



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

18 September 2019

SEC-OGC Opinion No. 19-39

Re: Online Retail; Secondary
Purpose

Mr. Romualdo I. Katigbak

389 Quezon Ave. corner West 6th St.
West Triangle, Quezon City

Dear Mr. Katigbak:

This refers to your letter dated 16 September 2016 requesting confirmation of your opinion that online selling is allowed under the existing Amended Articles of Incorporation (AAOI) of Ayala Foundation, Inc. (AFI).

AFI's online store will carry products that feature the Philippine culture and the works of art of Filipino artists as part of its initiative to make the appreciation of Philippine art and culture more accessible to the community it serves through imaginative programs and through the use of modern information technology.

AFI applied with the Bureau of Internal Revenue ("BIR") to include "Retail Sale via Internet" as an additional line of business; however, the BIR refused to accept the application pending confirmation by the Commission that AFI may engage in online selling under its AAOI. Hence, this request.

The Commission answers your query in the affirmative.

Sections 87 and 88 of the Corporation Code, which are reproduced as Sections 86 and 87 of the Revised Corporation Code (RCC),¹ provide:

"SEC. 86. Definition. – For purposes of this Code and subject to its provisions on dissolution, a non- stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers: Provided, That any profit which a non-stock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.

¹ Republic Act No. 11232, effective 23 February 2019.

The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.

"SEC. 87. *Purposes.* – Non-stock corporations may be formed or organized for charitable, religious, **educational**, professional, **cultural**, fraternal, literary, scientific, **social, civic service**, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations." (Emphasis supplied)

Section 13² of the RCC further provides:

"SEC. 13. *Contents of articles of incorporation.* – xxx xxx xxx

(b) xxx: Provided, That a non-stock corporation may not include a purpose which would change or contradict its nature as such; xxx."

It is well-settled that a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express power(s).³ A corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 35 of the RCC, and those which are sanctioned by the State in the corporation's articles of incorporation. Implied or incidental powers, on the other hand, are the corporation's "powers, attributes and properties...incident to its existence⁴", which may be "essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation."⁵

Though non-stock, non-profit corporations, as a general rule, are not authorized to pursue commercial business activities, they may do so when such income generating activities are **essential, incidental or reasonably necessary** to enable the corporation to carry out powers expressly granted and for the furtherance of the purpose(s) for which the corporation was established, and provided that income realized or derived therefrom shall not be distributable to members or officers but are used for the furtherance of the purpose(s) for which the corporation was organized. However, activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of the corporation.⁶

² Essentially the same as Section 14(2) of the Corporation Code

³ SEC Letter dated 20 June 1989 addressed to Mr. Philipps C. Comandante, citing 13 Am. Jur. Sec. 739.

⁴ SEC-OGC Opinion No. 20-09, citing Section 2 of the Corporation Code

⁵ Paragraph (g) and (k) of Section 35 of the Revised Corporation Code

⁶ SEC-OGC Opinion No. 11-12 dated 09 March 2011 addressed to Atty. Francis M. Egenias; SEC-OGC Opinion No. 11-11 dated 08 March 2011 addressed to Mr. James Yared Gaite, M.D.

Article II of AFI's AAOI⁷ provides in part, to wit:

"SECOND. - That the purposes for which this Corporation is formed are:

XXX

XXX

XXX

7. To preserve and enhance Philippine Art and Culture by, among other things, establishing and maintaining museums and libraries, supporting ethnic artisans and craftsmen, and undertaking related activities that will encourage Filipinos, especially our youth, to appreciate their heritage ;

XXX

XXX

XXX

14. Generally, to do all such things, transact such business, exercise such powers and authority as may be directly or indirectly necessary, suitable, or proper for the accomplishment of any of the purpose or the attainment of any or more of the object herein enumerated or which shall appear at anytime conducive to, or expedient for the Foundation; ... xxx (Emphasis ours)

XXX

XXX

XXX."

Thus, AFI's online selling of products that feature Philippine Culture and the works of Filipino artists to generate income to be used in the furtherance of its purposes under its AAOI can be said to be reasonably necessary and incidental to its primary purpose of preserving, enhancing and encouraging Philippine Art and Culture. Hence, AFI can engage in the same.

Further, a corporation authorized and/or registered as engaging in selling in general ⁸may do so online, because online selling is just a mode or means of selling. Thus, as long as a corporation is authorized to engage in selling in furtherance of its purpose, it may do so by any means or mode available. The Commission has previously opined, to wit:

"It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in such business (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p.54). As a matter of fact, it is even legal to "stretch" the meaning of the purpose clause to cover new and unexpected situations.

⁷ AFI's Amended Articles of Incorporation as per our records (As amended on 30 March 2016).

⁸ See BIR Certificate of Registration attached as Annex A of your letter

There will always be instances when doubts may arise as to whether an act may be reasonably implied from the purposes of the corporation. These doubts will sometime be due to poor draftsmanship or lack of foresight on the part of the original incorporators or their legal counsel or, as is oftentimes the case, situations or circumstances may come up which could not have been foreseen at the time of the incorporation. **Many times the purpose clause can be reasonably 'stretched' as to impliedly cover these new and unexpected situations.** But in those cases where it cannot, a proper amendment thereof would be necessary (Campos and Lopez Campos, Notes and Selected Cases on Corporation Law, p.247)."⁹

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.¹⁰ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.


CAMILO S. CORREA
General Counsel *CMP ✓*

⁹ SEC Opinion dated 24 March 1982 addressed to Mr. Amado J. Lansang, Jr.

¹⁰ SEC Memorandum Circular 2003-15, No. 7.