



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

28 November 2018

SEC-OGC Opinion No. 18-22

Re: Post-Production Facility; Mass Media

KITTLESON AND CARPO CONSULTING, INC.

21-B Rufino Pacific Tower
6784 Ayala Avenue
Makati City 1200

Attention: Atty. Maureen Marie Morales

Dear Atty. Morales:

This refers to your letter dated 01 April 2013 requesting “for a definitive ruling on whether a post-production facility (hereinafter referred to as the “Facility”), which functions merely to edit and package cable TV content for re-export to overseas clients, constitutes mass media, which prohibits foreign ownership, pursuant to Section 11(1), Article XVI of the 1987 Constitution.”

You further related that, “the workflow of the business process is that the television programs will be imported into the Philippines from the global television market. The content will then be re-edited, packaged, and exported via Globe Telecom Fiber Optic Link to the clients (regional distributors) abroad. All revenues will be generated from overseas clients in US Dollars and remitted into the Philippines.” You likewise stated that, “the Facility will not create or produce the content nor transmit the same to the general public.”

Please be informed that the Office of the General Counsel does not issue “direct rulings” (akin to BIR rulings) but rather opinions, as authorized by the Securities Regulation Code, Sec 5.1 (g)¹.

The issue in this case is whether the Facility falls within the purview of mass media, which is a nationalized activity, thus subject to foreign equity limitations.

Section 11(1), Article XVI of the 1987 Constitution provides:

¹Section 5. Powers and Functions of the Commission.— 5.1. The commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions: xxx (g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulation and orders; xxx.

Section 11 (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

'Mass media', as referred to in the Constitution, is defined as any medium of communication designed to reach the masses and that tends to set the standards, ideals, and aims of the masses, and is distinctively characterized by the dissemination of information and ideas, whether in whole or in part, to the public.²

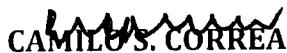
The Commission has opined that the activities of live productions, short and full-length television shows and movies, and direct to audience, all constitute the dissemination of information and ideas to the public, and tend to influence the public's standards, ideals, aims and opinion.³ Further, post-production has already been considered as an activity which falls within the definition of mass media.⁴

In order for the Constitutional provision to apply, the mass media material produced must be distributed in the Philippines. In previous opinions⁵, the Commission held that if the publication is intended for dissemination in the Philippines, the undertaking is subject to the constitutional limitation making mass media a completely nationalized activity.

Based on your representation, the mass media material will be exported to the regional distributors abroad and the Facility will not transmit the same to the general public. However, it is not known whether the regional distributors would be disseminating the material to the general public. If the cable television content edited and packaged by the Facility will not be distributed in the Philippines, then the Constitutional prohibition will not apply.

It shall be understood, however, that the foregoing opinion is rendered based solely on facts and circumstances disclosed and relevant solely to the particular issue 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. If, upon further inquiry and investigation it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.⁶

Please be guided accordingly.


CAMILLO S. CORREA
General Counsel

² Ministry of Justice (MOJ) Opinion No. 21, s. 1986

³ SEC Opinion No. 09-33, dated 18 December 2009 addressed to the Law Firm of R.V. Domingo & Associates

⁴ SEC Opinion No. 11-08, dated 03 March 2011 addressed to Atty. Nelson G. Leyco

⁵ SEC Opinion dated 21 September 1986, addressed to Mr. Jose P. Quiambao; SEC Opinion dated 31 March 1986, addressed to Mr. Youm Young Sig, both citing DOJ Opinion No. 024, S. 1986, dated 17 February 1986

⁶ SEC Memorandum Circular No. 15, s. of 2003