



Republic of the Philippines  
Department of Finance  
Securities and Exchange Commission  
**OFFICE OF THE GENERAL COUNSEL**

10 May 2021

**SEC-OGC Opinion No. 21-06**

Re: Retail Trade Law; Water  
Filtration Services

**TAPALES PRODON WEE-TOE HIO TATEL & RODRIGUEZ**

Ground floor One Beatriz Tower,  
Aurora Boulevard cor. Lauan St.,  
Cubao, Quezon City, Philippines

**Attention: ATTY. EUGENE HENRY C. RODRIGUEZ**

Dear Atty. Rodriguez:

This refers to your letter dated 25 January 2021 requesting for an opinion on the applicability of the Retail Trade Liberalization Act of 2000<sup>1</sup> ("RTLA") on the proposed investment in the Philippines by your client, Waterlogic, a foreign company which provides water filtration system services.

In your letter, you stated that Waterlogic would like to invest and establish a corporation in the Philippines with one hundred percent (100%) foreign ownership. The main business activity of said corporation is to provide water filtration services utilizing its own patented water filtration system (the "system") at offices, businesses or households of its customers who wish to avail of the same. The water filtration services of Waterlogic also includes the provision of monthly maintenance services to ensure that the system it has installed will continue to operate at the optimum guaranteed level. In consideration for the services that it will provide, Waterlogic will charge its customers a monthly subscription or service fee.

You also stated that the customer will never become the owner of the system installed by Waterlogic, as well as the machineries and equipment used in relation to the provision of the service, because ownership over the remains with the company. Consequently, customers have the obligation to return these items to Waterlogic upon termination of the services.

Hence, this query.

Under the RTLA, "retail trade" is defined as "*any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for*

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<sup>1</sup> Retail Trade Liberalization Act of 2000, Republic Act No. 8762, March 7, 2000



consumption.<sup>2</sup>" The law covers only the sale of goods for consumption to the general public as end-user.<sup>3</sup>

Thus, for sale transactions to be considered as "retail", the following elements must be present:

- (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."<sup>4</sup>

In one opinion<sup>5</sup> issued by the Department of Justice, it was held that a person who renders **services for hire or pay, or who leases services**, is **not** engaged in the retail business because he does not sell goods to the general public.

In **SEC OGC Opinion No. 08-14 dated May 19, 2014**<sup>6</sup>, it was opined that "a firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. It may supply these materials for the convenience of the client or when the materials required are produced exclusively by the same firm. Of course, the client has to pay for the cost of these materials separately from the cost of the service x x x. Although this is a sale, the same is incidental to the repair and is not being pursued as an independent business. Thus, the same is not considered retail trade."<sup>7</sup>

As disclosed in your letter, Waterlogic is engaged merely in the sale of water filtration *services*. While machineries and equipment will be installed at the location of its clients, the same shall never be owned by said clients and will be returned to Waterlogic upon termination of services. As payment for its services, the company will be charging a monthly subscription fee. Since Waterlogic is a service enterprise, and does not sell goods to its clients, it is not considered as engaged in retail trade as defined under the RTLA.

It shall be understood, however, that the foregoing opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue raised therein. This opinion shall not be considered and used in the nature of a standing rule binding upon the

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<sup>2</sup> *Ibid.* Section 3(1).

<sup>3</sup> SEC OGC Opinion No. 08-05, June 23, 2005 addressed to De Borja Medialdea Bello Guevarra & Gerodias.

<sup>4</sup> SEC OGC Opinion No. 03-16, February 15, 2016 addressed to Platon Martinez Flores San Pedro & Leano Law Offices; SEC OGC Opinion No. 10-18, June 4, 2018 addressed to First Associated Medical Distribution Co., Inc.

<sup>5</sup> DOJ Opinion No. 275, s. 1954, cited in SEC Opinion No. 08-05 (see Footnote 8) and SEC OGC Opinion No. 08-14 May 19, 2014 addressed to Aranas Law Offices.


<sup>6</sup> SEC OGC Opinion No. 08-14, May 19, 2014 addressed to Aranas Law Offices.

<sup>7</sup> This is consistent with the opinion rendered in SEC Opinion No. 08-05 dated June 23, 2005 addressed to De Borja Medialdea Bello Guevarra & Gerodias, *citing* SEC Opinion No. 24-03 dated May 19, 2003, where it was opined that the proposed sale and distribution by Philippine Long Distance Telephone Company (PLDT) of wire-based telephone handsets and accessories, are necessary and incidental to and form an integral component of providing telecommunications services within the Philippines. In the situation given, it is clear that the main activities of repair, assembling, maintenance and support to be undertaken by the PLDT subsidiary will qualify it as a service enterprise. As such, its activities are not covered by retail trade law because the subsidiary does not sell goods to the public.

Commission in other cases, or upon the courts whether of similar or dissimilar circumstances<sup>8</sup>. If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Romuald C. Padilla", with a stylized flourish at the end.

**ROMUALD C. PADILLA**  
*General Counsel*

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<sup>8</sup>SEC Memorandum Circular No. 15, Series of 2003, No.7