

OFFICE OF THE GENERAL COUNSEL

19 June 2024

SEC OGC Opinion No. 24-17

Re: Retail Trade Liberalization Act of 2000, as amended; Exception of Single Outlet Sales; Single Outlet Defined

ATTY. GILBERT E. MORENO

Assistant Vice-President for Legal

2nd Floor, Sharp Building, Km. 23 West Service Road
South Superhighway, Alabang, Muntinlupa City

Dear Sir:

This refers to your letter¹ requesting, on behalf of Sharp (Phils.) Corporation ("Sharp PH"), for an opinion on single outlet sales as an exception under the Retail Trade Liberalization Act of 2000 ("RTLA"), as amended.²

As stated in your letter, the relevant facts are as follows:

1. Sharp PH, a subsidiary of Sharp Corporation of Japan, is domestically engaged in the manufacture and sale of electronic household appliances which are sold through its various dealers nationwide.
2. Sharp PH's capitalization structure prohibits it from engaging directly in retail sale pursuant to the RTLA. However, by way of exception, the limitations under the RTLA shall not apply to "single outlet sales" or sales which are limited only to products manufactured, processed, or assembled by a manufacturer through a single outlet, irrespective of capitalization.
3. Sharp PH intends to sell online through its head office by putting its own online selling platform through Lazada. The sale will be recorded and invoiced from the head office as a single outlet and the products will all be dispatched and delivered from the head office directly to the purchaser or Lazada, as the case may be.
4. In SEC Opinion No. 19-35 dated 09 September 2019,³ the Commission stated that:

x x x Section 3 of the Retail Trade Liberalization Act (RTLA) defines retail trade as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption."

Based on the above definition, the law, for purposes of regulation, does not distinguish between retail trade carried on through physical stores and through online channels. x x x

5. You stated that, by analogy, it can be inferred that the same principle applies to the exception under RTLA when the law speaks about single outlet sale—so much so that it does not matter whether the purchase was made online or otherwise for as long as the sale is made by the single outlet.

In this regard, you seek the opinion of the Commission on whether or not sales, which are limited to products manufactured, processed, or assembled by a manufacturer, conducted through online

¹ Dated 23 July 2020.

² On 21 January 2022, Republic Act ("R.A.") No. 11595, otherwise known as "An Act Amending R.A. No. 8762 or the RTLA," took effect.

³ Addressed to Atty. Romeo Ll. Alcantara.

selling/platform, meet the criteria for classification as "single outlet sales," thereby qualifying for exemption under Paragraph 1(d) of Section 3 of the RTLA.

We answer your query in the *negative*.

Paragraph 1(d) of Section 3 of the RTLA provides that single outlet sales are exempt from the restrictions provided therein, viz:

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 good for consumption, but the restriction of this law shall not apply to the following:

x x x x x x x x x

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

x x x x x x x x x

A rule of statutory construction is that a statute must be construed as a whole. The meaning of the law is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context.⁴ In line with this rule, the term "single outlet" as articulated in paragraph 1(d) of Section 3 of the RTLA should be read in line with the provisions discussed hereunder.

While the definition for the term "single outlet" was not provided for in the RTLA, reference to the term "outlet" is used in defining "Store" under Section 1(n) of Rule I of the Implementing Rules and Regulations ("IRR")⁵ of the RTLA. This illustrates and underscores in a language too plain to be mistaken that "store" is the physical outlet established in the country where goods are sold on a retail basis.

Corollary thereto, paragraph 2 of Section 3 of the RTLA, which is also echoed in Section 1(g) of the IRR,⁶ defines "Minimum Investment Per Store" in this wise:

Section 3. *Definition*. - As used in this Act.

x x x x x x x x x

(2) "**Minimum Investment Per Store**" shall include the value of the gross assets, tangible or intangible, including, but not limited to, buildings, leaseholds, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities. x x x

Under the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference.⁷ Considering the provisions of the RTLA, its IRR, and in view of the rule of *ejusdem generis*, the word "single outlet" should be interpreted to mean that the same is akin to the enumeration, i.e., *buildings, leaseholds, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities*. Otherwise, it should be deemed foreign or extraneous and should therefore be excluded.

⁴ *Aquino v. Quezon City*, G.R. No. 137534, 03 August 2006. Citations omitted.

