Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

24 June 2025

SEC OGC Opinion No. 25-09

Re: Allowable Activities of a Representative Office

DE LEON AREVALO GONZALES LAW
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Attention : **ATTY. RYAN DANIELE Y. UY**
ATTY. JOYCE B. JACABA
ATTY. SEAN PATRICK C. LEE

Re : **Request for opinion**

Dear Attorneys:

This refers to your letter dated 17 July 2024, requesting for opinion on "the ability of a Representative Office to hold a Certificate of Product Registration (CPR) and a Certificate of Product Notification (CPN)."

In your letter, you disclosed the following matters:

a) Your client is a "foreign corporation engaged in marketing and distribution of health and cosmetic products" that "sells its products in different countries xxx";
b) "It plans to register a representative office in the Philippines to give it a legal personality in the country so that it may enjoy legal protection and undertake allowed activities"; and
c) "[It] aims to import to the Philippines its products as part of the initial marketing and market penetration. As such, xxx a License to Operate (LTO) may be necessary so that a general license from the Food and Drug Administration (FDA) may be secured for the purpose of importation and distribution of its products. Obtaining an LTO is also a pre-requisite for the issuance of [CPR] and [CPN]."

You are now asking for an opinion on whether or not a representative office:

1. "is allowed to employ a foreign individual to manage the activities of a representative office";
2. "is allowed to establish a physical office in the Philippines to pursue its business and its parent company can be a party to a lease agreement for such purpose";
3. "is allowed to import products";
4. "may obtain a LTO for it to engage in activities such as marketing its products and engaging in quality control"; and
5. "can apply for a CPR and CPN with the FDA after securing [a] LTO."

In essence, your questions pertain to the allowable activities of a representative office.

Employment of a Foreign National

In ***Commission of Internal Revenue (CIR) vs. Shinko Electronics Industries Co. Ltd.,***[1] the Supreme Court ruled as follows:

> Second, Shinko deals directly with the clients of its head office as it undertakes activities limited to information dissemination, promotion of the parent company's products, including the conduct of quality control. Records show that all inquiries from Philippine clients are routed to its Japan head office, which, in turn, makes the final decisions. ***As a representative office, Shinko promotes and provides information about the products offered by its Japan head office, but it does not enter into contracts on its own. Instead, such contracts are referred to its parent company, which then enters into a contract with the clients within the Philippines.*** The Japan parent company is responsible for all negotiations regarding the price, payment terms, and delivery of the product. ***In fine, Shinko's role is limited to introducing the parent company's products to clients in the Philippines. Nothing more. Nothing less.*** (Emphasis and underscoring supplied, citations omitted)

SEC-OGC Opinion No. 24-25[2] provides the following discussion:

> Certainly, a representative office does not have a separate and independent corporate personality apart from its parent company. For all intents and purposes, it is another office or unit within the organizational structure of the parent company, as characterized by the fact that it is fully subsidized by its parent company and it deals directly with the clients of the parent company, among others. For the same reason, the parent company has the authority to create and consequently appoint officers and/or personnel of its representative office, as may be permitted by its by-laws.
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> Considering that the nationality or residency requirement of the proposed Assistant Secretary pertains to the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties stockholders, members, or officers of corporations to each other or to the corporation, and based on your representation as to the absence of any nationality or residency requirements for subordinate officers in NIC's By-Laws, we answer your third query in the negative.

As to your first query, the parent company has the authority to create and consequently appoint officers and/or personnel of its representative office, as may be permitted by its by-laws, subject to immigration, labor, and other laws.

Authority to Establish a Physical Office and to Enter into a Lease Contract

As to your second query, the establishment of a physical office is necessary to the purposes for which the representative office is established and the parent company is vested with the personality to enter into a lease contract for such purpose.

