Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

19 September 2024

SEC OGC Opinion No. 24-25
Re: Creation of a Local Position of Assistant Secretary in a Representative Office

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Sir and Mesdames:

This pertains to your letter dated 11 July 2023, requesting for opinion from the Commission regarding your client, Nations Info Corporation ("NIC").

You disclosed the following:

1. NIC is a corporation registered and existing under the laws of the State of California, United States of America, with principal address at 1607 Hollister Avenue, Suite 104, Goleta, California, USA 93117.

2. NIC applied for and was granted a License to Transact Business in the Philippines by this Commission on 16 May 2022 for the establishment of a representative office under the name Nations Info Representative Office ("'NIRO"), with Company Registration No. 2022050052130-01.

3. As a Representative Office, the authority of the Resident Agent is limited only to accepting summons and processes in all legal proceedings and all notices affecting NIC.

4. To authorize its Resident Agent or any natural or juridical person in the Philippines to represent it in various transactions or proceedings, NIC's Board of Directors ("Board") issues, from time to time and as needed, the relevant Director's Certificate embodying the Board Resolution authorizing the specific person/s to represent it in each particular transaction or proceeding. Since the Philippines is a signatory to the Hague Treaty Convention 12 or the Apostille Convention, the Director's Certificate is apostilled (or alternatively, consularized) in order to have legal effect in the Philippines and is, thereafter, transmitted to NIRO *via* international courier.

5. Considering the cost of the apostille and transmittal of the documents, as well as the length of time before the documents arrive in the Philippines which may gravely affect time-sensitive

matters, *e.g., filing of responsive pleadings,* NIC intends to create the position of "Assistant Secretary" in NIRO in addition to its Resident Agent pursuant to Section 5.3 of its By-Laws permitting, among others, NIC's President or the Board, to appoint subordinate officers, *viz:*

> 5.3 **SUBORDINATE OFFICERS.** Subordinate officers, including Assistant Secretaries, Treasurers and Assistant Treasurers, and such other officers or agents as the business of the Corporation may require, may from time to time be appointed by the Board of Directors, the President, or by any officer empowered to do so by the Board of Directors, and shall have such authority and shall perform such duties as are provided in the Bylaws or as the Board of directors of the President may from time to time determine.[1]

6. The Assistant Secretary for NIRO shall be primarily responsible for issuing, within Philippine jurisdiction, the relevant Secretary's Certificate confirming the actions and resolutions of the Board in the same way a Corporate Secretary certifies the actions and resolutions of the Board of a domestic corporation.

Your queries are:

1. Whether NIC may modify the organizational structure of NIRO, its representative office, by creating additional subordinate offices and appointing subordinate officers as permitted by its By-Laws.

2. Whether the creation of the position of "Assistant Secretary" in NIRO is permitted under the Revised Corporation Code ("RCC").

3. In the affirmative, whether there are nationality or residency requirements that should be imposed on the Assistant Secretary of NIRO.

You submit that NIC may modify the organizational structure of NIRO and create the position of Assistant Secretary, sans the nationality or residency requirements, based on the following grounds:

1. The RCC, specifically Section 146 thereof, did not intend to restrict management's prerogative on matters relating to the organization of the corporation, including creation of offices and positions necessary for its operations and administrative needs. The RCC grants foreign corporations the liberty to organize and manage the corporation in accordance with business exigencies.

   In this connection, Section 1.3 of NIC's By-Laws unequivocally permits NIC's Board to establish subordinate offices with no other condition except that the Board deems such office to be appropriate.

2. The RCC recognizes NIC's power to validly create the office of an "Assistant Secretary" for NIRO, whether by virtue of its by-laws or the acts of its Board, and that there is no prohibition, express or otherwise, in the RCC for the creation of offices in addition to that of a Resident Agent. As held in *AGO Realty & Development Corporation, et al v. Dr. Angelita F. Ago, et. al.*:[2]

   > While corporations are subjected to the State's broad regulatory powers, it is their director and officers who are tasked with addressing questions of internal policy and management. The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions.

3. NIC's By-Laws do not provide for any requirement as to the nationality and citizenship for subordinate officers and the imposition of such requirement falls within the purview of NIC's prerogative, taking into consideration its administrative needs.

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[1] Underscoring in the original.
[2] G.R. No. 210906, 16 October 2019.

FIRST QUERY

Section 146 of the RCC provides that a foreign corporation lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, ***except those which provide for the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties stockholders, members, or officers of corporations to each other or to the corporation.***[3]

From the above, the letter of the law is clear and unequivocal that foreign corporations are bound by Philippine laws, subject to the exceptions provided therein. However, inasmuch as the "modification of the organizational structure of NIRO by creating additional subordinate offices and appointing subordinate officers as permitted by *[NIC's]* By-Laws" pertains to the *creation, **formation, organization** or dissolution of corporations or **those which fix the relation, liabilities, responsibilities, or duties of** stockholders, members, or **officers** of corporations to each other or to the corporation*, therefore, Philippine laws shall not apply to the same.

Certainly, a representative office does not have a separate and independent corporate personality apart from its parent company. For all intents and purposes, it is another office or unit within the organizational structure of the parent company, as characterized by the fact that it is fully subsidized by its parent company and it deals directly with the clients of the parent company, among others.[4] For the same reason, the parent company has the authority to create and consequently appoint officers and/or personnel of its representative office, as may be permitted by its by-laws.

Thus, we answer your first query in the *affirmative.*

SECOND QUERY

Section 24 of the RCC provides for the corporate officers and such other officers as may be provided in the by-laws, *viz:*

> Section 24. Corporate Officers. – Immediately after their election, the directors of a corporation must formally organize and elect: (a) a president, who must be a director; (b) a treasurer, who must be a resident; (c) a secretary, who must be a citizen and resident of the Philippines; and *(d) such other officers as may be provided in the bylaws.* If the corporation is vested with public interest, the board shall also elect a compliance officer. xxx[5]

In the case of *Renato Real vs. Sangu Philippines, Inc.*,[6] the Supreme Court ruled that a corporation may have other officers as may be provided for in the corporation's by-laws, thus:

> "'Corporate officers' in the context of Presidential Decree No. 902-A are those officers of the corporation who are given that character by the corporation code or by the corporation's by-laws. There are three specific officers whom a corporation must have under Section 25[7] of the corporation code. These are the president, secretary and the treasurer. *The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws."*[8]

Further, in the case of a foreign corporation, there is no prohibition in the RCC barring the creation of officer positions for its representative office, in addition to that of a Resident Agent. In fact, Section 146 of the RCC allows the same.

As such, we answer your second query in the *affirmative.*

THIRD QUERY

Considering that the nationality or residency requirement of the proposed Assistant Secretary pertains to the creation, formation, organization or dissolution of corporations or those which fix the

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[3] