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

30 September 2011

SEC-OGC Opinion No. 11-40
Licensing of foreign corporation; Doing business; Purchase of condominium units

MR. LEE SOON KOOK
President
(c/o Atty. Manuel D. Gacula)
Unit 2301 Antel 2000 Corporate Center,
121 Valero St., Salcedo Village,
Makati City

Dear Mr. Lee,

This refers to your letter dated 30 June 2011 requesting for an opinion on whether a foreign corporation can purchase and acquire condominium units in the Philippines without necessarily securing with the Securities and Exchange Commission a license to transact business here.

Based on your letter and its attachments, G.A.T. Co. Ltd. (GAT) is a Korean-registered entity whose objectives include engaging in overseas travel agency, air ticket sales, hotel reservation, car rental, trading business, business of distribution, wholesale business, retailing, service business, leisure business, real estate leasing services, studying abroad services and any related or incidental business thereto. It changed its trade name to SHIN-HO SUBIC CO., LTD., which was registered on 5 August 2010.

You also stated that:

1.) Sometime in 2007, GAT purchased from Federal Land Inc. two (2) condominium units and two (2) parking lots in Palawan Tower of Bay Garden Project in Paranaque City, as evidenced by the attached Contract to Sell.

2.) GAT's purpose for acquiring the foregoing properties was merely for the benefit of its officers and directors who travel and visit the Philippines, with no intention to use the condominium units for commercial purposes, but merely a one-time investment transaction by the company.

3.) GAT has not engaged in any other venture, activity or involvement within the Philippines nor has any further transactions other than the purchase of said units.

4.) On 28 June 2011, Federal Land Inc. issued certifications that GAT has already paid the above properties in full.

5.) In a letter dated 12 September 2007, Federal Land Inc. informed GAT that it should apply for a License to Transact Business in the Philippines with the Securities and Exchange Commission to enable it to register said properties under the name of GAT.

Based on the above narration, you now seek confirmation on whether the purchase or acquisition of condominium units by GAT would be considered as doing or transacting business, which would necessitate applying for a license to do business from the SEC.

At the outset, no foreign corporation shall be permitted to transact business in the Philippines, unless it shall have secured a license from the Securities and Exchange Commission (SEC). In elaborating on what is deemed as "transacting business," the Supreme Court held that:

> No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is **continuing a body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another** ... The term implies **a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.** (Emphasis supplied)[1]

Further, the Foreign Investments Act of 1991,[2] as amended, defines the term "doing business" as to include the following:

> "Doing business" shall include soliciting orders, service contracts, opening offices, whether called 'liaison' officer or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more, participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or of the purpose and object of the business organization; *Provided, however*, That the phrase 'doing business' shall not be deemed to include

[1] Mentholatum vs. Mangiliman, G.R. No. 47701 (1941).
[2] Republic Act No. 7042.

> mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor, nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.[3]

In Agilent Technologies Singapore Pte. Ltd. vs. Integrated Silicon Technology Phils. Corporation,[4] the Supreme Court laid down the test to determine whether a foreign corporation can be considered as "doing business" in the Philippines. The first is the substance test, thus:

> The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.
>
> The second test is the continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works, or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.

Further, an essential condition to be considered as "doing business" in the Philippines is the actual performance of specific commercial acts within the territory of the Philippines for the plain reason that the Philippines has no jurisdiction over commercial acts performed in foreign territories.

Considering that the transaction provided in your letter involves a mere acquisition of several condominium units wherein GAT's officers and directors shall stay during visits in the Philippines, such transaction is an activity that is not contemplated by the definition of "doing or transacting business." However, should the condominium units be leased by GAT to its customers in light of its overseas travel agency business and real estate leasing services, or otherwise used by it for commercial purposes, it is considered as "doing or transacting business" in the Philippines, which requires securing a license with the SEC.

Accordingly, a foreign corporation, subject to the provisions of RA 4726, otherwise known as the Condominium Act of the Philippines, may acquire condominium units in the Philippines without necessarily securing with the SEC a license to transact business here. However, it must be emphasized that when the condominium units are used in commercial transactions, such activity is considered as doing business in the Philippines that would require securing a license with the SEC.

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used

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[3] Sec. 3 (d), RA No. 7042, as amended.

[4] G.R. No. 154618, 14 April 2004, citing Mentholatum v. Mangaliman, G.R. No. 47701, 27 June 1941 (72 Phil. 524).

in the nature of a standing rule binding upon the Commission whether of similar or dissimilar circumstances.[5] If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VESPER JULIUS B. GARCIA
Officer-in-Charge

[5] SEC Memorandum Circular No. 15, series of 2003.