Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

17 February 2025

SEC OGC Opinion No. 25-03
Re: Engagement in E-Commerce *vis-a vis-* Retail Trade Act

YAMAHA MOTOR PHILIPPINES, INC.
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Attn: Atty. Mark Kenneth A. Cataquiz
Legal Officer

Attorney:

This pertains to your letters dated 22 February 2024 and 8 March 2024 requesting for an opinion on 1) whether Yamaha Motor Philippines, Inc's (YMPH) engagement in Electronic Commerce (E-Commerce) as below described would constitute retail trade as defined in Section 3 (1) of Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 ("RTLA"); and 2) whether YMPH is permitted to engage in E-Commerce without amending its articles of incorporation (AOI).

In your letter dated 22 February 2024, you stated that YMPH is the sole entity in the Philippines duly licensed by Yamaha Motor Co. Ltd (Japan) to manufacture, assemble, and distribute Yamaha Motorcycle and other related products.

In SEC-OGC Opinion No. 09-22[1], YMPH sought our opinion on its plan to establish a café and a 3S shop where the manufactured and/or assembled products in the Philippines will be sold to end-users. In the said opinion, the Commission opined that sales through a single outlet owned by a manufacturer of products manufactured, processed, or assembled in the Philippines irrespective of the capitalization is not considered as retail. Since then, YMPH has operated a single outlet in Mandaluyong City called YZone.

According to you, YMPH is presently poised to introduce Power Assist Bicycles to the Philippines. These items are analogous to electric bicycles. In light of technological progress and the evolving landscape of commerce, YMPH's strategy involves the establishment of an E-Commerce platform. YMPH is looking into several options.

Option 1 entails customers placing orders via an E-Commerce platform, with fulfillment managed directly by YMPH's sole outlet, Y Zone. Option 2 involves buyers submitting orders online with the fulfillment executed by their chosen dealer. Although the point of sale resides with the dealer, the payment structure resembles that of a consignment arrangement, as inventory ownership remains vested in YMPH until a purchase is finalized. Option 3 operates on a subscription model, wherein customers remit periodic fees for bicycle usage and are required to return the bicycles upon subscription expiry.

You stated that, by launching an E-Commerce platform, YMPH will not be considered engaged in retail trade based on the following reasons:

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[1] SEC-OGC Opinion No. 09-22 dated 19 August 2009 addressed to Atty. Jesus Clint O. Aranas.

1. Under Option 1, YMPH assumes responsibility for all facets of the operation, encompassing marketing, order fulfillment, site maintenance, inventory control, after-sales support, and related functions. All transactions occur exclusively through the single outlet YZone;
2. In option 2, the E-Commerce infrastructure remains under the YMPH's purview, upon customer order completion, payment processing is directed to the buyer's chosen dealer for issuance, maintaining a business model akin to consignment. Inventory ownership remains with YMPH until the point of purchase, with branch outlets tasked with order fulfillment; and
3. In option 3, the leasing model is considered incidental to achieving YMPH's primary purpose and is a legitimate strategy to expand the company's market reach and promote its products.

As to your first query, we answer in the affirmative.

Section 3 (1) of the RTLA defines retail trade as " any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption."

A sale transaction is considered "retail" if the following elements are present:

1. The seller should be habitually engaged in selling;
2. The sale must be direct to the general public; and
3. The object of the sale is limited to merchandise, commodities, or goods for consumption.[2]

The Commission had previously opined[3] that the word "public" has been defined differently depending on the context in which it is found. In one sense, the "public" is everybody; accordingly, "public" has been employed as meaning the body of people at large; and "sales to the public" has been held as sales to the community at large, all of the inhabitants of a particular place and not limited to the portion of the people (People vs. Huthven, 288 N.Y.S 631). Other cases have held that "public does not mean all of the public, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few (State v. Luce, Del., 32A.1076; State vs. Baker, 102 N.E.732;People vs. Powel. N.W.372).[4]

Section 3 (1) of the RTLA also enumerates exceptions from retail trade, to wit:

> "Section 3. *Definition.* - As used in this Act.
>
> (1) *"Retail trade"* shall mean any xxx, but the restriction of this law shall not apply to the following:
>
> (a) Sales by manufacturer, processor, laborer, or worker, to the general public of the products manufactured, processed, or products by him if his capital does not exceed One hundred thousand pesos (100,000.00);
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> (b) Sales by a farmer or agriculturist selling the products of his farm;
>
> (c) Sales in restaurant operations by a hotel owner or inn-keeper irrespective of the amount of capital: provided, that the restaurant is incidental to the hotel business; and
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> (d) **Sales which are limited only to products manufactured, processed or assembled by a manufactured, processed or assembled by a manufacturer through a single outlet, irrespective of capitalization**. xxx" (Emphasis and underscoring supplied)

The term outlet is used in the Implementing Rules and Regulations (IRR) of the RTLA to define "Store". Section 1 (n) of the IRR provides that a *store* shall mean a physical outlet established in the country where goods are sold on a retail basis.

