opinion. In other words, these activities are mass media.⁶

Based on the entity's proposed primary purpose in the articles of incorporation, we opine that the proposed Philippine entity may NOT be 100% owned by AEON.

Moving further, **assuming that the businesses to be undertaken by the proposed entity do not constitute mass media activities**, the same may fall under List B of the Ninth Foreign Investment Negative List ("FINL-9").⁷

Under Section 8 of the Foreign Investments Act of 1991 ("FIA"),⁸ which is adopted in the FINL-9, domestic market enterprises, with paid-in equity capital of less than the equivalent of two hundred thousand US Dollars (US\$ 200,000.00), are restricted to a maximum of forty percent (40%) foreign equity. Moreover, if the domestic market enterprise either (1) involves advanced technology as determined by the Department of Science and Technology, or (2) employs at least fifty (50) direct employees, and has a paid-in capital of less than the equivalent of one hundred thousand US Dollars (US\$ 100,000.00), then the foreign equity restriction applies.

The Implementing Rules and Regulations of the FIA, Section 1(k) provides:

² 1987 Philippine Constitution, Article XVI, Section 11.

³ Ministry of Justice's (MOJ) Opinion no. 24, series of 1986 citing MOJ Opinion No. 163, series of 1973.

⁴ MOJ Opinion no. 24, s. 1986 citing MOJ Opinion No. 120, series of 1982.

⁵ MOJ Opinion no. 24, s. 1986 citing Quisumbing-Fernando, Constitutional Law, 1984 ed., p. 345.

⁶ SEC Opinion No. 09-33, 18 December 2009, addressed to the Law Firm of R.V. Domingo & Associates.

⁷ Executive Order No. 98, 29 October 2012, List B (6) and (7) provide:

6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA 7042 as amended by RA 8179).

7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in-equity capital of less than the equivalent of US\$100,000 (RA 7042 as amended by RA 8179).

⁸ Republic Act No. 7402, as amended by Republic Act No. 8179.



"Domestic market enterprise" shall mean an enterprise which produces goods for sale, or renders service or otherwise **engages in any business in the Philippines**.
(emphasis supplied)

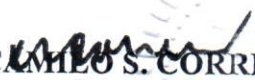
Applying the same to AEON's case, as its intention is clearly to do business within the Philippines, the requirements set forth by the FIA and the FINL-9 (i.e., the minimum of US\$ 200,000.00 or US\$ 100,000.00 paid-in capital, as the case may be) must be complied with in order that the proposed Philippine entity may be 100% owned by AEON.

Finally, please note that under the 1987 Constitution⁹ and the Public Land Act,¹⁰ ownership of private lands is a partially nationalized activity. Only those corporations with foreign equity not exceeding forty percent (40%) may own private lands, regardless of its paid-in capitalization. In short, the proposed Philippine entity that is one hundred percent (100%) owned by AEON cannot own, but can only lease, the land on which its business shall be undertaken.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and 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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.¹¹

Please be guided accordingly.

Very truly yours,


CAMILLO S. CORREA
General Counsel

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⁹ Article XXII, Section 7.

¹⁰ Commonwealth Act No. 141, Chapter 5, Section 22.

¹¹ SEC Memorandum Circular No. 15, Series of 2003.

