Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-05
Re: Amendment of Primary Purpose to Include Business Process Outsourcing (BPO) Services

02 April 2024

LG Electronics Philippines, Inc.
15 Francisco Legaspi Street,
Maybunga, Pasig City

Attn: Atty. Jesse Joe Lagon
Legal Counsel

Ms. Luisa Renema Peru-Sabater
Corporate Secretary

Gentlemen:

This refers to your letter dated 21 June 2023 requesting for the Commission's opinion on whether or not LG Electronics Philippines, Inc ("LGEPH"), a fully-owned subsidiary of LG Electronics, Inc. ("LGE"), may conduct Business Process Outsourcing (BPO) activities.

You mentioned in your letter that LGEPH is a domestic corporation registered and existing under the Philippine laws and one of the subsidiaries of LGE, a foreign corporation existing under Korean laws. The other LGE subsidiaries are located in the United States of America, United Kingdom, Canada, and Australia ("Other Subsidiaries").

According to its Articles of Incorporation (AOI)[1] that you attached, LGEPH is engaged in the following primary purpose:

> "To import, buy locally and to sell, distribute or otherwise deal in, at wholesale and in retail, electric and/or electrical devices, equipment, apparatus, and other products such as, but not limited to home entertainment units, home appliances, commercial televisions, information display units, residential and commercial air conditioning units, accessories thereof, including all parts, accessories, and replacements therefor; medical equipment or devices, including its accessories or replacements, hospital equipment, devices and supplies, including its accessories or replacements, and to accept job orders for assembly, installation, servicing, maintenance or repairs, testing, commissioning, and integration in connection with the above electric and/or electrical devices, equipment, apparatus, and other products including the remodeling, repainting, alterations and all other work in connection therewith.[2]

You further disclosed that LGE intends to expand the services of its Other Subsidiaries relative to its after-sales activities with customers located in their respective territories. Hence, it is the direction of LGE that these Other Subsidiaries set up a call-center administrative team, which will be stationed at the principal office of LGEPH. The manpower and staff of the team will be composed of both Korean and Filipino nationalities, and its operation will depend on the time zones of the Other Subsidiaries, as the team members will specifically cater only to the customers located at their territories. The role of the team will be that of supervision, management, and administration of after-sales activities, and will not be taking any calls as customer service representatives.

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[1] Submitted as an attachment to your letter
[2] LGEPH's Primary Purpose as stated in their Amended Articles of Incorporation.

Likewise, you mentioned that there will be a contractual relationship/ agreement to be executed between LGEPH and the Other Subsidiaries for them to use the permit, office and other shared services available. Consequently, there will be a revenue generated in favor of LGEPH.

Thus, you are requesting for a legal opinion on the following:

1. Whether or not LGEPH and the Other Subsidiaries of LGE may legally enter into an agreement to conduct: a) BPO operations; and/ or b) Administrative activities of a BPO company, despite being a wholesaler, distributor and retailer, and not a BPO company; and

2. Whether or not LGEPH may amend its primary purpose to include: a) BPO operations; and/or b) Administrative activities of a BPO company, to engage in such activity with the Other Subsidiaries of LGE.

Discussion

With regard to your first query, a corporation, as a general rule, 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.[3]

The ***express powers*** of a corporation are the general powers enumerated under Section 35 of the Revised Corporation Code of the Philippines (RCCP)[4] and those which are sanctioned by the State in the corporation's AOI. Meanwhile, ***implied powers*** refer to those essential and necessary to carry out its purposes as stated in the AOI. Lastly, ***incidental powers***, are powers that are deemed conferred on the corporation because they are incidental to its existence.[5] It shall be emphasized that the implied powers of a corporation shall only pertain to the powers that are ***reasonably necessary to enable a corporation to carry out the express powers granted.***[6] Activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of incorporation.[7]

Accordingly, in the determination of what businesses 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.***[8]

A perusal of the AOI of LGEPH shows that the conduct of BPO operations or related business activities is not among the corporation's express or authorized purposes or activities.

Neither is the conduct of BPO operations incidental or necessary to carry out the objectives for which LGEPH was organized. The beneficiary of the proposed BPO activity is not LGEPH's clients but rather the Other Subsidiaries, and by extension, the latter's clients. Rendering BPO activity for subsidiaries of its parent corporation is, by no stretch of imagination, essential or deemed included in LGEPH's power or authority to buy or sell various electrical devices, equipment, apparatus, and other products, or otherwise deal with its own clientele. Absent such proposed activity, LGEPH can still carry-out its business under its AOI. Hence, using the ***reasonable necessity test***, the proposed business activity cannot be classified as incidental or impliedly connected to the main business of LGEPH, but should be treated as a separate and distinct business activity.

From the foregoing, LGEPH may not engage in BPO operations as the same is neither part of its express nor its implied powers. If LGEPH would like to offer BPO services to the Other Subsidiaries of LGE or to any party, it must file an amendment of its AOI to reflect the BPO operations as one of its authorized activities.

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[3] SEC-OGC Opinion No. 11-33, addressed to Mr. Jesus B. Lapuz, dated 29 July 2011.
[4] Republic Act No. 11232, Revised Corporation Code of the Philippines, 20 February 2019
[5] Aquino, Timoteo, Commentaries and Jurisprudence on the Revised Corporation Code (2020), p. 429-430.
[6] SEC-OGC Opinion No. 22-08, addressed to Gammad Law Office, dated 30 May 2022.
[7] SEC Opinion addressed to Mr. Felicisimo O. Joson dated 8 March 1995 *citing* Planters Bank v. Sharp 6 How (VS) 301, 121, ED 447)
[8] SEC-OGC Opinion No. 23-10, addressed to Teko Solutions Asia, Inc., dated 19 May 2023.

To address your ***second query***, while amendment of AOI is permissible to add other activities in which the corporation may engage in, the ***amendment of primary purpose*** to include activities that are ***separate and distinct*** from its main business activity is not allowed.

The purpose or purposes for which the corporation is to be formed must be grouped into Primary and Secondary Purposes. **The Primary Purpose must be only one**, but the Secondary Purposes may be several.[9] Other Purposes not allied or incidental to the Primary Purpose should be classified as Secondary Purposes. [10]

As we have previously opined:

> "It is the corporation's purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. **The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification.**
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> **Outside of the primary purpose, the secondary purposes might determine a corporation's classification on the condition that the corporation is actually engaged in the business stated therein.**"[11] (emphasis ours)

Hence, if LGEPH intends to add BPO operations to its business activities, LGEPH should amend its Secondary Purposes to include BPO operations and/or administrative activities of a BPO company, so it could legally engage in such activity pursuant to its certificate of registration with the Commission.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[12] 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.

Very truly yours,

Romuald C Padilla
General Counsel

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[9] Aquino, Timoteo, Commentaries and Jurisprudence on the Revised Corporation Code of the Philippines, 2020 edition.
[10] *Ibid citing SEC Opinion dated 6 June 1985.*
[11] SEC-OGC Opinion No. 11-33 dated July 29, 2011 *citing* SEC Opinion No. 08-06, citing Campos, J., et al., The Corporation Code, Vol. I, 74 (1990).
[12] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.