



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

04 October 2019

SEC-OGC Opinion No. 19-44

Re: Retail Trade; Event Organizer
providing catering services

Mr. Przemyslaw Adam Floras

PAFKRU SK Inc.

5 Noreco Rd, Mangnao, Dumaguete City
Negros Oriental

Dear Mr. Floras

This refers to your letter dated 25 April 2019 requesting an opinion on whether the business model of PAFKRU SK Inc. (PAFKRU) constitutes retail trade under Republic Act (R.A.) No. 8726, otherwise known as the Retail Trade Liberalization Act of 2000 (RTLA).

It is averred that PAFKRU is a domestic corporation with 40% foreign equity primarily engaged in event management services, which includes party catering services. It has no intention to operate restaurants and aims to provide by itself, its subsidiaries or subcontractors catering services during events only.

PAFKRU's business model, as you described, is that of an event caterer that offers service packages, rather than standard produce. These service packages usually include preparation, logistics, rental, delivery and set-up of tables, chairs, cutleries, including delivery and display of food and beverages. You gave as an example a wedding celebration where a caterer is hired by the bride and groom to provide a packaged service during the event as provided for in a contract. The corporation does not habitually sell or charge anything to the attending guests. It interacts only with the bride and groom as customer via appointment and its only interaction with the general public or attending guests happens during the actual event.

Hence, this request with the following queries:

1. Should an event catering provider be considered as retailer, engaging in retail trade?
2. Would a single customer lounge offering goods, commodities and merchandise like those commonly offered by coffee shops be considered a retail trade?

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

For sales transaction to be considered as “retail” the following elements should concur:

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

FIRST QUERY

Solely as an event organizer, PAFKRU shall not be considered a retailer under the RTLA. Event organizing involves a contract of services, not sale. PAFKRU’s business model, involves a packaged service. An event organizer sells no goods, merchandise or commodities to his customers but simply renders his services for hire or pay.

However, as an event caterer, PAFKRU shall be considered a retailer under the RTLA. Catering is sale of food eaten² and falls within the definition of retail trade.

The presence of the first and third requisites are clear. As to the second requisite, PAFKRU alleges that its catering business will be tailor-made (e.g. theme, menu, design), to particular customers (e.g. bride and groom in a wedding occasion) thus, not readily available to the general public. Hence, element no. 2 is not present.

¹ SEC-OGC Opinion No. 18-10 dated 04 June 2018 addressed to First Associated Medical Distribution Co., Inc.

² Department of Justice (DOJ) Opinion No. 248 s. 1954 dated 22 September 1954

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 the people at large; and “sales to the public” has been held to mean sales to the community at large, all of the inhabitants of a particular place and not limited to 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. Powell*, N.W. 372).³

Based on the foregoing, it was previously ruled that were a particular retail business services only an exclusive group, as in the case of restaurant catering solely to the members of the Casino Español⁴ or of a Chinese druggist dealing solely with persons with Chinese blood⁵, it does not fall within the purview of the Retail Trade Nationalization Law.

We are unable to apply the above ruling to the instant case. The element of “exclusivity” is lacking. It would seem that PAFKRU’s customers are no less than the “general public.” In a catering business, every consumer celebrating an event is a potential customer. The end-users for an event catering business include those celebrating weddings, baptisms, birthdays, anniversaries, etc... Thus, selling to this group of customers is “selling to the general public.”

Furthermore, the exception granted under the RTLA and its IRR⁶ to sales arising from restaurant operations of a hotel owner or in-keeper may not be applied by analogy in this case because catering of food should not be treated as incidental only to PAFKRU’s services as event organizer because the biggest expense in catered events is food. Effectively, an event organizer like PAFKRU providing food is actually an event caterer.

Based on the foregoing, the business model of PAFKRU which includes event catering shall be considered retail trade under the RTLA.

SECOND QUERY

³ DOJ Opinion No. 47, s. 1955 and Opinion dated 30 October 1968

⁴ DOJ Opinion dated 30 October 1968

⁵ DOJ Opinion No. 47, s. 1955

⁶ Sec. 2. *Sales Not Considered As Retail.* – The following sales are not considered as retail:

xxx	xxx	xxx
(c) Sales arising from 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 xxx’;		
xxx	xxx	xxx
(emphasis supplied)		

On the issue of whether the sale of goods, commodities and merchandise in a single customer lounge may be considered retail trade, we answer in the affirmative.

The exception granted under the RTLA and its IRR⁷ to a "single outlet sale" refers only to the sale by a manufacturer of its products manufactured in the Philippines.

In this case, PAFKRU is not a manufacturer. Further, the proposed single customer lounge where PAFKRU can accommodate inquiries and hold meetings with its prospective customers will sell commodities/merchandise (e.g. refreshments and light snacks) that may be purchased by walk-in customers without engaging in further business.

In opening a customer lounge selling merchandise, PAFKRU will already engage in retail trade under the RTLA as all the elements of the retail trade will be present. PAFKRU will be habitually selling direct to the general public merchandise, commodities or good for consumption.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.⁸ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.


CAMILO S. CORREA
General Counsel


⁷ *Supra*. Sec. 2. *Sales Not Considered As Retail*. – The following sales are not considered as retail:

xxx	xxx	xxx
(d) Sales through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization;		
xxx	xxx	xxx
(emphasis supplied)		

⁸ SEC Memorandum Circular 2003-15, No. 7.