Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23-15
Re: Merger of a Domestic Corporation with a Foreign Corporation Licensed to do Business in the Philippines

19 October 2023

MUSIC GLOBAL SHARED SERVICES, INC.
703 Philippine AXA Life Centre, 1286 Sen.Gil Puyat
Avenue, Makati City, Phiilippines 1200
sja@sjalaw.com.ph

Attn: Atty. Mindamar Somera
Atty. Eric B. Javeloza

Attorneys:

This refers to your letter dated 27 February 2023[1] requesting confirmation of your position that the planned merger between Music Tribe Commercial BM Ltd.[2] ("MUSIC Tribe") and Music Global Shared Services, Inc. ("MUSIC Global") is allowed under Philippine law.

You stated that MUSIC Tribe is a company incorporated under the laws of the British Overseas Territory of Bermuda ("Bermuda"), with its registered office located on the 5th Floor, Rosebank Centre 11 Bermudiana Road Pembroke HM, 08, Bermuda. It has been licensed to do business in the Philippines since January 27, 2015. On the other hand, MUSIC Global is a corporation organized under Philippine law with its principal place of business at 703 Philippine AXA Life Centre, 1286 Sen. Gil Puyat Avenue, Makati City, Philippines 1200.

You also stated that to consolidate their businesses and streamline their operations, the above-named companies have agreed to merge, with MUSIC Tribe as the absorbed entity and MUSIC Global as the surviving entity, subject to compliance with the regulatory requirements of the jurisdictions where the companies are respectively registered.

You averred that Section 104B of the Bermuda Companies Act allows the merger of a company registered under the laws of Bermuda with a corporation registered in a foreign jurisdiction with the latter entity as the surviving company. Thus:

> "104B. Amalgamation or merger of exempted company and foreign corporation and continuation as a foreign corporation. (1) One or more exempted companies and one or more foreign corporations may- (a) amalgamate and continue as a foreign corporation (in this section and section 104C referred to as "the amalgamated corporation"); or (b) merge and the surviving company continue as a foreign corporation (in this section and section 104C referred to as " the surviving corporation"), to which the laws of the jurisdiction in which is it is proposed that the amalgamated corporation or surviving corporation will

[1] Received by our office on 14 March 2023.
[2] The previous corporate name of this entity is MUSIC Group Commercial BM Ltd.

continue (in this section and section 104C referred to as " the foreign jurisdiction ") shall apply."

Based on the foregoing, you submit this request for confirmation that the planned merger between MUSIC Tribe and MUSIC Global is allowed under Philippine law.

Merger of Corporations under the Revised Corporation Code (RCC)[3]

Section 75 of the RCC defines **merger** by illustration and states that "***two (2) or more corporations*** may ***merge*** into a ***single corporation*** which shall be ***one of the constituent corporations.***"

In *Bank of Commerce v. Radio Philippines Network, Inc.*[4], a ***merger*** is defined as the absorption of one or more corporations by another existing corporation, which retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s). The absorbing corporation continues its existence while the life or lives of the other corporation(s) is or are terminated.

For mergers involving a foreign corporation that is licensed to do business in the Philippines, Section 149 of the RCC provides:

> "***Section 149. Merger or Consolidation Involving a Foreign Corporation Licensed in the Philippines.*** - **One or more foreign corporations authorized to transact business in the Philippines may merge or consolidate with any domestic corporation or corporations if permitted under Philippine laws and by the law of its incorporation: Provided, That the requirements on merger or consolidation as provided in this Code are followed.**
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> Whenever a foreign corporation authorized to transact business in the Philippines shall be a party to a merger or consolidation in its home country or State as permitted by the law authorizing its incorporation, such foreign corporation shall, within sixty (60) days after the effectivity of such merger or consolidation, file with the Commission, and in proper cases, with the appropriate government agency, a copy of the articles of merger or consolidation duly authenticated by the proper official or officials of the country or State under whose laws the merger or consolidation was effected: **Provided, however, That if the absorbed corporation is the foreign corporation doing business in the Philippines, the latter shall at the same time file a petition for withdrawal of its license in accordance with this Title.**"

In relation thereto, Section 153 of the RCC provides the requirements for the petition for withdrawal of the license of foreign corporations:

> "***Section 153. Withdrawal of Foreign Corporations.*** — Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the Commission unless all the following requirements are met:
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> (a) All claims which have accrued in the Philippines have been paid, compromised or settled;
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> (b) All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions, have been paid; and
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> (c) The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines."