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[2] SEC Opinion No. 16-03 dated 15 February 2016 addressed to Platon Martinez Flores San Pedro & Leaño law offices.
[3] SEC OGC Opinion No.19-44 dated 04 October 2019 addressed to Mr. Przemyslaw Adam Floras.
[4] DOJ Opinion No. 47, s.1995 and Opinion dated 30 October 1968.

Section 1 (g) of Rule 1 of the IRR of the RTLA indicates that stores, branches, or outlets pertain only to brick and mortar type of stores, which provides as follows:

> " **Minimum Investment Per Store** shall include the value of assets, tangible, or intangible including but not limited to buildings, leasehold rights, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparations, or storage facilities."

In a previous opinion[5], the Commission opined:

> "Under the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference.[6] Considering the provisions of the RTLA, its IRR, and in view of the rule of *ejusdem generis*, the word "**single outlet**" should be interpreted to mean that the same **is akin to the enumeration, *i.e., buildings, leaseholds, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities.*** Otherwise, it should be deemed foreign or extraneous and should therefore be excluded.
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> Further, it is imperative to recall that retail trade shall mean any act, occupation, or calling of habitually selling direct to the general public merchandise, commodities, or goods for consumption, subject to the exemptions or restrictions provided by law.[7] **In light of this definition, the utilization of online platforms for sales negates the purported rationale behind the exemption as the scope of sales conducted through online platforms *expands beyond limitation*, facilitating broader outreach and increased transactions, and thus, deviating from the notion of "single outlet sales."** This effectively sanctions actions that would otherwise be prohibited through direct means.
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> Under the rules of statutory construction, ***exceptions, as a general rule, should be strictly, but reasonably construed;*** they extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception.[8]
>
> Thus, **in defining "single outlet" for the purpose of availing the exception under the RTLA, the establishment of a "brick and mortar" store or physical store is the criterion— *to the exclusion of online platforms or stores.*"**

Based on the foregoing, while YMPH's sale of electric bicycles and other related products via its single outlet was previously considered exempt from retail trade, placing orders and payment arrangements by potential customers through an E-Commerce platform that complements said single outlet, to our mind, already constitutes retail trade. The use of the E-Commerce platform to augment the single outlet significantly broadens the reach to potential customers in the general public, deviating from the notion and rationale of single outlet sales.

As to your second query, we likewise answer the same in the affirmative.

YMPH's primary purpose clause, based on its Amended AOI, states:

> " **To manufacture, develop, produce, assemble, process, fabricate,repair, preserve, maintain, enhance, refine and pack, any article of commerce**, including but not limited to transportation vehicles of all kinds and types, utilizing engines of all kinds and types, tools and components, other general. Mechanical, electric, or hydro machinery, appliances, and their parts, to import, purchase, or acquire the necessary machinery, equipment raw materials, and supplies required for such manufacturing operations and **to export, sell at wholesale, distribute, trade, deal in, or otherwise dispose of its manufactured products**; and to do all such things, and perform such acts as may be necessary and proper to conduct the business of manufacturing and selling at wholesale the said products and other lawful object of commerce throughout the Philippines and elsewhere." (Emphasis supplied)

The Commission has previously opined[9], to wit:

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[5] SEC OGC Opinion No. 24-17 dated 19 June 2024 addressed to Atty.Gilbert E. Moreno.
[6] *Metropolitan Bank and Trust Co. v. Chiok*, G.R. Nos. 172652, 175302 & 175394, November 26, 2014. Citations omitted.
[7] Section 3, paragraph 1, RTLA.
[8] *Samson v. Court of Appeals*, G.R. No. L-43182, November 25, 1986.
[9] SEC- OGC Opinion No. 22-08 dated 30 May 2022 addressed to Atty.Joel C. Gammad.

"It is well-settled that a corporation has only such powers as expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express power.[10]

It is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise. *Express powers* include the general powers which are enumerated in Section 35 of the Revised Corporation Code ("RCC") and those which are sanctioned by the State in the corporation's Articles of Incorporation . *Implied or incidental powers*, on the other hand, are those which are "essential or necessary to carry out its purpose as stated in the Articles of Incorporation.[11]

"The power to "exercise such other powers as may be essential or necessary to carry out its purpose or purposes stated in the articles of incorporation " is an *implied power* of corporation as recognized under paragraph (k) of Section 35[12] of the RCC. Clearly, the implied powers of a corporation pertain only to such powers as are reasonably necessary to enable a corporation to carry out the express powers granted."

Relative thereto, the Commission opined[13]:

"It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in business (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p.54).

Considering that YMPH's primary purpose, as laid down in its Amended AOI, involves wholesaling of transportation vehicles of all kinds and types, it needs to amend its AOI if it sells, in conjunction with its single outlet, electric bicycles and other related products through the E-Commerce platform which is directed to the general public, because the same is removed from the ambit of the single outlet sales exception and already constitutes retailing that could not be considered incidental or reasonably necessary to carry out the purpose to engage in wholesaling.

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.[14] 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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[10] SEC -OGC Opinion No. 33-11 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

[11] Insurance Commission Legal Opinion L.O No. 2017-07, 15 September 2017.

[12] Section 35 of the RCC. (k) To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

[13] SEC-OGC Opinion No.19-39 dated 18 September 2019 addressed to Mr. Romualdo I. Katigbak.

[14] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.