Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

26 March 2024

SEC OGC Opinion No. 24-04

Re: Applicability of SRC Registration Requirements to Timeshares

PUYAT JACINTO & SANTOS
10F 8 Rockwell
Hidalgo Cor. Plaza Drive, Rockwell Center
Makati City 1200, Philippines

Attention: **Atty. Virginia B. Viray**
vbviray@pjslaw.com

Atty. Pearl Grace G. Cabali

Atty. Elaine Marie G. Laceda

Dear Atty. Viray:

This refers to your letter dated 20 March 2015 sent on behalf of your client Marriott Ownership Resorts, Inc. (MORI), requesting for an opinion on the applicability of the registration requirements under the Securities Regulation Code (SRC) to MORI's Marriot Vacation Club Destinations Exchange Program (MVCD-EP).

In your letter, you disclosed the following:

a) MORI is a Delaware company engaged, *inter alia,* in the operation of the Marriot Vacation Club Destinations (MVCD) Program and the sale of Marriot Vacation Club vacation-ownership products (MVC Timeshares);
b) The MVC Timeshares are "currently being marketed for sale in the United States, Europe, and the Asia[-]Pacific region, excluding the Philippines, among other locations";
c) To enhance the MVC Timeshares it sells, MORI developed the MVCD-EP which "provides timeshare interest owners, who are members thereof, the opportunity to utilize the exchange services and related benefits provided by the Exchange Company";
d) The MVCD-EP allows its members "to exchange their existing timeshare interests for Exchange Points, which such members can use to reserve accommodations in other Exchange Company[-]affiliated plans/resorts or avail of other benefits that may be made available by the Exchange Company or by independent third parties by arrangement with the Exchange Company";
e) As membership in the MVCD-EP is currently on a voluntary basis, MORI intends to provide automatic membership in the MVCD-EP to all existing MVC Timeshare owners, without the need for an enrollment agreement and payment of any enrollment fee or annual dues;
f) With the introduction of the automatic membership, the MVCD-EP documents (i.e., the Exchange Company Disclosure Guide, the Exchange Procedures, and the Quality Assurance Checklist) are sent to existing MVC Timeshare owners wherever they reside. The MVCD-EP documents will:
    1. Provide disclosures on the program and describe its usage;

2. Inform existing MVC Timeshare owners of the new feature to the MVC Timeshares, specifically on the auto-membership with the MVCD-EP;
3. Not involve any new offering of the MVC Timeshares to existing owners; and
4. Not involve any consideration paid for the new feature to the MVC Timeshares; and

g) None of the subject MVC Timeshares were, at any time, offered and/or sold within the Philippines; however, there are some existing owners of MVC Timeshares currently residing in the Philippines, to whom MORI intends to send such documents.

The issue is ***whether the requirement of registration of securities under the SRC is applicable to the distribution of the MVCD-EP Documents to the MVC Timeshare owners who are Philippine residents***.

At the outset, the MVCD-EP must be distinguished from the MVC Timeshares to which it attaches. Timeshares have been held to be securities.[1] More specifically, contracts for future employment of a privilege or service such as vacation rights or interests consisting of future right to use resort facilities are considered contracts similar to that of an investment contract which require registration.[2] Here, the subject matter at issue is not the MVC Timeshares but rather, the MVCD-EP offered for free to existing MVC Timeshare holders in the Philippines.

The test is whether the MVCD-EP, independent of the timeshares, fits the definition of securities in Rule 3.1.20 of the 2015 Implementing Rules and Regulations of the SRC (SRC-IRR)[3], *viz:*

> Securities shall include: (a) Shares of stock, bonds, government securities, commercial papers, debentures, notes, evidences of indebtedness, asset-backed securities; (b) ***Investment contracts***, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments; (f) ***Proprietary or nonproprietary membership certificates in corporations***; and (g) Other instruments as may in the future be determined by the Commission. (Emphasis and underscoring supplied)

In addition, Rule 26.3.5(4) of the 2015 SRC-IRR[4] further defines an investment contract in this manner:

> An "investment contract" means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

Meanwhile, Section 8.1 of the SRC[5] expressly provides that:

> Securities shall ***not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission.*** Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser. (Emphasis supplied)

Thus, for the registration requirement to bind the issuer, the following elements must be present:

a) the subject matter must be ***securities***;
b) the securities must either be *sold or **offered for sale or distribution***; and
c) the sale or offer to sell/distribute securities must be ***within the Philippines***.

From the foregoing, it is apparent that the SRC registration requirement is *not necessary* prior to the distribution of the MVCD-EP documents to existing MVC Timeshare owners in the Philippines.

Notably, there is no monetary investment or consideration for the MVCD-EP given by the MVC Timeshare owner. As previously opined by the Commission, **by the absence of an investment of money alone, it can no longer be considered an investment contract.**[6]

Further, there is ***no sale or offer for sale or distribution of securities*** to the public as the MVCD-EP is essentially only a ***free upgrade*** of the benefits arising from MVC Timeshare ownership ***given exclusively to existing owners***.

---

[1] SEC En Banc Case No. 10-04-19, 25 March 2011; see also SEC Opinion addressed to Atty. Nicanor M. Zaratan dated 16 April 1996.
[2] SEC Opinion dated 2 January 1997 addressed to Attys. Kennedy B. Sarmiento and Je Frollan M. Clerigo
[3] Rule 3.1.20, Implementing Rules and Regulations of Republic Act (R.A.) No. 8799 or the Securities Regulation Code (SRC-IRR), 04 August 2015.
[4] Rule 26.3.5, Paragraph 4, *ibid.*
[5] Section 8.1, R.A. No. 8799 or the Securities Regulation Code (SRC), 19 July 2000.
[6] SEC-OGC Opinion No. 11-21 addressed to Atty. Arthur C. Corpuz dated 12 April 2011.

The same conclusion would hold true even if we were not to consider the MVCD-EP independently of the MVC Timeshares. The reason for this is that the MVC Timeshares were never offered for sale in the Philippines and were bought by the Philippine residents elsewhere.

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.[7] 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.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[7] Section 7, SEC Memorandum Circular No. 15, Series of 2003, 16 December 2003.