ICTD

Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

25 August 2016

SEC-OGC Opinion No. 16-20
RE: Allowed activities of a
Representative Office

ATTY. GILBERT MARIO A. DE LA CRUZ
21st Floor Chatham House Building
116 Rufino Street corner Valero Street
Salcedo Village, Makati City

Dear Atty. De La Cruz:

This refers to your letter dated March 4, 2014 requesting for a legal opinion on behalf of your client, Curtain Wall Design & Consulting, Inc. (CWDCI), on whether the proposed Representative Office can legally engage in certain activities.

In your letter, you manifested that CWDCI is a corporation organized and existing under the laws of the United States of America and is engaged in providing design, engineering and consulting services for the total building envelope system ("curtain wall design"), with twenty-two (22) offices located in the United States, Canada, Mexico, China, Taiwan, South Korea, Australia and the Philippines. Thereafter, you disclosed that CWDCI is planning to establish a Representative Office in the Philippines with the following activities:

1. "To **engage in information dissemination** about the technical and consulting services related to state-of the-art building envelope systems (curtain wall designs) offered by the parent company

2. To **liaise with potential clients** who are interested in the parent company's range of technical and consulting services

3. To **render technical service demonstration to potential clients** and to provide technical drafting support to the parent company

4. To **undertake promotion and quality control of technical services** offered by the parent company

5. To **conduct research on curtain wall designs** related to the parent company's technical and consulting services." (Emphasis and underscoring provided.)

You also mentioned that the above-enumerated activities shall be strictly governed by the following parameters or restrictions:

a. The representative office shall **not transact or book in its records any business** with the Philippine clients of the parent company **nor shall it receive any payments from said clients.**

b. The **representative office shall not charge any fees** in the performance of its activities and is **not authorized to derive any income in the Philippines**.

c. The operations of the representative office shall be fully subsidized by the parent company. (Emphasis and underscoring supplied.)

The Implementing Rules and Regulations (IRR) of the Foreign Investments Act of 1991 defines a representative or liaison office. Rule 1, Section 1 (c) of the said IRR specifically provides:

> "*Representative or liaison office* deals directly with the clients of the parent company but does not derive income from the host country 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**." (Emphasis and underscoring supplied.)

To further elucidate the functions of a Representative Office, the Commission opined, to wit:

> "Further the implementing rules and regulations of Republic Act 7042, as amended, clearly defined a **representative office** or liaison office as distinguished from a **branch office**. The **former** deals directly with the client of the parent company but does not derive income from the host country and is fully subsidized by its head office while the **latter carries out the business activities of the head office and derives income from the host country.**" [1] (Emphasis and underscoring supplied.)

[1] SEC Opinion dated 02 February 2001 addressed to Mr. Jaime Diaz.

In a more recent opinion, the Commission provided guidance as to how this definition could be interpreted in determining what activities are allowed for a Representative Office, 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 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. To hold otherwise would run counter to the very nature of a representative or liason office.**"[2] (Emphasis and underscoring supplied.)

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.

Thus, the Commission, when earlier presented with substantially the same nature of activities and similar parameters and restrictions, opined, to wit:

> "We confirm that the representative office may engage in these activities provided it strictly adheres to the said parameters or restrictions.
>
> xxx
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> 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 Philippine's jurisdiction, and it will derive no income from within

[2] SEC Opinion No. 15-06 dated 21 July 2015 addressed to Fortun, Narvasa & Salazar, RE: Investment by a Representative Office in Stocks of a Domestic Corporation.

the country. Thus, the representative office will not exceed its authority."[3]

In view of the foregoing, the Commission confirms that the enumerated activities (i.e. to engage in information dissemination about the technical and consulting services, to liaise with potential clients, to render technical service demonstration to potential clients, and to undertake promotion and quality control of technical services offered by the parent company) fall within the allowed activities of a Representative Office are such as promotion, information dissemination and quality control.

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[3] SEC-OGC Opinion No. 10-01 addressed to Sycip Salazar Hernandez & Gatmaitan, Re: Allowed activities for a foreign bank's representative office in the Philippines.

NOTE: The **proposed activities** are the following, "(1) prospect clients and invite such clients to open offshore accounts with IAPBL; (2) assist clients in the account opening process and send the account opening documents signed by clients to IAPBL's offshore head office for acceptance and opening; (3) communicate with the clients and provide them with the available information about their accounts including reporting to clients on the performance, structure and individual components of their offshore portfolios; (4) determine client's investment risk profile, investment goals and constraints and, in line with the client's risk profile and investment goals, provide client with appropriate investment proposals and model portfolios for such client's offshore investment; (5)promote and market IAPBL's products and services such as listed/unlisted foreign equities, bond, funds, derivatives, foreign exchange and loans including giving advice to clients in the management of their assets deposited in their offshore accounts with IAPBL; (6) refer clients to IAPBL's offshore trust and insurance teams, as clients may require, without offering insurance products; (7) transmit clients' orders or instructions to IAPBL's offshore head office for acceptance and execution, and confirm to clients that their orders or instructions have been executed by IAPBL abroad; and (8) transmit clients' instructions to obtain loan facilities with IAPBL offshore."

"The above-enumerated activities shall be **subject to the following parameters or restrictions**: (a) the Representative Office will not transact any banking business, such as acceptance of deposits and foreign exchange trading; (b) all transactions entered into through the promotional and marketing efforts of the Representative Office will be booked only by IAPBL in Singapore or by any of IAPBL's branches in other jurisdictions. The Representative Office will not charge any fees in the performance of its activities and functions, as it is not authorized to generate income from such activities and functions in the Philippines; (c) IAPBL's products and services, while promoted by the Representative Office in the Philippines, can only be sold or executed outside the country. Thus, all proposed transactions with clients in the Philippines are subject to acceptance and confirmation by IAPBL in Singapore or the relevant branch of IAPBL in another jurisdiction. Once so accepted and confirmed, IAPBL Singapore or such branch will execute the transactions or perform the services outside the Philippines; (d) Payment 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; (e) Any marketing of securities in the Philippines is subject to the provisions and requirements of the Securities Regulation Code and its implementing rules and regulations.

With respect to the other two activities: "to provide technical drafting support to parent company" and "to conduct research on curtain wall designs related to the parent company's technical and consulting services", these activities may be allowed as long as the parameters or restrictions you enumerated (i.e. shall not transact or book in its records any business nor receive any payments from said clients, shall not charge any fees in the performance of its activities, shall not derive any income in the Philippines, shall be fully subsidized by the parent company) will be imposed. In this regard, they are considered as passive acts in support of the parent company which do not involve the earning of any income.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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.[4] 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.

CAMILO S. CORREA
General Counsel

[4] SEC Memorandum Circular 2003-15, No.7