Allowable Activities of a Representative Office

The Supreme Court, in ***CIR vs. Shinko Electronics,***[3] illustrated the importance of knowing the nature of the company's activities as stated in pertinent documents like SEC Records. This is because a representative office's activities are **limited to "information dissemination, promotion of the parent company's products, quality control of the products, as well as other activities which may be legally undertaken by the representative office."**[4]

In the same case, the Supreme Court enumerated the similarities between and among a representative office, a regional headquarters (RHQ), and regional operating headquarters (ROHQ), *viz.*:

> In stark contrast to an RHQ, an ROHQ is allowed by law to perform activities that generate income in the Philippines. These activities, termed as "qualifying services", include the following: (1) general administration and planning; (2) business planning and coordination; (3) ***sourcing/procurement of raw materials and components***; (4) corporate finance advisory services; (5) ***marketing control and sales promotion***; (6) training and personnel management; (7) logistics services; (8) research and development services, and product development; (9) technical support and maintenance; (10) data processing and communication; and (11) business development. However, similar to an RHQ, an ROHQ performs services only with the head office's affiliates, branches or subsidiaries. ROHQs are also prohibited by law to directly or indirectly market the goods and services of their mother company and its affiliates.
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> In sum, the following are the similarities and differences among a representative office, an RHQ, and an ROHQ:

[1] G.R. No. 226827, 06 July 2021. [Per J. Caguioa, First Division]
[2] SEC-OGC Opinion No. 24-25 addressed to Tan Hassani & Counsels dated 19 September 2024.
[3] *CIR vs. Shinko Electronics, supra* Note 1.
[4] Section 1(c), Rule I of the *Implementing Rules and Regulations of the Foreign Investment Act* (FIA-IRR), 11 July 2022.

1. A representative office and an RHQ are not allowed to engage in any income-generating activities in the Philippines. An ROHQ, on the other hand, provides qualifying services that generate income in the Philippines.
2. Both a representative office and an RHQ do not earn or derive income in the Philippines. An ROHQ is allowed to derive income in the Philippines.
3. Unlike an RHQ and an ROHQ, a representative office deals directly with the parent company's clients and not with the affiliates, branches, or subsidiaries.
4. Under the NIRC, as amended, RHQs are exempt from both income tax and VAT so long as they do not render any of the qualifying services, whereas ROHQs shall be subject to a tax rate often percent (10%) of their taxable income from its qualifying services and twelve percent (12%) VAT.

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As discussed, a representative office is only allowed under the law to undertake activities such as but not limited to information dissemination, promotion of the parent company's products as well as quality control of products. These activities, while directed to the parent company's clients, are not income generating, similar to the activities of an RHQ and in stark contrast with the qualifying services performed by ROHQs. (Emphasis and underscoring supplied)

SEC-OGC Opinion No. 23-05[5] is also instructive as to the allowable activities of a representative office, to wit:

Allowable activities of a representative office

In ***Lapanday Foods Corporation vs. [CIR]***, the Court reiterated the principle of ejusdem generis, viz.:

> Furthermore, We observe that the term "assisting" appearing in Lapanday's primary purpose. Under the principle of ejusdem generis, "where a general word or phrase follow an enumeration of particular and specific words of the same class, or where the latter follows the former, the general word or phrase is to be construed to include or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class those specifically mentioned." To "manage" means "to control and direct"; to "administer" is "manage or conduct affairs"; to "promote" is to contribute to the growth, enlargement or prosperity of or to present (merchandise) for public acceptance through advertising or publicity." It is logical then to bestow on the term "assisting" in Lapanday's Articles of Incorporation as having a similar meaning as "managing," "administering," or "promoting."

Applying the principle of ejusdem generis, the Commission opined in ***SEC-OGC Opinion No. 15-06*** that a representative office cannot derive income from the host country, to wit:

> The letter of the law is very clear that a representative office cannot derive any income from the host country. Where the law does not distinguish, neither should we distinguish. Thus, the second sentence of the afore-quoted definition should, pursuant to the principle of ejusdem generis, be interpreted to mean that any permissible act of a representative office should be akin to or resemble the same kind or class as those of information dissemination and promotion of the company's products, or quality control for the parent company, or any other passive act that does not involve the earning of any income. To hold otherwise would run counter to the very nature of a representative or liaison office. (Citations omitted)

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In ***SEC-OGC Opinion No. 10-01***,[6] the Commission rendered an opinion on whether a proposed representative office may legally engage in various activities such as inviting clients to open off-shore accounts with the parent company, promoting the parent company's products, assisting and communicating with clients, and transmitting clients' instructions to the parent company, to wit:

The above-enumerated activities shall be subject to the following parameters or restrictions:

(a) The Representative Office will not transact any banking business, such as acceptance of deposits and foreign exchange trading.

