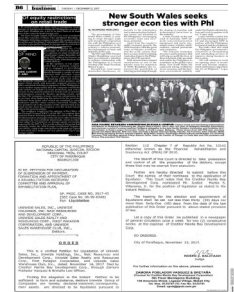


Headline	Of equity restrictions on retail trade		
MediaTitle	The Philippine Star		
Date	12 Dec 2017	Language	English
Section	Business	Journalist	ARIK AARON C. ABU
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Of equity restrictions on retail trade

In recent years, we have seen a resurgence (read: deluge) of foreign acts visiting the Philippines as part of their tour. Chances are, a lot of us have been to at least one of the concerts from foreign acts.

We have bought tickets, but have we ever wondered about the concerns of those who sell them? Recently, a Philippine ticketing company sought the opinion of the Securities and Exchange Commission (SEC) to determine whether it should be subject to foreign equity restriction in view of the business in which it is engaged in.

TOP OF MIND



ARIK AARON C. ABU

SEC-OGC Opinion No. 17-12 dated Sept. 19, 2017 is an illustrative opinion on what constitutes “retail trade” under Republic Act (RA) 8762, otherwise known as the Retail Trade Liberalization Act of 2000 (RTLA).

In the opinion, it was represented that a domestic corporation is engaged in providing ticketing services to venues across Manila through a variety of sales channels that includes venue office boxes, physical outlets in shopping malls and online.

The domestic corporation also sells ticket printers and paper ticket stock, and provides support services to other unrelated ticketing companies in the Philippines. It was further represented that the company essentially sells tickets on behalf of event producers and venue owners, to the general public for events such as musical performances, concerts, theater, sporting events, and the like. The company, in turn, receives commissions for its services after deducting the same from the revenues collected from ticket sales which are remitted to event producers and the venue owners concerned. Finally, it was pointed out in the premise of the opinion that at no point in time does the company own the tickets that it sells to the general public.

The company sought for the opinion of the Office of the General Counsel (OGC) of the SEC to confirm their position that its ticketing activities, as well as the selling of ticket printers and paper ticket stock to other ticketing companies do not constitute retail trade, which is otherwise subject to a limitation on foreign equity ownership imposed by the RTLA. It is worth noting at this point that currently, under the 10th Foreign Investment Negative List (FINL), retail trade enterprises with paid-up capital of less than \$2.5 million are not allowed to have any foreign equity.

Turn to B8

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TOP OF MIND... From B6

The OGC agreed with the position of the company. However, what makes this opinion of possible interest for any potential foreign investor in the Philippines is the analysis provided by the OGC.

The OGC began its discussion with the definition of "retail trade" under the RTLA as "any act, occupation, or habitually selling direct to the general public merchandise, commodities or goods for consumption." In the 1988 case of *Marsman & Co. Inc. v. First Coconut Central Co. Inc.*, the Supreme Court had the opportunity to enumerate the following elements that constitute retail trade: a) the seller should be habitually engaged in selling; b) the sale must be direct to general public; and c) the object of sale is limited to merchandise, commodities or goods for consumption. The court further elaborated that last element "refers to the subject of the retailer's activities or what he is selling (i.e., consumer goods). Consumer goods may be defined as goods which are used or bought for use primarily for personal, family or household purposes... not intended for resale or further use in the production of other products. In other words, consumer goods are goods which by their nature are ready for consumption." It was further pointed out that the RTLA covers only the sale of goods for consumption to the general public as end-user, and "the items sold must be the final and end (uses) of a product which directly satisfy human wants and desires and are needed for home and daily life."

In view of the foregoing, the OGC is of the opinion that a "ticket" is not a good for consumption, as it merely is a certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege. Since a ticket, being classified as a document evidencing a contract, is not what is being contemplated by the last element of a retail trade in the *Marsman* case.

Moreover, a ticket is not a merchandise or good that

can, on its own be consumed for personal gratification or satisfaction of the holder. It partakes the nature of a document evidencing a contract ensuring the holder the right of access or seat reservation to the venue or theatrical performance. The OGC stated that its utility is not the direct source of human satisfaction since what it only confers the holder is a future right or privilege to enter a place or participate in an event provided by the event producers and venue owners. Finally, granted that the real objects of the sale are the "events," the last element remains lacking, since they do not fall under the category of goods or merchandise used primarily for home and daily life. In the same stroke, the OGC also deemed it apt to opine selling of ticket printers and paper ticket stock to other ticketing companies do not constitute retail trade, as they are sold to industrial and commercial users or consumers who use products bought to render service to or produce products for the general public.

Accordingly, since the activities of the domestic company do not constitute retail trade, the foreign ownership restriction imposed by applicable Philippine laws and the FINL do not find application in the case of the domestic company.

Arik Aaron C. Abu is a supervisor from the tax group of KPMG R.G. Manabat & Co. (KPMG RGM&Co.), the Philippine member firm of KPMG International. KPMG RGM&Co. has been recognized as a Tier 1 tax practice, Tier 1 transfer pricing practice, Tier 1 leading tax transactional firm and the 2016 National Transfer Pricing Firm of the Year in the Philippines by the International Tax Review.

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