Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

08 April 2011

SEC-OGC Opinion No. 11-20
Exemption from the Filing of GIS

MIGALLOS & LUNA LAW OFFICES
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Attention: *Atty. Barbara Anne C. Migallos*
Atty. Maria Monica L. Jimenez

Mesdames:

This refers to your letter dated 19 December 2007 requesting opinion on whether corporations that are subject to the reportorial requirements under Section 17 of the Securities Regulation Code[1] ("**SRC**") are exempt from the filing of the General Information Sheet pursuant to Section 17.4 of the SRC.

As disclosed in your letter, the following are the relevant facts:

Your client, Philex Mining Corporation ("**Philex**," for brevity), is a domestic corporation whose shares are listed and traded on the Philippine Stock Exchange and, as such, files reports with the Commission pursuant to Sections 17.1 and 17.2 of the SRC.

In the present query, you are seeking the opinion of this Office whether Philex, being a corporation subject to the reportorial requirements under Section 17 of the SRC, is exempt from the filing of the General Information Sheet.

Relevant to your query are Sections 141 and 26 of the Corporation Code, which provide that:

> "Sec. 141. Annual report or corporations. - Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in

[1] Republic Act 8799

appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission."

"Sec. 26. Report of election of directors, trustees and officers. - Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected. Should a director, trustee or officer die, resign or in any manner cease to hold office, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, shall immediately report such fact to the Securities and Exchange Commission."

Further, Memorandum Circular No. 02, Series of 2001, which was adopted on 12 March 2001 after SRC took effect on 08 August 2000, provides for the submission of reportorial requirements from all corporations registered with the Commission, thus:

"In compliance with Section 27 of R.A. 8792 otherwise known as the "Electronic Commerce Act", and Sec. 37 of its Implementing Rules and Regulations, all corporations with gross sales or revenue of Ten Million (P10,000,000.00) Pesos and above, are hereby directed to file four (4) copies and a diskette of the General Information Sheet (GIS) within thirty (30) days from the date of annual meeting, as specified in the by-laws and four (4) copies and a diskette of the Audited Financial Statements (F/S) duly stamped "RECEIVED" by the Bureau of Internal Revenue within 120 days (105 days for corporations whose securities are registered under the Revised Securities Act or Securities Regulations Code) after the end of the fiscal year as specified in the by-laws. A certification that the GIS diskette contains the exact data stated in the hard copies and the F/S diskette has the basic and material data in the F/S, executed under oath by the Corporate Secretary for the former and by the Treasurer for the latter shall also be submitted.

Those corporations with lower amount of gross sales or revenue have also the option to file these reportorial requirements with diskettes. Otherwise, they shall file six (6) hard copies of said documents."

Likewise, SEC Memorandum Circular No. 6, Series of 2006, adopted on 07 April 2006, reiterates the requirement on the submission of General Information Sheet and the General and Special Form for Financial Statements in Electronic Format, stating the rationale in Section 1 thereof behind such requirement, thus:

"Section 1. Rationale – Section 141 of the Corporation Code of the Philippines (Batas Pambansa 68) mandates that every corporation, domestic or foreign, lawfully doing business in the Philippines, shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, or by SEC-accredited independent certified public accountants **in case of listed companies and secondary licensees**, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require.

Further, Section 26 of the Corporation Code requires that the Secretary or any other officer of the Corporation shall submit within thirty (30) days after the election of directors, trustees and officers of the corporation, a report containing among others, the names, nationalities and addresses of such persons. Thus, for reporting such information, **corporations use the General Information Sheet (GIS), the form devised by the Securities and Exchange Commission (SEC) for this and other purposes**.

Apart from being used for **SEC monitoring and enforcement activities**, the data in the aforementioned reports also serve as inputs for the different statistical frameworks compiled by other government institutions for purposes of analyzing the performance of the Philippine corporate sector and formulating the appropriate economic and regulatory policies. It is therefore essential that the date in the subject reports be complete, accurate, reliable, and submitted following the prescribed reporting template and timeframe, because of their profound impact on the economy in general and the capital market in particular.

Considering the foregoing and in accordance with Section 27 o[f] R.A. 8792 which is also known as the Electronic Commerce Act, and Section 37 of its Implementing Rules and Regulations, **the submission of the GIS**, the General Form for Financial Statements (GFFS), and the industry-specific Special Forms for Financial Statements (SFFS) in electronic format i.e., on diskette or Compact Disc (CD) is hereby mandated." (Emphasis supplied)

Further, Section 2 on the *Scope of Application* of SEC Memorandum Circular No. 6, Series of 2006 expressly provides that the same memorandum circular be made applicable to, among others, *publicly-held companies enumerated in Section 17.2 of the Securities Regulation Code*.

Meanwhile, Section 17.2 of the SRC lists down the requirements for an issuer to file the subject reportorial requirements with the Commission, to wit:

"17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:

(a) An issuer which has sold a class of its securities pursuant to a registration under Section 12 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;

(b) **An issuer with a class of securities listed for trading on an Exchange**; and

(c) An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having Two hundred (200) or more holders each holding at least One hundred (100) shares of a class of its equity securities: *Provided, however,* That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than One hundred (100)." (Emphasis supplied)

In view of the foregoing, this Office is of the opinion that Philex is not exempt from the filing of the General Information Sheet and other reports required by the Corporation Code notwithstanding the fact that the same is subject to the reportorial requirements under Section 17 of the SRC. Philex, being a domestic corporation whose shares are listed and traded on the Philippine Stock Exchange, is still required to file the subject reportorial requirements with the Commission as further mandated in SEC Memorandum Circular No. 6, Series of 2006.

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 issues 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.[2] If, upon further inquiry and 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,

VERNETTE G. UMALI-PACO
General Counsel

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[2] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003