The Commission opined that paragraph 1 of Section 132 of the Corporation Code (which is essentially the same as paragraph 1 of Section 149 of the RCC) authorizes a foreign corporation licensed to do business in the Philippines to merge with a domestic corporation, *provided* that the former can prove that there is a similar authorizing law in its home jurisdiction. Such a merger will be governed by the Corporation Code (now the RCC) and other relevant laws.[5]

The Commission also opined that the phrase "if permitted under Philippine laws" should be construed to include our nationality laws. Thus, foreign equity restrictions in the Philippines would prevent a merger between a domestic corporation and a licensed corporation if the surviving corporation will be

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[3] Republic Act No. 11232, 20 February 2019
[4] G.R. No. 195615, 21 April 2014, 733 PHIL. 491-581
[5] SEC-OGC Opinion No.18-18, addressed to Fortun Narvasa Salazar, dated 16 November 2018.

engaged in the nationalized industry and foreign control of such surviving corporation will exceed the limits imposed by law.[6] The general rule is that non-Philippine nationals can own up to one hundred percent (100%) of the equity of the *surviving corporation*, unless foreign ownership therein is prohibited or limited by the Constitution and applicable laws as summarized under the Foreign Investment Negative List (e.g. domestic market enterprise).[7]

In addition, Republic Act No. 10667, also known as the Philippine Competition Act, provides that "merger and acquisition agreements that substantially prevent, restrict or lessen the competition in the relevant market or in the market of goods or services, as the Commission may determine, are prohibited, subject to certain exemptions."[8]

Based on the foregoing discussion, a foreign corporation that is licensed to transact business in the Philippines *may* merge or consolidate with any domestic corporation, provided the following are complied with:

a) The foreign corporation can prove that there is a similar law in its home jurisdiction authorizing such merger;

b) The requirements for merger under the RCC are followed (e.g. requisites, documentary requirements, petition for withdrawal of license by the absorbed foreign corporation, etc.); and

c) Compliance with other applicable Philippine laws (e.g. Nationality laws, competition laws, etc.).

As such, we confirm your position that MUSIC Tribe, a foreign corporation licensed to do business in the Philippines, *may* merge with MUSIC Global, a domestic corporation, *provided* that the abovementioned requirements are complied with. This is without prejudice to the evaluation of, and additional documents required by, our Company Registration Monitoring Department (CRMD) once the application for merger is filed with the Commission.[9]

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances, and documents disclosed/submitted and 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

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[6] *Ibid.*

[7] Section 8 of Republic Act ("RA") No. 11647 or "An act promoting foreign investments, thereby amending Republic Act No. 7042, otherwise known as the 'Foreign Investments Act of 1991'".

"Section 8. *List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List)*-xxx

a) List A shall enumerate the areas of activities reserved to Philippine nationals by mandate pf the Constitution and specific laws.
b) List B shall contain the areas of activities and enterprises pursuant to law.

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Except as otherwise provided under Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 and other relevant laws, micro and small domestic market enterprise with paid-in equity capital less than the equivalent of Two hundred thousand US dollar (US$200,000.00). are reserved to Philippine nationals: *Provided*, That if: (1) they involve advanced technology as determined by the Department of Science and Technology, or (2) they are endorsed as startup or startup enablers by the lead host agencies pursuant to Republic Act No. 11337, otherwise known as the Innovative Startup Act; or (3) a majority of their direct employees are Filipinos, but in no case shall the number of Filipino employees be less than fifteen (15), than a minimum paid-in capital of One hundred thousand US dollars (US$100,000.00) shall be allowed to non-Philippine nationals: *Provided*, further, That registered foreign enterprises employing foreign nationals and enjoying fiscal incentive shall implement an understudy or skills development program to ensure the transfer of technology or skills to Filipinos. Compliance with this requirement shall be regularly monitored by the DOLE."

[8] Section 20 of the Philippine Competition Act.

[9] Under the 2023 SEC Citizen's Charter (https://www.sec.gov.ph/about-us/citizens-charter/#gsc.tab=0) , application for mergers is filed with the CRMD. For questions on filing of the said application, please contact CRMD at crmd_publicassistance@sec.gov.ph or the telephone numbers provided at https://www.sec.gov.ph/contact-us/#gsc.tab=0 .

upon the courts whether of similar or dissimilar circumstances.[10] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C. Padilla
General Counsel

[10] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.