Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23-05
Re: Allowable activities of a Representative Office

15 March 2023

CTI ENGINEERING INTERNATIONAL CO., LTD.
Manila Liaison Office, 2F Room 200, S&L Building
1500 Roxas Boulevard, Ermita, Manila

Attention: **MR. SHUJI KAKU**
Chief Representative

Dear Mr. Shuji Kaku:

This refers to your letter dated 12 October 2022 requesting for an opinion on the authority of a representative office to receive payments on behalf of its foreign principal.

In your letter, you disclosed the following matters:

a) CTI Engineering International Co. Ltd. (CTII – Japan) is a foreign company organized and existing under the laws of Japan. It was registered with the Japanese Securities and Exchange Commission in July 1999;
b) CTII – Japan was granted a license to transact business in the Philippines on 29 August 2022;
c) CTI Engineering International Co. Ltd. – Manila Representative Office (CTII-Manila) was established as a representative office in Manila "to act as a liaison between its head office and its clients/customers in the Philippines[1]";
d) CTII – Manila's operations are fully subsidized by CTII – Japan. It does not engage in business activities for its own account in the Philippines;
e) At present, CTII – Japan conducts engineering consultancy services for the Philippine government, its agencies, and instrumentalities; and
f) CTII – Manila liaises between the Philippine government and CTII – Japan.

You are now requesting for confirmation of your position that the CTII – Manila is allowed to receive payments on behalf of CTII – Japan from the Philippine government, its agents, and instrumentalities for engineering and consultancy services rendered by the former to the latter.

Nature of a representative office

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

[1] This is based on the License to Transact Business in the Philippines of CTII – Japan as attached in your letter.
[2] Implementing Rules and Regulations of Republic Act (R.A.) No. 11647 or An Act Promoting Foreign Investments, Amending thereby Republic Act No. 7042, otherwise known as the "Foreign Investments Act of 1991", As Amended, and for Other Purposes (FIA-IRR). 11 July 2022

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> *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.

In ***Commissioner of Internal Revenue vs. Shinko Electric Industries Co. Ltd.***, the Supreme Court provided an enumeration of a representative office's characteristics, to wit:

> It can be gleaned from the foregoing that a representative office has the following characteristics:
>
> 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***.[3] (Emphasis supplied)

Allowable activities of a representative office

In ***Lapanday Foods Corporation vs. Commissioner of Internal Revenue,*** the Court reiterated the principle of *ejusdem generis, viz*:

> Furthermore, We observe that the term "assisting" appearing in Lapanday's primary purpose. **Under the principle of ejusdem generis, "where a general word or phrase follow an enumeration of particular and specific words of the same class, or where the latter follows the former, the general word or phrase is to be construed to include or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class those specifically mentioned."** To "manage" means "to control and direct"; to "administer" is "manage or conduct affairs"; to "promote" is to contribute to the growth, enlargement or prosperity of or to present (merchandise) for public acceptance through advertising or publicity." It is logical then to bestow on the term "assisting" in Lapanday's Articles of Incorporation as having a similar meaning as "managing," "administering," or "promoting."[4] (Citations omitted)

Applying the principle of *ejusdem generis*, the Commission opined in ***SEC-OGC Opinion No. 15-06*** that a representative office cannot derive income from the host country, to wit:

> ***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***. Thus, the second sentence of the afore-quoted definition should, pursuant to the *principle of ejusdem generis*, be interpreted to mean that ***<u>any permissible act of a representative office should be akin to or resemble the same kind or class as those of 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</u>***. To hold otherwise would run counter to the very nature of a representative or liaison office.[5] (Emphasis and underscoring supplied)

That a representative office does not derive income from its activities in the Philippines was reiterated in ***SEC-OGC Opinion No. 16-20***, to wit:

> Based on the foregoing, the allowed activities of a Representative Office are those aligned with information dissemination, promotion and quality control of the company's products. In other words, a Representative Office ***may only engage in activities which support the business activities of the parent company***. In addition, it is imperative that a Representative Office ***does not derive income from activities performed in the Philippines***. All the expenses to establish and maintain the Representative Office will therefore come from the parent company's remittances.[6]

In ***SEC-OGC opinion No. 10-01***, the Commission rendered an opinion on whether a proposed representative office may legally engage in various activities such as inviting clients to open off-shore accounts with the parent company, promoting the parent company's products, assisting and communicating with clients, and transmitting clients' instructions to the parent company, to wit:

> We confirm that the representative office may engage in these activities ***<u>provided it strictly adheres to the said parameters or restrictions</u>***. The representative office's conduct of these activities subject to the parameters is consistent with the Implementing Rules and Regulations of the Foreign Investments Act of 1991, which provides that:
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>> 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

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[3] *Commissioner of Internal Revenue v. Shinko Electric Industries Co., Ltd.*, G.R. No. 226287, 06 July 2021.
[4] *Lapanday Foods Corp. v. Commissioner of Internal Revenue*, G.R. No. 186155, 17 January 2023.
[5] SEC Opinion No. 15-06 addressed to Fortun, Narvasa & Salazar dated 21 July 2015.
[6] SEC-OGC Opinion No. 16-20 addressed to Atty. Gilbert Mario A. De La Cruz dated 25 August 2016.

> 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.
>
> We emphasize that these activities are ***limited only to marketing and promotion*** of IAPBL's products and services to Philippine clients. **However, all transactions will be booked, sold or executed outside the Philippines' jurisdiction, and it will derive no income from within the country. Thus, the representative office will not exceed its authority.**[7] (Emphasis and underscoring supplied)

In the said Opinion, it was mentioned that the proposed activities of the representative office shall be subject to parameters or restrictions, one of which is as follows:

> (d) Payments for IAPBL's products and services are made by Philippine clients directly to IAPBL Singapore or its contracting branch outside the Philippines. ***The Representative Office is not allowed to receive such payments***[8]***;*** (Emphasis supplied)

Whether or not a representative office can receive payments on behalf of its head office

Based on the foregoing discussion, we opine in the *negative*.

You state that the act of receiving payment from clients falls within "passive acts in support of the parent company." However, we note that the act of receiving payments in behalf of the parent company is ***not*** related to information dissemination, promotion, nor quality control.

The license to transact of CTII – Manila which you have attached as Annex "A" of your letter states that the representative office was established by CTII – Japan "to act as a liaison between its head office and its clients/customers in the Philippines." The act of being a "liaison" should be read in relation to Section 1(q) of the FIA-IRR.

Moreover, ***SEC-OGC Opinion No. 16-20*** specifically mentions that the act of receiving payment from clients is **excluded** from representative office's passive acts in support of the parent company. This is also consistent with ***SEC-OGC opinion No. 10-01***.

As such, CTII – Manila cannot receive payments in behalf of CTII – Japan considering that it is not one of nor *akin* to the allowable activities under the FIA-IRR.

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.[10] 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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[7] SEC-OGC Opinion No. 10-01 addressed to Sycip Salazar Hernandez & Gatmaitan dated 13 January 2010
[8] *Ibid.*
[10] Section 7, SEC Memorandum Circular No. 15-03, 16 December 2003.