



Republic of the Philippines  
Department of Trade and Industry  
**Securities and Exchange Commission**  
SEC Bldg. EDSA, Greenhills, Mandaluyong City

30 March 2010

SEC-OGC Opinion No. 10-13  
Re: Doing business; Jewelry Auction  
not a retail trade business

DEL ROSARIO AND DEL ROSARIO  
15<sup>th</sup> Floor, Pacific Star Building  
Makati Avenue corner Sen. Gil Puyat Avenue  
Makati City 1200, Philippines

Gentlemen:

This refers to your letter dated 14 July 2009 requesting confirmation of the opinion that a limited liability company may lawfully do business in the Philippines through a branch office or subsidiary.

In your letter, you stated that:

1. Your client, Roberto Galleries, LLC ("Company") is a limited liability company ("LLC") registered in the State of California, United States of America ("USA").
2. The Company is engaged in the business of auctioning jewelry and the scope of its business is limited only to the territory of the USA. The Company would like to expand its business here in the Philippines.

The two queries that need to be addressed are:

1. Is an auction of jewelry covered by the concept of "retail trade" in the Philippines?
2. If auction of jewelry is not considered a retail trade, how may the Company do business in the Philippines?

With regard to your first query, the answer is negative. Retail trade is defined under Republic Act No. 8762, also known as the "Retail Trade Liberalization of 2000" as:

"SECTION 3. Definition. — As used in this Act:

- (1) "Retail Trade" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but the restrictions of this law shall not apply to the following:
  - (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;
  - (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."

To constitute a retail business, the following must be present:

- (1) The seller should be habitually engaged in selling;
- (2) The sale must be direct to the general public; and
- (3) The object of the sale is limited to merchandise, commodities or goods for consumption.<sup>1</sup>

The last element refers to the subject of the retailer's activities or what he is selling, that is, consumption goods or consumer goods. Consumer goods may be defined as 'goods which are used or bought for use primarily for personal, family or household purposes. In other words, consumer goods are goods which by their very nature are ready for consumption.'<sup>2</sup>

In the case of the Company, auction of jewelry does not come within the ambit of retail business as defined by Republic Act No. 8762 since the Company's goods are not sold directly or readily available to the general public, but only to those who are invited to participate in a competitive bidding process. Further, the target clients of the Company need not be the final end user.

As for your second concern, there are different modes of establishing business presence in the Philippines. In case the foreign investor intends to actively transact business and derive income from the Philippines, then it may establish a

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<sup>1</sup> Marsman vs. First Coconut Central Company, Inc., G.R. No. 139841, 20 June 1988; SEC Opinion No. 64, series of 2003, dated 27 November 2003, addressed to Atty. Jose Oscar M. Salazar.

<sup>2</sup> Id.

subsidiary, whether wholly-owned or partly owned, or a branch that is licensed to do business in the Philippines. The Company may organize a wholly-owned Philippine company, and must comply with the nationality restrictions and capitalization requirement.<sup>1</sup> If the paid-in equity capital is at least equivalent to the amount of US\$200,000.00, the allowed foreign equity is up to one hundred percent (100%). Otherwise, the foreign equity is limited up to forty percent (40%) only.<sup>2</sup>

Finally, since an LLC is not recognized under Philippine law, it cannot establish a branch to engage in jewelry auction in the Philippine market. However, the Company may opt to register as a foreign-owned sole proprietorship with the Bureau of Trade Regulation and Consumer Protection of the Department of Trade and Industry.<sup>3</sup>

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.



**VERNETTE G. UMALI-PACO**  
General Counsel

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<sup>1</sup> Republic Act No. 7042, as amended by R.A. No. 8179, Section 7 (1991).

<sup>2</sup> Seventh Regular Foreign Investment Negative List dated 08 December 2006 in relation to R.A. No. 7042, as amended, Section 8.

<sup>3</sup> R.A. No. 7042, as amended, Section 5.