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

Office of the General Counsel

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SEC-OGC Opinion No. 11-47
Foreign donation to domestic foundation

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Sir:

This refers to your letter concerning the Philippine Military Academ Foundation, Inc. *("PMAFI")* with SEC Registration No. 155593 dated 23 Septembe 1988. You seek the opinion of the Commission as to whether PMAFI can, under it by-laws, legally receive funds from Ayala Foundation USA *("AFI-USA")*, and transfe the same funds to the Philippine Military Academy *("PMA")* or the Department c National Defense *("DND")*, specifically through a committee organized by the DNI *("DND Committee")* to raise funds to construct a Philippine-American Memorial a PMA.

In your letter, you stated that the DND Committee has made an arrangemer with AFI-USA in which the latter will help in soliciting donations from United State veterans and Filipino Americans in the USA. To facilitate a more convenient transfe of funds, there is a plan to channel the funds through PMAFI, since the DNI Committee by itself is part of the government and not a foundation, and the AFI-USA already has an institutional arrangement to assist PMAFI in raising funds fror the USA. Thus, the funds will be donated to PMAFI, which in turn will donate th same to the DND Committee or the PMA for the construction of the Memorial.

The question can be separated into two parts:

1. Can PMAFI, under its by-laws, receive donations from a foreign source?
2. Can PMAFI transfer the donations from a foreign source to the DND Committee or to PMA?

Before we delve into the first question, it needs to be stated that under the Corporation Code[1], among the powers of every corporation incorporated under it, as provided in Section 36 (7), is the power:

> "to purchase, **receive**, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with **such real and personal property**, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution."

Thus, it is an inherent power of a corporation, or one such as PMAFI, to receive property, like cash donations, as may be required by its lawful business. This power has always been regarded as an incident to every corporation.[2]

Next, we must determine if the act of receiving donations from a foreign source is within the scope of the PMAFI's primary purpose, as stated in its Amended Articles of Incorporation as approved by the Commission on 25 November 2005. Therein, it is stated:

> "SECOND – That the purpose for which the Foundation is formed is to contribute to scholastic progress and to national security and development. For this purpose, the Foundation shall engage in the following activities:
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> xxx
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> e) **Assisting in strengthening** the library, laboratory facilities, teaching and research capabilities, and **other facilities of the Philippine Military Academy**. (Emphasis ours.)
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> In the furtherance of the aforesaid purpose and activities, and not in limitation of the powers granted by the laws of the Philippines, the Foundation shall have the powers:
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> **a) To solicit and/or accept any donation, contribution, gift, endowment, bequest, legacy or inheritance, or any other assets from any source whatsoever, and to make use or dispose of them as may be necessary to carry out the purpose and activities of the Foundation;**
>
> xxx"[3]

The by-laws of PMAFI also provide in Article VI, Section 1 that:

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[1] Batas Pambansa Blg. 68 (1980).
[2] H. De Leon, The Corporation Code of the Philippines Annotated, 327 (2002).
[3] PMAFI's Amended Articles of Incorporation, as appended to the Certificate of Filing Amended Articles of Incorporation issued by the Commission on 25 November 2005.

"Funds of the Foundation shall come from donations, contributions, gifts, bequests, legacies, endowments, loans, investment income and proceeds from fund drives."[4]

Based on the foregoing, it is clear that PMAFI can receive donations from a foreign source.

The answer to the second question is not as clear-cut. The matter of transfer of funds from PMAFI to the DND Committee or PMA is a two-part question: first, of asking whether PMAFI can donate funds received by it; and second, of determining whether the DND Committee or PMA can accept the donated funds from PMAFI.

Section 36 of the Corporation Code provides that "[e]very corporation incorporated under this Code has the power and capacity:

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity; xxx"

Further, under the aforequoted portion of PMAFI's Articles of Incorporation PMAFI has the power to "**solicit and/or accept any donation**, contribution, gift, endowment, bequest, legacy or inheritance, or any other assets **from any source whatsoever**, and **to make use or dispose of them as may be necessary to carry out the purpose and activities of the Foundation**". (Emphasis ours.)

