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

28 August 2012
SEC-OGC Opinion No. 12-14
Merger of Two Foreign Corporations

DU-BALADAD and ASSOCIATES
20th Floor, Chatham House
Rufino cor. Valero Sts., Salcedo Village
1227 Makati City

Attention: Atty. Fulvio D. Dawilan

Dear Atty. Dawilan:

This refers to your request for confirmation of your opinion that "a Philippine branch office of an absorbed foreign corporation in a merger can continue its juridical existence despite the merger."

Your client, Convergys Customer Management Group, Inc. (CCMGI), is a corporation duly organized and existing by virtue and under the laws of the state of Ohio, U.S.A. with principal address at 201 East Fourth Street, Cincinnati, Ohio 45202. CCMGI is engaged in the business of relationship management services, and has a subsidiary, Encore Receivable Management Inc. (ERMI) which is engaged in the business of debt collection. ERMI is a corporation duly organized and existing under the laws of the State of Kansas, U.S.A. with principal office address at 400 Rogers Road, Olathe, Kansas 66062.

On 12 May 2005, ERMI was granted by the Commission a license to establish a Philippine branch, under the name Encore Receivable Management Inc. with SEC Registration No. FS200508007. The principal address of the Philippine branch is, 24th Floor, Robinson's Equitable Tower, ADB Avenue cor. Poveda Street, Ortigas Center, Pasig City 1600.

The management of the two corporations, ERMI and CCMGI, are planning to merge the two corporations, with CCMGI as the surviving corporation. If the merger proceeds, CCMGI plans to continue to operate the Philippine branch of ERMI in the Philippines.

Your position is that if the merger ensues, the Philippine branch of ERMI can continue its existence, subject to change of its name, with CCMGI as its new head office in the U.S.A. You based this on Sections 132 and 80 of the Corporation Code[1] (the "Code") and SEC Opinion No. 14 Series of 2002, dated 15 November 2002 (the 2002 Opinion):

a) Sections 132 and 80 of the Code provide:

SECTION 132. **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 such is 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.

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 of its incorporation, such foreign corporation shall, within sixty (60) days after such merger or consolidation becomes effective, file with the Securities and Exchange 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 the laws of which 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.

SECTION 80. **Effects of merger or consolidation. — The merger or consolidation shall have the following effects:**

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4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

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[1] Batas Pambansa Blg. 68 (2000).

b) Citing Section 80 par. 4 of the Code, the 2002 Opinion stated that the surviving entity shall acquire all the assets, including the branches, of the absorbed company.

The 2002 Opinion went further thus:

"The branches of Company Y need not be closed so as to establish new branches of the surviving company. All properties (including branches) of the absorbed company shall be transferred to the surviving company as result of the merger. Moreover, the name of the absorbed company used in all branches should be changed and the name of the surviving company shall be adopted."

However, Section 80 par. 4 of the Code, which was the subject of the 2002 Opinion, applies to the merger of Philippine corporations. CCMGI and ERMI are both foreign corporations; therefore, the 2002 Opinion cannot be applied to their merger. Inasmuch as CCMGI is the surviving corporation, ERMI which is the absorbed corporation is in effect, dissolved because of the merger.[2] Paragraph two, Section 132 of the Code reproduced above applies to the merger of CCMGI and ERMI.

"The section covers the merger of a licensed foreign corporation with another corporation in its home country which is not doing business in the Philippines. xxxxxx if the licensed foreign corporation is absorbed by the merger, it must ask for withdrawal of its license to do business in the Philippines. Should the foreign absorbing corporation wish to continue the business of the absorbed corporation in the Philippines, it will have to file its own application for a license to do so in accordance with the provisions of Philippine law." [3]

As prescribed by paragraph two, Section 132 of the Code, ERMI shall file with the Commission within sixty (60) days after such merger becomes effective, a copy of the articles of merger duly authenticated by the proper official or officials of the country or state under the laws of which merger was effected. Inasmuch as the absorbed corporation, ERMI, is the foreign corporation doing business in the Philippines, it shall at the same time file a petition for withdrawal of its license in accordance with Title XV on Foreign Corporations of the Code.

If the surviving foreign corporation CCMGI, will continue the business of the absorbed corporation in the Philippines, it must file its own application for a license to do business in the Philippines in compliance with Sections 123,[4] 125,[5] 126[6] and 128[7] of the Code.

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[2] Hector S. De Leon, *The Corporation Code of the Philippines, Annotated* (2002) p. 812.
[3] Jose C. Campos Jr. and Maria Clara Lopez-Campos, "*The Corporation Code, Notes and Selected Cases* Vol. II (1990) p. 602.
[4] "SECTION 123. Definition and rights of foreign corporations. xxx."

Code.[8] In applying for said license, CCMGI must comply with all the all requirements prescribed by the Company Registration and Monitoring Department of the Commission (CRMD).

In addition thereto, a Certification must be submitted to the CRMD stating that the laws on merger of the foreign country provides for substantially the same effects as those mentioned in Section 80 paragraph 4 of the Corporation Code, reproducing therein the exact provisions of the applicable foreign laws.

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.[9] 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,

CAMILO S. CORREA
General Counsel

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[5] "SECTION 125. Application for a license. — A foreign corporation applying for a license to transact business in the Philippines shall submit to the Securities and Exchange Commission a copy of its articles of incorporation and by-laws, certified in accordance with law, and their translation to an official language of the Philippines, if necessary. The application shall be under oath and, unless already stated in its articles of incorporation, shall specifically set forth the following: xxxxxx"

[6] "SECTION 126. Issuance of a license. — If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license. xxxxxx"

[7] "SECTION 128. Resident agent; service of process. — The Securities and Exchange Commission shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the Securities and Exchange Commission a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office. xxxxxx"

[8] Rosario N. Lopez, "The Corporation of the Philippines Annotated" Volume III (1994) p. 1173.

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