



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

03 May 2012

SEC-OGC Opinion No. **12-07**
Foreign corporation;
Scope of license

MANABAT DELGADO AMPER & CO.

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197 Salcedo Street Legaspi Village
Makati City 1229
Philippines

ATTN: *Atty. Maricel B. Alisuag*, Tax Manager
Atty. Fredieric B. Landicho, Partner

This refers your letter dated 28 October 2011 seeking confirmation if the proposed global finance and grant management support services to be undertaken by CARE PHILIPPINES, the Philippine branch of Cooperative for Assistance and Relief Everywhere, Inc. ("CARE"), for various CARE missions in other countries, including the Philippines, are duly covered by the purposes for which CARE Philippines was established and included among the activities that CARE Philippines is allowed to engage in pursuant to its license to operate issued by the Commission.

CARE is a non-profit humanitarian organization that provides goods and services in aid of the underprivileged in developing countries, including the Philippines, pursuant to an Agreement¹ between the Government of the Philippines and CARE. CARE Philippines, on the other hand, operates in the Philippines pursuant to a license to operate issued by the Commission on 30 August 1990 and implements development and relief activities pursuant to the said Agreement.

In addition, you state that CARE Philippines also provided the following grants management and financial support services: **cash management, contract and grant**

¹ Executed on 01 August 1963.

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management, general ledger maintenance, manage billings and receivables, budget management and financial reporting ("*Services*"). These Services, however, were relocated to the United States of America in the late 1990s.

Presently, CARE intends to formally relocate its Services back to Manila through CARE Philippines, with the addition of Asset Management and Procurement among the proposed Services. These Services will be done through a new, web-based Enterprise Resource Platform (ERP) using Oracle Peoplesoft, and will be used to support partner programs in the Philippines as well as 43 other countries. CARE Philippines' license to operate provides:

"xxx The applicant proposes to establish a branch office in the Philippines to help the developing world's poor in their efforts to achieve social and economic well being by offering ***technical assistance***, training, food and other material resources in combinations appropriate to local needs and priorities, ***as well as to provide financial monitoring support to other CARE missions in other countries.***xx

NOW, THEREFORE, by virtue of the powers and duties vested in me by law, I do hereby license COOPERATIVE FOR AMERICAN RELIEF EVERYWHERE, INC. (CARE Philippines) ***to carry out its activities in the Philippines as it is authorized to do under its charter*** and the Corporation Code, Batas Pambansa Blg. 68, subject to the prohibitions and limitations of the laws of the Philippines as regards foreign corporations and domestic corporations of like nature.xx"

Generally, the license to operate issued by the Commission to a foreign corporation subsists as long as it retains its authority to act as a corporation under the laws of the country or state of its incorporation (in this case, the United States), unless such license is sooner surrendered, revoked, suspended or annulled.² An amended license to operate is required in the event the foreign corporation changes its corporate name, or desires to pursue in the Philippines other or additional purposes.³

In determining whether or not the proposed Services are covered by the CARE Philippines' license to operate, we apply the following rules and principles:

"The rules governing the construction of charters of corporations are, for the most part, the same as those which govern the construction and interpretation of statutes, contracts and other written instruments (7A Fletcher, Sec. 3640)."⁴

² Section 126, Corporation Code of the Philippines (Batas Pambansa Blg. 68).

³ *Id.*, Section 131.

⁴ SEC Letter dated September 10, 1992, addressed to Chemical Industries of the Philippines, Inc.

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"In the determination of what business may be carried on by a corporation, reference must be had to its charter, and unless the power to carry on a particular business is either expressly or impliedly conferred thereby, it does not exist. (Chiwacila Line v. Disnukes, 87 Ala. 344, 650, 122, 5 LRA 100, cited in Am. Jur. sec. 743)"⁵

Based on the foregoing, it appears that the proposed Services are covered by the scope and coverage of CARE Philippines' license, since financial monitoring support is broad enough to encompass the enumerated activities. Moreover, the proposed Services are necessary to and implied from the nature of the activity the organization is engaged in – i.e. it provides technical and financial assistance through grants, to other CARE missions and local developmental partners. Hence, these services are necessary for CARE to implement its grants management and global finance system for it to operate.

Hence, there is no need to amend its license to accommodate the proposed Services.

However, based on its license to operate, it must be emphasized that the Services to be undertaken by CARE Philippines are *strictly limited* to CARE programs in the Philippines and other CARE missions worldwide, and should not be extended to entities outside of the CARE network.

The foregoing opinion rendered is 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 Commission whether of similar or dissimilar circumstances.⁶ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILLOS CORREA
General Counsel

⁵ SEC Letter dated December 11, 1989 addressed to Atty. Milnar T. Lammawin, Omengan Construction & Development Corporation.

⁶ SEC Memorandum Circular No. 15, series of 2003.