Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

12 December 2024

SEC OGC Opinion No.24-42
Re: Applicability of the Rules on Material Related Party Transactions for Publicly-Listed Companies ("MRPT")

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Attention: Atty. Lauren Isabel Ong
Associate

Dear Attorney:

This pertains to your letter dated 12 January 2024[1] requesting for opinion on the applicability of the SEC Memorandum Circular No. 10, Series of 2019, or the Rules on Material Related Party Transactions for Publicly-Listed Companies (MRPT Rules).

In your letter, you averred the following scenario:

Company A is a Publicly-Listed Company ("PLC") that is a parent to numerous "Subsidiaries" and likewise also has ties with other companies as "Affiliates".

Company B, a private unlisted company, is a subsidiary of Company A, as the latter owns more than a majority of Company B's shares.

Being a subsidiary of Company A, the financials of Company B are consolidated with Company A's Audited Financial Statements (AFS).

Company B also has various subsidiaries and affiliates, one of which is Company B-1 which may be defined as an "affiliate" of Company A under the MRPT Rules.

Company B-1 entered into a transaction with Company C wherein Company B-1 sold its services and products to Company C. The price of the transaction is valued at more than ten percent (10%) of Company A's total assets.

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[1] Received by this Office on 12 January 2024.

In relation to the aforementioned, you raised the following queries:

1. Are transactions between Subsidiaries/Affiliates of a PLC with other entities or individuals (a non-related party) covered by the MRPT Rules? and
2. Does the fact that the financials of a Subsidiary/Affiliate is consolidated with the AFS of the Parent-PLC mean that any or all transactions of said Subsidiary/Affiliate is/are deemed "action(s)/transaction(s)" of the Parent-PLC under the MRPT Rules?

Under Section 1 of the MRPT Rules, Related Party Transactions (RPTs) and Related Parties are defined as:

> " ***Related parties***- covers the reporting of PLC's directors, officers, substantial shareholders and their spouses and relatives within the fourth civil degree of consanguinity or affinity, legitimate or common-law, if these persons have control, joint control or significant influence over the reporting PLC. **It also covers the reporting PLC's parent, subsidiary, fellow subsidiary, associate, joint venture, or entity that is controlled, jointly controlled or significantly influenced or managed by a person who is a related party.**"
>
> "***Related Party Transactions***- a transfer of resources, services, or obligations between a reporting PLC and a related party, regardless of whether a price is charged. It should be interpreted broadly to include not only transactions that are entered into with related parties but also outstanding transactions that are entered into with an unrelated party that subsequently becomes a related party."

In order for an RPT to be considered material according to the rules[2], it must meet the criteria of representing 10% or more of the company's total assets. This applies to both individual transactions and the cumulative value of transactions with the same related party within a 12-month period. The determination of the company's total assets should be based on the most recent AFS.

However, it must be stressed that the MRPT Rules focus on and regulate related party transaction/s between a reporting PLC and a related party.

It primarily pertains to transactions that directly involve reporting PLC's. This strategic approach is designed to safeguard the interest of shareholders and stakeholders and this is achieved by ensuring that transactions with related parties are conducted in a transparent, fair, and compliant manner, thereby securing the integrity of the capital market and the broader corporate governance framework. The regulatory scheme is put in place to address any potential conflicts of interest and maintain a stringent scrutiny over all material transactions, thereby upholding the utmost standards of corporate governance.

Thus, transactions between subsidiaries/affiliates of a reporting PLC and a non-related party are not covered by the rules. Accordingly, we answer your **first query** in the **negative.**

As to your **second query**, we answer it in the **negative**.

The Revised Securities Regulation Code ("SRC") Rule 68 provides that parent companies governed by Part II of the same are mandated to submit consolidated AFS to the Commission, including AFS which has been duly acknowledged by the Bureau of Internal Revenue ("BIR") or any of its accredited banks.

This notwithstanding, it is well-settled that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company, hence, any claim or suit against the latter does not bind the former and vice versa.[3] This principle finds its context on the postulate that a

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[2] Section 3, MRPT Rules.
[3] Velarde v. Lopez, Inc., G.R. No. 153886, 14 January, 2004.

corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related.[4]

In short, the consolidation of financial statements is merely a critical component of financial reporting to enhance financial transparency and accountability by providing to stakeholders a complete picture of the financial status of the corporate group or conglomerate to which the PLC belongs, but which is not meant to negate or disregard the juridical personality of each entity in the group.

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.[5] 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

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[4] Jardine Davies, Inc. v. JRB Realty, Inc., G.R. No. 151438, July 15, 2005, 463 SCRA 555, 563.
[5] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.

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