Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

16 August 2024

SEC-OGC Opinion No. 24-21
RE: Non-Stock/Non-Profit Organization to Establish Income Generating Activity – Contact/ Call Center

ATTY. GENESES R. ABOT
389 Quezon Ave. corner West 6th St.,
West Triangle, Quezon City

Dear Atty. Abot:

This refers to your letter dated 12 March 2019 requesting an opinion on whether World Vision Development Foundation, Inc. ("WVDF"), a non-stock, non-profit organization, can establish a business process outsourcing ("BPO") service or contact/call center that will serve other World Vision affiliates in other countries, without amending its Article of Incorporation ("AOI").

In your letter, you stated that WVDF, established and registered with the Commission on 12 July 1995, is a "Christian child focused emergency, relief, development, and advocacy organization providing social development services all over the Philippines." You also averred that it is an international organization because it is affiliated with other organizations from around the world carrying the World Vision International trademark and doing the same ministry.

You further stated that to augment its programing costs, WVDF proposes to provide contact or call center services to its World Vison affiliates in other countries. Hence, your query.

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. (Emphasis ours)
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> xxx xxx xxx
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> "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."

[1] Republic Act No. 11232, Revised Corporation Code of the Philippines, 23 February 2019 (essentially the same as Sections 87 and 88 of the Old Corporation Code)

In this connection, Section 13[2] of the RCC provides:

"SEC. 13. Contents of articles of incorporations. – xxx xxx xxx

(b) The specific purpose or purposes for which the corporation is being formed. Where a corporation has more than one stated purpose, the articles of incorporation shall indicate the primary purpose and secondary purpose or purposes: *Provided*, That a non-stock corporation may not include a purpose which would change or contradict its nature as such; xxx."

Under the foregoing provisions, non-stock, non-profit corporations, as a general rule, are not empowered to venture on profitable business activities. By way of exception, the corporation may, as incident to its purpose(s), engage in business activities which are reasonably necessary to carry out the purpose(s) for which the corporation was organized. Any such power which is reasonably necessary to enable a corporation to carry out express powers granted and the purposes of its creation is to be deemed implied or incidental purpose. However, activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of the corporation. Thus, while non-stock corporations are not empowered to venture on profitable business activities, **<u>they may, as incident to their purposes, engage in such business activities that are reasonably necessary or essential to carry out the purposes for which they were organized, provided that any profit that may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.</u>**[3] (Emphasis and underscoring supplied)

The law clearly allows non-stock corporations to raise funds so long as **<u>it is incidental to the company's operations, and that said funds shall be used for the furtherance of the purpose for which it was established</u>**. The fact that **<u>a non-profit corporation earns a profit as a legal entity</u>**, as distinguished from profit, gain or income to the incorporators or members, **<u>does not make it a profit-making corporation where such profit or income is used for the purposes set forth in the articles of incorporation</u>** and is not distributed to its incorporators, members or officers, since mere intangible or pecuniary benefits to the members **<u>do not change the nature of the corporation</u>**.[4] (Emphasis and underscoring supplied)

Accordingly, in determining whether a non-stock corporation can engage in business activities for profit, much would depend on the purpose clause provision in its AOI. If the business activity is not incidental, necessary or essential to carry out the express objectives of the corporation as appearing in its AOI, the same cannot be undertaken by a non-stock corporation.[5]

The Department of Trade and Industry defines BPO as the "delegation of service-type business processes to a third-party service provider,"[6] In the Philippines, this industry is generally divided into the following sectors; contact centers; back office services; data transcription; animation; software development; engineering development; and game development.[7]

Unfortunately, your letter does not clearly state the facts as to the business model that will be used (i.e. how the contact/call center will service other World Vision affiliates in other countries) which is necessary to categorically answer your query. Nevertheless, for purposes of this opinion, we assume and adopt the common concept of a contact /call center.

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[2] Essentially the same as Section 14 (2) of the Old Corporation Code.
[3] SEC-OGC Opinion No. 11-12 dated 09 March 2011 addressed to VELICARIA EGENIAS LAW OFFICES;
[4] SEC Opinion No. 11-11 dated 08 March 2011 addressed to Mr. James Yared Gaite, M.D.
[5] Supra, Note 3
[6] Senate Economic Planning Office. At A Glance 10-01 ttps://www.senate.gov.ph/publications/AG%202010-01%20-%20BPO%20Industry,pdf] (last visited 15 August 2024),
[7] Ibid

Inbound and outbound voice operation services for sale, customer services, and technical support comprise the contact center sector.[8] Thus, a call center is defined as a centralized department that handles inbound and outbound calls from current and potential customers.[9]

For instance, in outbound call centers, call center agents make calls **on behalf of the organization or client for tasks, including lead generation, telemarketing, customer retention, fundraising, surveying, collecting debts or scheduling appointments, while in offshore call centers, the organization outsources its operations to a company in another country, often to save money on wages and provide services as well as to address language barrier among different countries[10].**

In relation to the above, we take note of the purposes of WVDF, as stated in its AOI, which you attached to your letter, to wit:

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1. To render emergency relief assistance to those affected by natural and man-made calamities.

