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

OFFICE OF THE GENERAL COUNSEL

27 November 2014

SEC-OGC Opinion No. 14-35
Remittance of Donations of a Domestic Corporation to that of a Foreign Foundation

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Sir:

This refers to your letter-request for legal opinion dated October 25, 2013 concerning questions as to whether or not your client, Children International Inc. ("CI-PHL"), is permitted by its Articles of Incorporation to remit some or all of its donations to Children International ("CI-US"), a non-profit, United States-based organization, for the furtherance of their objective in supporting indigent children worldwide.

You disclosed that CI-PHL is a domestic corporation, under SEC Registration No. CN201215838. CI-US, on the other hand, is an organization based in Kansas City, Missouri, United States of America, dedicated to improving the lives of children living in dire poverty in nine countries around the world, including the Philippines.

You stated in your letter that the purposes for which CI-PHL was created are as follows:

> (1) To support and conduct projects and programs which provide for the socio-economic development of indigent children such as giving them access to healthcare, educational assistance, feeding and nutritional trainings, among others, without regard to race, color, creed, religion, national origin, sex and physical condition and to perform other charitable or social service activities nationwide;

(2) To receive donations, bequests, gifts, contributions from any persons, whether natural or juridical, here and abroad, in the form of cash, financial instruments, personal properties;

(3) To invest such donations in financial instruments, or such undertakings and collect income derived therefrom in order for the association to carry out its objectives; and

(4) To affiliate or contract with other local and international organizations for the purpose of carrying out the association's objective.

You further stated that CI-PHL would remit some or all of its received donations, to CI-US, which shall then pool remittances from CI-PHL together with other donations from around the world, including other related companies, to fund CI-US international programs for indigent children worldwide, including the Philippines. As such, it will be CI-US that will have the final determination as to which program for indigent children will be funded from the donations received from CI-PHL.

Simply put, the query is whether or not CI-PHL, under its purposes, may remit some or all of its received donations with a foreign non-profit entity like CI-US.

The remittance of CI-PHL in favor of CI-US is, for all intents and purposes, by itself an act of donation, considering that CI-PHL would give such amounts, gratuitously and with all liberality, in favor of CI-US. Pursuant to Section 36(9) the Corporation Code, among the powers of a corporation include the power *"**to make reasonable donations**, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes xxx".*[1] Section 36 (9) of the Corporation Code gives recognition to the growing tendency to regard charitable gifts as within the scope of corporate authority. It is based on the modern view that business corporations are not organized solely as profit-making enterprises but also as economic and social institutions with corresponding public responsibility to aid the betterment of economic and social conditions in the community in which such corporations are doing business.[2]

Moreover, CI-PHL's act of remitting and/or donating to CI-US is in accordance with its corporate purposes as stated in its Articles of Incorporation. It has been previously opined by the Commission that a purpose clause can be reasonably stretched or construed to cover matters or objects which could not have been expressly enumerated at the time of incorporation due to their huge number or changes in economic conditions, but can be impliedly included therein.[3] A cursory reading of the purposes you mentioned in your letter reveal that they do not expressly state the specific purpose of "remitting"

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[1] SEC-OGC Opinion No. 11-47, November 25, 2011, addressed to Comm. Carlos L. Agustin, AFP (Ret.)
[2] De Leon, Corporation Code of the Philippines (2002 ed.), p. 332.
[3] SEC Opinion dated April 12, 1991, addressed to Mr. Libertad Lagman-Sy, cited in I Lopez, The Corporation Code of the Philippines (1994 ed.), p. 206. See also SEC Opinion dated December 17, 1999, addressed to Director Gia Marie C. Andres; and SEC Opinion dated September 12, 2002, addressed to Hon. Amado D. Valdez.

the donations to other persons, whether natural or juridical. However, a reading of the fourth purpose of CI-PHL's Articles of Incorporation shows that it may ***"affiliate or contract with other local and international organizations for the purpose of carrying out the association's objective"***. The intended act of CI-PHL of remitting some or all of their donations to CI-US can be considered as an act of "contracting with other international organizations."

The term "contracting" is a term of wide latitude, encompassing any kind of transaction creating contractual relations, including donations or submission of proceeds to other organizations. Accordingly, the CI-PHL may be allowed to remit donation proceeds to CI-US, because CI-US will use such funds to carry out the purposes and objectives for which CI-PHL was incorporated.

However, please take into consideration Rule 68, Part I, paragraph A of the Implementing Rules and Regulations of the Securities Regulation Code, as amended by SEC Memorandum Circular No. 4, Series of 2013 dated March 7, 2013,[4] regarding Reportorial Requirements of Non-Stock Corporations. The remittance by CI-PHL to CI-US of its donation is a disbursement of funds, which CI-PHL should appropriately report to the Commission together with its Audited Financial Statements.

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.[5] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

CARLOS S. CORREA
General Counsel

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[4] **"4. OTHER DOCUMENTS TO BE FILED WITH THE FINANCIAL STATEMENTS**
"The following documents shall be filed with the annual audited financial statements and in the interim financial statements, if required herein:
"A. Non-stock and non-profit organizations
"A sworn statement of the organization's President and Treasurer on the accuracy and completeness of the following schedules:
"i. Schedule of Receipts or Income Other Than Contributions and Donations. This schedule shall provide the nature and amount of each item;
"ii. **Schedule of Contributions and Donations** that is prepared in accordance with the prescribed form per Annex "A"; and
"iii. **Schedule of Disbursements according to sources and activities**. This schedule shall provide the nature and amount of each item. If material in amount (10% or more of the total), the details of such disbursement shall likewise be indicated."
(Emphasis and underscoring supplied)

[5] SEC Memorandum Circular 2003-15 (No. 7).