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

10 February 2012

SEC-OGC Opinion No. 12-04
Re-domestication of a Foreign Corporation

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ATTENTION : **ATTYS. JOSE MA. G. HOFILENA** and **JOANNA EILEEN M. CAPONES**

Dear Attorneys Hofilena and Capones:

This refers to your request for opinion on the legal effects of a "re-domestication" of a foreign corporation from one country to another on its branch license issued by the Commission. Re-domestication is the process of changing a corporation's seat of registration from one state to another without having to undergo either a liquidation or a new incorporation.

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

Your client, Quezon Power, Inc. (QPI), was issued SEC License No. AF96-52 on 15 March 1996 by the Commission as a Philippine branch of its parent company Quezon Power, Inc., the latter being an exempt company limited by shares incorporated and existing under the laws of the Cayman Islands. The parent company now proposes its re-domestication from the Cayman Islands (the **"Place of Origin"**) to Switzerland (the **"Place of Transfer"**) in connection with a global re-organization plan of the company.

It is likewise stated in your letter that QPI, after its re-domestication to Switzerland from the Cayman Islands, will be the same corporation subject to Swiss law, thus creating no new legal entity. Further, there will be no interruption of the juridical personality or existence of QPI after the said transfer, which will have the same date of incorporation, purpose, incorporators, shareholders, and will run the same business and hold the same assets and liabilities. The only change would only pertain to the new corporate domicile of QPI from that of the Cayman Islands to Switzerland.

You inquire about the legal effects of re-domestication on QPI's existing Philippine branch license and any relevant processes it needs to undertake in the Philippines.

Based on your representations that transfer of domicile is allowed by the Cayman Islands law, and continuation is similarly allowed under Swiss law, and that the conditions and effects thereof that you stated are true, we confirm your position that in the event of re-domestication of QPI from the Cayman Islands to Switzerland, QPI is merely required to file with the Commission an application or petition for the amendment of its branch office license, to be accompanied by supporting documents that the Commission may require, instead of withdrawing, then re-applying for, the said branch license.

It is clearly provided for by Section 129 of the Corporation Code (the "Code") that the laws of the country or state of the applicant-foreign corporation govern the latter's creation, formation, organization or dissolution, or those which fix the relations, liabilities, responsibilities, or duties of stockholders, members, or officers of corporations to each other or to the corporation itself, thus:

> "Sec. 129. *Law applicable.* - Any foreign corporation lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, ***except such only as provide for the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties of stockholders, members, or officers of corporations to each other or to the corporation.*** " (Emphasis supplied)

Meanwhile, in case of amendments to articles of incorporation or by-laws of the same foreign corporation, it is provided for under Section 130 of the Code that:

> "Sec. 130. *Amendments to articles of incorporation or by-laws of foreign corporations.* - **Whenever the articles of incorporation or by-laws of a foreign corporation authorized to transact business in the Philippines are amended, such foreign corporation shall, within sixty (60) days after the amendment becomes effective, file with the Securities and Exchange Commission, and in the proper cases with the appropriate government agency, a duly authenticated copy of the articles of incorporation or by-laws, as amended, indicating clearly in capital letters or by underscoring the change or changes made, duly certified by the authorized official or officials of the country or state of incorporation.** The filing thereof shall not of itself enlarge or alter the purpose or purposes for which such corporation is authorized to transact business in the Philippines." (Emphasis and underscoring supplied)

Hence, in the case of re-domestication, upon the premise that the re-domestication is permitted by the laws of both the Cayman Islands and Switzerland to which the corporation is re-domesticating, QPI must file with the Commission, and in the proper cases, with the appropriate government agency, documents pertaining to the transfer of domicile procedure under the Cayman Islands law including (but not limited to) its articles of incorporation (or its equivalent) and by-laws, together with the documents pertaining to the continuation procedure under Swiss law including (but not limited to) its new corporate registration documents, articles of incorporation, and by-laws, all duly authenticated and consularized.

Further, QPI, in reflecting the parent company's new country of domestication, must likewise include any and all other amendments and changes to the same set of information required under Section 125 of the Code, more particularly, at this instance, the details regarding the complete address of the principal office of the corporation in the country or state of incorporation, to wit:

> "Sec. 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:
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> 1. The date and term of incorporation;
> 2. **The address, including the street number, of the principal office of the corporation in the country or state of incorporation**;
> 3. The name and address of its resident agent authorized to accept summons and process in all legal proceedings and, pending the establishment of a local office, all notices affecting the corporation;
> 4. The place in the Philippines where the corporation intends to operate;
> 5. The specific purpose or purposes which the corporation intends to pursue in the transaction of its business in the Philippines: Provided, That said purpose or purposes are those specifically stated in the certificate of authority issued by the appropriate government agency;
> 6. The names and addresses of the present directors and officers of the corporation;
> 7. A statement of its authorized capital stock and the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any;
> 8. A statement of its outstanding capital stock and the aggregate number of shares which the corporation has issued, itemized by classes, par value of shares, shares without par value, and series, if any;
> 9. A statement of the amount actually paid in; and
> 10. Such additional information as may be necessary or appropriate in order to enable the Securities and Exchange Commission to determine whether such corporation is entitled to a license to transact business in the Philippines, and to determine and assess the fees payable." (Emphasis supplied)

More importantly, the application for the same amendment must include likewise "*a **duly executed certificate under oath by the authorized official or officials of the jurisdiction of its incorporation,** attesting to the fact that the laws of the country or state of the applicant allow Filipino citizens and corporations to do business therein, and that the applicant is an existing corporation in good standing. If such certificate is in a foreign language, a translation thereof in English under oath of the translator shall be attached thereto.*"[1] Simply put, the laws of Switzerland, in case of re-domestication, must also allow Filipino citizens and corporations to do business therein to give effect to the change in the corporation's seat of registration.

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,

CAMILO S. CORREA
General Counsel

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[1] Section 125 of the Corporation Code
[2] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.