2. To facilitate transformational development in the poorest communities by addressing the root causes of poverty in a Christian and holistic manner, leading to transformed lives and values of children, families and communities.

3. **To undertake such activities that contribute to the awareness of poverty issues and provide opportunities for the public to become involved in the Foundation's mission in the Philippines and other countries.**

4. x x x x

5. **To promote the growth and dissemination of the knowledge and practice of Christian transformational development.**

6. **To promote and encourage ecumenical cooperation among the churches in the ministry of transformational development.**

7. **To enter into agreements, receive funds, implement projects and work with government and non-government organizations alike, whether foreign or local;**

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Towards the attainment of the afore-stated purposes, WVDF adopted in the Fourth Article of its AOI, these Core Values:

xxx xxx xxx

2. *WE ARE COMMITED TO THE POOR.*

We are called to serve the neediest people of earth; to relieve their suffering and to promote the transformation of their condition of life.

We stand in solidarity in a common search for justice. We seek to understand the situation of the poor and work alongside them towards fullness of life. We share our discovery of eternal hope in Jesus Christ. We seek to facilitate an engagement between

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[8] Ibid

[9] https://www.techtarget.com/searchcustomerexperience/definition/Call-Center (last visited 15 August 2024

[10] ibid

the poor and the affluent that opens both to transformation. We respect the poor as participants, not passive recipients, in this relationship. They are people from whom others may learn and receive, as well as give. The need for transformation is common to all. Together, we share a quest for justice, peace, reconciliation and healing in a broken world.

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4. *WE ARE STEWARDS.*

The resources at our disposal are not our own. They are sacred trust from God through donors on behalf of the poor. We are faithful to the purpose of which those resources are given and manage them in a manner that brings maximum benefit the poor.

We speak and act honestly. We are open and factual in our dealings with donor constituents, project communities, governments, the public at large and with each other. We endeavor to convey a public image confronting to reality. We strive for consistency between what we say and what we do.

5. *WE ARE PARTNERS.*

We are members of International World Vision partnerships that transcends legal, structural and cultural boundaries. We accept the obligations of joint participation, shared goals and mutual accountability that true partnership requires. We affirm our inter-dependence and our willingness to yield autonomy as necessary for the common good. We commit ourselves to know, understand and love each other.

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We maintain a **co-operative** stance and spirit of openness towards other humanitarian organizations. We are willing to receive and consider honest opinions from others about our work.

To recall, WVDF is a Christian social development foundation that does not only undertake emergency relief assistance during natural and man-made calamities, but is also authorized "to promote the growth xxx of the knowledge and practice of Christian transformational development" to "[address] the root causes of poverty", in accordance with its "mission in the Philippines and other countries." To do this, it is empowered "to promote xxx ecumenical cooperation among the churches in the ministry" and "to enter into agreements, receive funds, implement projects and work with government and non-government organizations." Of special importance in this duty to collaborate is its commitment, expressed in its Core Values, which must be read with its purposes, to "accept [its] obligations of joint participation, shared goals, and mutual accountability" as a "[member] of [the] International World Vision Partnerships" with its affiliates.

Viewed within the context of these mandates vis-à-vis the modern realities of common global concerns, e.g., climate change, uneven distribution of wealth, etc., and cross border or borderless transactions, organizations must now adopt and adapt to more efficient ways of doing things.

Nowadays, a contact or call center, whether outsourced or not, serves as a streamlined division or unit of an organization to handle client concerns. And since WVDF is a member of this international community of World Vision affiliates that share common goals, any form of help by the WVDF to the latter to achieve their common goals is practically in pursuits of its own purposes and mission.

Thus, the rendering of contact or call center services by WVDF to its World Vision affiliates can be said to be reasonably necessary and incidental to its purposes under its AOI. Further, while there may be an expectation of income from this activity, the same is for the purpose of augmenting its programming costs, in furtherance of its corporate purposes.

Accordingly, we answer your query in the affirmative, for as long as the following restrictions and parameters still obtain, to wit:

1. The rendering of contact or call center services is reasonable and not primarily profit-making, and is limited to its World Vision affiliates; and

2. That any profit that may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.

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.[11] 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.

Yours most respectfully,

ROMUALD C. PADILLA
General Counsel

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[11] SEC Memorandum Circular No. 15, Series of 2003, 16 December 2003