



## SEC ADVISORY ON RETAIL TRADE (12 February 2018)

The Securities and Exchange Commission has received numerous complaints/reports that there are entities, wholly or partly owned by foreign nationals, engaging in retail trade without the proper registration from the Commission or acting beyond the authority granted in their Articles of Incorporation/Partnership, in violation of Republic Act (RA) No. 8762 *Retail Trade Liberalization Act of 2000*.

Please be advised that under RA No. 8762, retail trade enterprises with **paid-up capital of less than US\$2,500,000 are exclusively reserved for Filipino citizens**. Full foreign participation is allowed only if any of the following qualifications is met: (a) with paid-up capital of US\$2,500,000 or more provided that investments for establishing a store is not less than US\$830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US\$250,000.<sup>1</sup>

For reference, "*retail trade*" shall mean any act, occupation or calling of **habitually selling direct to the general public merchandise, commodities or goods for consumption**.

Section 12 of RA 8762 provides that any person who shall be found guilty of violation of any provision of the Act shall be punished by **imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of not less than One Million Pesos (P1,000,000) but not more than Twenty Million Pesos (P20,000,000)**. In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, managers and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the Filipino offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, suffer dismissal and permanent disqualification from public office.

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<sup>1</sup> Opening of branches/stores by the registered foreign retailer shall be allowed, provided that the investments for each branch/store established in the Philippines must not be less than the required amount.

Further, the Commission advises the public to be mindful of the provision in Section 2-A of Commonwealth Act No. 108, as amended, otherwise known as the *Anti-Dummy Law of the Philippines*, **prohibiting the employment by any person, corporation or association of an alien, who shall intervene in the management, operation, administration or control thereof, whether as officer, employee, or laborer, applies where the exercise or enjoyment of the property or of the franchise, privilege, or business engaged in by such person, corporation or association "is expressly reserved by the Constitution or the law to the citizens of the Philippines" or "corporations or associations at least 60% of the capital of which is owned by such citizens."**

In the case of *King v. Hernaez* (31 March 1962, 4 SCRA 792), the Supreme Court held that the Anti-Dummy Law bans the employment of aliens in all entities engaged in **nationalized activities**<sup>2</sup> and the ban on alien employment includes even minor or clerical or non-control positions.

Should you have any information or reports regarding the abovementioned unauthorized activities, you may contact our Enforcement and Investor Protection Department at (02) 818-6337 or (02) 818-5476, email at [epd@sec.gov.ph](mailto:epd@sec.gov.ph) or visit us at Ground Floor, North Wing Hall, Secretariat Building, PICC Complex, Pasay City.

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<sup>2</sup> **Completely/wholly nationalized activities** refer to those the exercise and enjoyment of which are expressly reserved by the Constitution and/or laws to citizens of the Philippines or to corporations or associations wholly owned by such citizens. On the other hand, an undertaking or activity is **partly nationalized**, within the meaning of Section 2-A of the Anti-Dummy Law if its enjoyment or exercise is limited by the Constitution or any law to corporations or associations at least 60% of the capital of which is owned by Filipino citizens, that is to say, the minimum equity participation required to be owned by Filipinos is 60%.