
On February 15, 2016, the SEC issued an opinion regarding the exceptions to retail trade law. Below is the summary of key points:

Issue

Are the following transactions within or outside the scope of Retail Trade Law?

- a) The maintenance and repair services performed by the Company in its service centers, including the incidental sale of spare parts and materials reasonably necessary for the services.
- b) Sales of motorbikes assembled in the Company's principal office through a single/ solitary outlet in the service center of its principal office.
- c) Sales of motorcycles to the government and its agencies as well as to industrial users (fleet sales) on wholesale basis.
- d) The sale of the Company of motorbikes to its qualified employees (directly or through a cooperative), at prices and terms not offered to the general public.

Background

It is important to determine whether a transaction falls within the scope of R.A. 8762 Retail Trade Liberalization Act of 2000 primarily because of the foreign equity participation requirement in Sec 5.

As defined in R.A. 8762, retail trade is any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption. Thus, for sale transactions to be considered as "retail", the following elements should occur:

- ☑ The seller should be habitually engaged in selling;
- ☑ The sale must be direct to the general public;
- ☑ The object of the sale is limited to merchandise, commodities or goods for consumption.

SEC Opinion

The SEC opined that the above transactions are outside the scope of Retail Trade Law. The following are the reasons:

- a) The sale is incidental and reasonably necessary to the maintenance and repair of the motorcycles.
- b) The set-up of a single sales outlet exclusively at the existing service center located in its principal office falls within the exception of retail trade.
- c) The sale of motorbikes to industrial users (fleet sales) on wholesale basis is not considered as retail trade because it involves producer goods, not consumer goods for household purposes. In addition,

Section 2(f) of the IRR states that sales to government and/ or its agencies and government-owned and controlled corporations are not considered retail transaction.

d) Sales to qualified employees at better prices and terms not offered to general public are not retail trade because goods are not sold to the general public.