(b) All transactions entered into through the promotional and marketing efforts of the Representative Office will be booked only by IAPBL in Singapore or by any of IAPBL's branches in other jurisdictions. The Representative Office will not charge any fees in the performance of its activities and functions, as it is not authorized to generate income from such activities and functions in the Philippines.

(c) IAPBL's products and services, while promoted by the Representative Office in the Philippines, can only be sold or executed outside the country. Thus, all proposed transactions with clients in the Philippines are subject to acceptance and confirmation by IAPBL in Singapore or the relevant branch of IAPBL in another jurisdiction. Once so accepted and confirmed, IAPBL Singapore or such branch will execute the transactions or perform the services outside the Philippines;

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[5] SEC-OGC Opinion No. 23-05 addressed to CTI Engineering International Co. Ltd. dated 15 March 2023.
[6] SEC-OGC Opinion No. 10-01 addressed to Sycip, Salazar, Hernandez, and Gatmaitan dated 13 January 2010.

> (d) Payments for IAPBL's products and services are made by Philippine clients directly to IAPBL Singapore or its contracting branch outside the Philippines. The Representative Office is not allowed to receive such payments;
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> (e) Any marketing of securities in the Philippines is subject to the provisions and requirements of the Securities Regulation Code and its implementing rules and regulations.
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> We confirm that the representative office may engage in these activities provided it strictly adheres to the said parameters or restrictions. The representative office's conduct of these activities subject to the parameters is consistent with the [FIA-IRR], which provides that:
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>> Representative or liaison office deals directly, with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head 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.
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> We emphasize that these activities are limited only to marketing and promotion of IAPBL's products and services to Philippine clients. However, all transactions will be booked, sold or executed outside the Philippines' jurisdiction, and it will derive no income from within the country. Thus, the representative office will not exceed its authority.

In sum, a representative office is an extension of a foreign corporation and does not have a legal personality separate from its parent company. A representative office could deal directly with the parent company's clients, including those outside the Philippines as the same is not prohibited, but not with its affiliates, branches, or subsidiaries. However, a representative office is ***forbidden to engage in income-producing activities in the Philippines.***[7]

Authority to Import for Distribution in Relation to LTO, CPR, and CPN

As to your third, fourth and fifth queries, the crux of the same is the allowable activities of a representative office, specifically, whether or not a representative office is allowed, as part of its marketing for market penetration, to import products in order to distribute the same within the country and to do quality control, pursuant to a LTO, CPR, and CPN.

Section 6 of Republic Act (R.A.) No. 9711 or the ***Food and Drug Administration Act of 2009,***[8] provides the following:

> The FDA shall have the following centers and offices:
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> (a) The Centers shall be established per major product category that is regulated, namely:
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> (1) Center for Drug Regulation and Research (to include veterinary medicine, vaccines and biologicals);
> (2) Center for Food Regulation and Research;
> (3) Center for Cosmetics Regulation and Research (to include household hazardous/urban substances); and
> (4) Center for Device Regulation, Radiation Health, and Research.
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> ***<u>These Centers shall regulate the manufacture, importation, exportation, distribution, sale, offer for sale, transfer, promotion, advertisement, sponsorship of, and/or, where appropriate, the use and testing of health products.</u>*** The Centers shall likewise conduct research on the safety, efficacy, and quality of health products, and to institute standards for the same. (Emphasis and underscoring supplied)

In this relation, materials from the FDA website provide the following definitions:

a) A LTO is "an authorization issued by the FDA to an establishment to grant permission to undertake a trade or carry out a business activity, such as manufacturing, importation, exportation, ***<u>sale, offering for sale,</u>*** distribution, or transfer of food products."[9] (Emphasis and underscoring supplied);
b) A CPR is "an authorization issued by the FDA upon the approval of an application to register a health product prior to engaging in marketing, importation, exportation, ***<u>sale, offer for sale</u>***, distribution, transfer, promotion, advertisement and/or sponsorship." [10] (Emphasis and underscoring supplied); and