⁵ Section 1. *Definition of Terms*. — For the purposes of these Rules, the following are defined as follows:

x x x x x x x x x

(n) "**Store**" shall mean a physical outlet established in the country where goods are sold on a retail basis. x x x

⁶ (g) "**Minimum Investment Per Store**" shall include the value of the gross assets, tangible or intangible, including, but not limited to, buildings, leaseholds, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities.

⁷ *Metropolitan Bank and Trust Co. v. Chiok*, G.R. Nos. 172652, 175302 & 175394, November 26, 2014. Citations omitted.

Further, it is imperative to recall that retail trade shall mean any act, occupation or calling of ***habitually selling direct to the general public*** merchandise, commodities or goods for consumption, subject to the exemptions or restrictions provided by law.⁸ In light of this definition, the utilization of online platforms for sales negates the purported rationale behind the exemption as the scope of sales conducted through online platforms *expands beyond limitation*, facilitating broader outreach and increased transactions, and thus, deviating from the notion of “single outlet sales.” This effectively sanctions actions that would otherwise be prohibited through direct means.

Under the rules of statutory construction, ***exceptions, as a general rule, should be strictly, but reasonably construed***; they extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception.⁹

Thus, in defining “single outlet” for the purpose of availing the exception under the RTLA, the establishment of a “brick and mortar” store or physical store is the criterion— ***to the exclusion of online platforms or stores***.

With regard to confirming the application *by analogy* of SEC Opinion No. 19-35 to Sharp PH, it is worth stressing that the opinions issued by the Commission cannot be considered precedents under the *stare decisis* principle. Opinions are not doctrinal decisions that command following. Rather, these are determinations on questions which are not yet subject of actual controversy, but which the Commission is competent to answer, as they involve the laws which are being implemented by, and circumstances which are under the jurisdiction of the Commission. These opinions reflect the tenor of the Commission's interpretation of the laws that it is tasked to enforce. It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in sharp conflict with the governing statute or the Constitution and other laws. It is persuasive and accorded with much respect, but not finality. While not binding upon the Commission, the reasoning invoked or used therein may be adopted by the Commission in its future decisions or opinions. ***Of course, the facts and circumstances of the cases or queries in the future must fall squarely and be similarly situated in order that the same ruling and reasoning of the previous opinion may be applicable.*** Moreover, the Commission warns that, if, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, the opinion shall be rendered void.¹⁰

The facts and issues in SEC Opinion No. 19-35 do not fall squarely with this case, as the requestor therein sought for an opinion on whether the corporation needs to further amend its Amended Articles of Incorporation (“AOI”) to include Electronic Commerce (“E-Commerce”) ***as part of its purposes as a retail business. The requestor did not seek an exemption from the RTLA; instead, it inquired about the possibility of integrating E-commerce to complement its existing retail trade activities, without amending its AOI.*** To reiterate, what was enunciated therein was that based on the definition of “retail trade,” the law, for purposes of regulation, does not distinguish between retail trade carried on through physical stores and through online channels and ***that as long as a corporation is authorized to engage in retail trade, it may do so by any means or mode available.*** At most, the act of selling online through the use of E-Commerce is just a new mode of delivering retail services, and could be more appropriately considered as necessary or incidental to the power of a corporation to engage in retail trade. Consequently, there is no need to amend the Amended AOI to include E-Commerce as part of its purposes ***as a retail business.***

In short, SEC Opinion No. 19-35 was issued to elucidate only the scope of the definition of “retail trade” under Paragraph 1 of Section 3 of the RTLA ***and cannot be expansively construed to also include online stores within the ambit of a “single outlet,” as referred in paragraph 1(d) of Section 3 of the RTLA.***

In contrast, Sharp PH seeks ***exemption*** from the provisions of the RTLA. Clearly, the distinction is too important to brush aside. Hence, the conclusions rendered in SEC Opinion No. 19-35 will ***not*** apply.

⁸ Section 3, paragraph 1, RTLA.

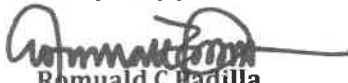
⁹ *Samson v. Court of Appeals*, G.R. No. L-43182, November 25, 1986.

¹⁰ SEC-OGC Opinion No. 16-14 dated 07 July 2014, addressed to Atty. Ritchel B. Caparal-Llena. Italics in the original. Emphasis and italics supplied.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.¹¹ 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.

Very truly yours,



Romuald C. Padilla
General Counsel

¹¹ Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.