Considering that the funds donated by AFI-USA will be used in building the Phil-Am Memorial, an end which furthers the PMAFI objective of assisting in the scholastic progress and strengthening of PMA facilities, PMAFI may thus accept the AFI-USA donations and, in turn, donate them to the DND Committee or PMA. The Phil-Am Memorial project is significant in the history of the PMA, and the role of the US armed services in the establishment of the Academy is highlighted. Not to mention that it is seen to contribute to closer RP-US relations.[5]

Assuming that ownership of the funds from AFI-USA transfers to PMAFI upon donation, the disposal of the donated funds must comply with the requirements of the by-laws of PMAFI, which states in Article VI that:

"Section 3. Disbursements – No money shall be disbursed except for projects and budgeted expenditures duly approved by the Board, Provided, that not more than thirty (30%) percent of the gross income and not more than ten (10%) percent of the unrestricted donations shall be devoted to general and administrative expenses."

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[4] Attached to the Certificate of Filing of Amended By-Laws issued by the Commission on 13 May 201.
[5] Attached as Annex "A" to the letter-request for opinion.

However, if ownership of the donated funds are not transferred to PMAFI prior to the transfer to the DND Committee or to PMA, then PMAFI will merely serve as a conduit, and it might raise a question as to whether AFI-USA, a foreign entity, is making a direct donation to the Philippine Government, particularly DND.

Finally, considering that the question of whether or not the DND Committee can accept or receive donated funds, either from PMAFI directly, or from a foreign source coursed through PMAFI, would require an examination of the laws, rules and regulations pertaining to another government agency, namely, the Department of National Defense, we are reluctant to provide you an answer.

The matter of the acceptance by the DND of the donation is within its discretion and jurisdiction. This Commission can only interpret laws and rules being enforced and implemented by it. We refrain from rendering opinion on matters which would require an examination and review of the acts of another government agency.[6] Thus, the answer to the second part of your second question is not within this Commission but with the DND.

However, for your guidance, Section 47 of the Administrative Code of 1987[7] provides that:

> "Section 47. Contracts and Conveyances. – Contracts or conveyances may be executed for an in behalf of the Government or any of its branches, subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations, whether demanded by the exigency or exigencies of the service and as long as the same are not prohibited by law."

In addition, Section 12 of Republic Act No. 10147, the General Appropriations Act for the fiscal year 2011 states that:

> "Sec. 12. Donations. Departments, bureaus, offices or agencies may accept donations, contributions, grants, bequests or gifts, in cash or in kind, from various sources, domestic or foreign, for purposes relevant to their functions: PROVIDED, That in case of donations from foreign governments, acceptance thereof shall be subject to the prior clearance and approval by the President of the Philippines upon recommendation of the Secretary of Foreign Affairs: xxx
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> Receipts from donations shall be accounted for in the books of the recipient government agency in accordance with pertinent accounting and auditing rules and regulations. Such donations, whether in cash or in kind, shall be deemed automatically appropriated for the purpose specified by the donor. The receipts from cash donations and proceeds from sale of donated commodities shall be deposited with the National Treasury and recorded as a Special Account in the General Fund and shall be available to the implementing agency concerned through a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That donations

[6] SEC Memorandum Circular No. 15, Series of 2003, 5.6.
[7] Executive Order No. 292

for specific purpose with a term not exceeding one (1) year shall be treated as trust receipts in accordance with Section 6 hereof.

The donee-agency concerned shall submit to the DBM, the Senate Committee on Finance, the House Committee on Appropriations, and the COA, a quarterly report of all donations received, whether in cash or in kind, and a quarterly report of expenditures or disbursements thereon.

In case of violation of this section, the erring officials and employees shall be subject to disciplinary action in accordance with Sections 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292 and to appropriate criminal action under existing penal laws."

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

Please be guided accordingly.

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