[7] SEC-OGC Opinion No. 24-22 addressed to Reyes Tacandong & Co. dated 10 September 2024.
[8] Section 6, Republic Act (R.A.) No. 9711, *Food and Drug Administration Act of 2009*, 18 August 2009.
[9] *FDA Frequently Asked Questions (FAQs)* Retrieved from: https://www.fda.gov.ph/faqs/ last accessed: 03 June 2025.
[10] *FDA Frequently Asked Questions (FAQs)* Retrieved from: https://www.fda.gov.ph/wp-content/uploads/2021/04/CPR-FAQS-HUHS.pdf#:~:text=A%20CPR%20is%20an%20authorization%20issued%20by.distribution%2C%20transfer%2C%20promotion%2C%20advertisement%2C%20and/or%20sponsorship%20thereof.&text=Which%20establishments%20are%20required%20to%20secure%20a.under%20AO%202019-0019%20and%20FDA%20Circular%20No. ast accessed: 03 June 2025.

c) A CPN pertains to the necessary notification prior to importation. Specifically for certain products like cosmetics, "[t]he company or person responsible for placing the cosmetic products in the market shall notify the [Bureau of Food and Drugs (BFAD)] of the place of manufacture of or initial importation before the product is placed in the market."[11]

At any rate, please be informed that, as a matter of public policy, the Commission refrains from rendering an opinion on matters which would require an ***examination and review of the acts and rulings of another government agency*** since the Commission does not review acts and ruling of other government agencies.[12]

Thus, we cannot examine what activities are exactly allowed by a FDA-issued LTO, CPR, and/or CPN in favor of an establishment, and to what extent.

However, the Commission has the authority to opine on or review, based on the given facts, the activities of a representative office if they are allowed under its license issued by the Commission pursuant to R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCCP) in relation to R.A. No. 7042 or the Foreign Investments Act (FIA), as amended. Such license to do business is the primary license which defines the scope of the activities that a representative office is permitted to undertake in the Philippines.

Based on your letter, your representative office intends to import products, not raw materials,[13] for the purpose of distributing them in the country. As a commercial activity, importation of products for domestic distribution usually connotes sale.

In this connection, we note that you qualify this importation for distribution "as part of the marketing of [your] products and market penetration."

"Marketing" is defined as "the activity or business of promoting and selling products or services, including market research and advertising."[14] Thus, "marketing" includes several types of business activities. For a representative office, the term should be limited to simple product promotion or advertising. Sales promotion, another type of marketing activity, which means "an activity or series of activities done to increase sales of a particular product, for example by reducing its price"[15] is not an allowed activity of a representative office as it **may involve income generation through temporary price reductions even if the primary aim is product promotion.**

We note that the marketing pertained to in your letter involves distribution of the imported products without any qualification as to the absence of consideration therefor and/or its temporary nature, which means that marketing may involve distribution at discounted rates or introduction of promotional prices to achieve market penetration and gain market share.

Without an assurance that the distribution arising from the importation would be ***entirely for free***, it does not fall under the allowed activities of a representative office as it falls under income-generating activities which are prohibited to be undertaken.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed in the queries relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding on the Commission in other cases whether similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be considered as null and void.

Yours most respectfully,

ROMUALD C. PADILLA
General Counsel

[11] Department of Health Bureau of Food and Drugs (now the FDA), Circular No. 2007-013A dated 21 January 2008. Retrieved from: https://www.fda.gov.ph/wp-content/uploads/2021/08/Bureau-Circular-No.2007-013-A.pdf last accessed 03 June 2025.
[12] Section 5.7, SEC Memorandum Circular (MC) No. 15, Series of 2003, 16 December 2003.
[13] Importation of raw materials is one of the qualifying services of ROHQ as provided in *CIR vs. Shinko Electronics, supra* Note 1.
[14] Retrieved from *Oxford Learner's Dictionaries* https://www.oxfordlearnersdictionaries.com/definition/american_english/marketing#:~:text=marketing-,noun,cuts/cutbacks%20sales%20and%20marketing last accessed 24 June 2025.
[15] Retrieved from Cambridge Dictionary https://dictionary.cambridge.org/us/dictionary/english/sales-promotion last accessed 24 June 2025.