



Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

19 August 2009

SEC-OGC Opinion No. 09-22
Retail trade; R.A. No. 8762

ARANAS CONSUNJI BARLETA

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326 Tordesillas Street corner De la Costa Street
Salcedo Village, Makati City 1227

Attention: Atty. Jesus Clint O. Aranas

Gentlemen:

This refers to your letter dated 09 July 2009 requesting confirmation that:

1. Yamaha Motor Philippines, Inc. ("YMPH") may set up its 3S (Sales, Service, Spare Parts) Shop, and operate a café without amending its articles of incorporation; and
2. YMPH need not increase its paid-up capital and modify its capital structure and set of officers to comply with the requirements of Republic Act No. 8762, also known as the "Retail Trade Liberalization Act of 2000."

As disclosed in your letter, the following are the relevant facts:

1. YMPH is a domestic corporation organized and existing under the law of the Philippines, and is a subsidiary of Yamaha Motor Co., Ltd., Japan ("Yamaha Japan");
2. YMPH is the sole entity in the Philippines duly licensed by Yamaha Japan to manufacture, assemble and distribute Yamaha motorcycles and other related products;
3. YMPH is in the process of developing its network of third-party dealers to whom YMPH sells Yamaha products at wholesale. These

third-party dealers, in turn, and for their own account, sell YMPH's products to the end-users;

4. YMPH is in the process of setting-up one fully functioning Shop where the products it manufactured and/or assembled in the Philippines will be sold to end-users;
5. YMPH also plans to establish a café that will cater to potential customers/clients of the 3S Shop. The operation of the café will be awarded to a third-party commissary, and no portion of the income of the café will go to YMPH;

The ultimate issue involved is whether the contemplated 3S Shop and café would fall under R.A. No. 8762.

You are of the opinion that the 3S Shop does not fall under the definition of a retail trade under R.A. No. 8762 since it qualifies as a "single outlet". It is also your position that the establishment of a café in the 3S Shop will not render the YMPH as engaged in retail trade since the café is a mere incident of the 3S Shop, and the income of the same will not inure to YMPH.

R.A. No. 8762 was signed into law on March 7, 2000 to promote consumer welfare in attracting, promoting and welcoming productive investments that will bring down prices for the Filipino consumer, create more jobs, promote tourism, assist small manufacturers, stimulate economic growth, and enable Philippine goods and services to become globally competitive through the liberalization of the retail trade sector.¹ The liberalization of the retail trade paved the way for the entry of foreign participants who meet capitalization, net worth, and other requirements under R.A. No. 8762.²

"Retail trade" is defined as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.³ The following, however, are not considered retail trade:

- (a) Sales by a manufacturer, processor, laborer, or worker, to the general public the products manufactured, processed or produced by him if his capital does not exceed One hundred thousand pesos (P100,000.00);
- (b) Sales by a farmer or agriculturist selling the products of his farm;

¹ Section 2, RA No. 8762

² <http://www.dti.gov.ph/dti/index.php7p=7&c=35>.

³ Section 3(1) R.A. No. 8762.

- (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
- (d) Sales which are limited only to products manufactured, processed or assembled by a manufacturer through a single outlet, irrespective of capitalization.⁴ (Underscoring supplied)

The rules and regulations implementing R.A. No. 8762 also consider the following sales as not retail, namely:

"SECTION 2. Sales Not Considered As Retail. -- The following sales are not considered as retail:

- (a) Sales by a manufacturer, processor, laborer, or worker, to the general public of products manufactured, processed or produced by him whose capital does not exceed One hundred thousand pesos (P100,000.00);
- (b) Sales by a farmer or agriculturist selling the products of his farm, regardless of capital;
- (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;
- (d) Sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization;"⁵
(Underscoring supplied)

In the case of *Adriano v. Untalan, et al.*,⁶ the Court of Appeals pronounced that sales to the general public, through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines irrespective of capitalization, is not considered as retail, to quote:

⁴ Section 3 (1), supra

⁵ Rules and Regulations Implementing Republic Act No. 8762, An Act Liberalizing the Retail Trade Business, Repealing Republic Act No. 1180, as Amended.

⁶ CA-G.R. No. SP 87800, 20 June 2006.

"Moreover, even if the Court considers PLI as engaging in the Retail Trade, the company would still not fall under R.A. No. 8762. Under Section 2 (d) of the Rules and Regulations implementing Republic Act No. 8762, it provides that sales to the general public, 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. It must be pointed out that as admitted by both parties, PLI does not maintain any other office or display and selling area except in its principal office in Bangkal, Makati. Thus PLI, having a single outlet that manufactures, processes or assembles laminates in the Philippines is not considered as engaging in retail sales. It is therefore immaterial that the word retail is stated in the primary purpose of PLI since what will govern will be R.A. 8762. (pp. 1129-1130, record, Vol. 2)"

Applying the foregoing in the case of YMPH, the contemplated 3S Shop falls within the exception of retail trade. As regards the café, the same is likewise not considered a retail trade activity considering that it will be operated by a third party commissary, and no portion of the income of the café will go to YMPH.

Necessarily, YMPH need not amend its articles of incorporation before it can establish the 3S Shop and a café. Further, since the two business activities do not fall within the meaning of retail trade, YMPH does not need to comply with the capital requirements under the Retail Trade Liberalization Act.

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



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