Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-22
Re: Allowable Activities of a Representative Office

10 September 2024

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Attention: Atty. Arvin Stephen L. Molina
Atty. Ma. Carmela T. Fojas

Dear Attorneys:

This pertains to your 31 July 2024 letter[1] requesting for an opinion on whether or not a representative office in the Philippines is allowed to deal directly with its parent company's clients outside the Philippines.

You stated that your client is a foreign limited liability company organized and existing under the laws of Austria with a registered office therein. The company is primarily engaged in the trade of goods, especially abroad, and providing service, management, and consulting in the export sector, as well as the purchase and sale of goods of all kinds.

You also stated that the company is considering establishing a representative office in the Philippines for marketing and management service purposes dealing directly with the clients of the company:

1. Located in the Philippines; and
2. In the countries located in Southeast Asia.

Thus, your query.

Rule I, Section 1 (q) of the Implementing Rules and Regulations (IRR) of Republic Act No. 7042 or the Foreign Investment Act (FIA) (FIA-IRR), as amended[2], defines a representative or liaison office as:

> "*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."

[1] Received by this Office on 1 August 2024.
[2] Implementing Rules and Regulations of Republic Act (RA) No. 11647 or An Act Promoting Foreign Investment Investments, Amending thereby Republic Act No. 7042, otherwise known as the "Foreign Investment Act of 1991", As Amended, and for Other Purposes (FIA-IRR) 11 July 2022.

In the case of *Commissioner of Internal Revenue v. Shinko Electric Industries Co. Ltd.*[3], the Supreme Court enumerated the characteristics of a representative office, to wit:

a) It is fully subsidized by its head office;

b) It deals directly with the clients of its parent company;

c) It undertakes activities such as but not limited to information dissemination, promotion of the parent company's products as well as quality control of products; and

d) It does not derive income in the Philippines.

In a previous opinion, the Commission opined:[4]

> "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.[5] Thus, the second sentence of the afore-quoted definition should, pursuant to the principle of *ejusdem generis*[6], 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 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."

A representative office is an extension of a foreign corporation and does not have a legal personality separate from its parent company. Unlike a Regional or Area Headquarters (RHQ) and a Regional Operating Headquarters (ROHQ), however, 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.[7] However, a representative office is forbidden to engage in income-producing activities in the Philippines.

Applying the foregoing discussion, the representative office in the Philippines is allowed to deal directly with its parent company's clients inside and outside the Philippines as long as its activities relate to information dissemination, promotion, and quality control of its parent company's products and does not derive income in the Philippines and is fully subsidized by its head office.

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 upon the courts whether of similar or dissimilar circumstances.[8] 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

[3] G.R. No. 226287, July 06, 2021.
[4] SEC Opinion No. 16-20 dated 25 August 2016 addressed to Atty. Gilbert Mario A. De la Cruz
[5] Landbank v. De Leon, 437 Phil. 324 (2002)
[6] Miranda v. Abaya, 370 Phil.642 (1999)
[7] See supra note 4.
[8] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.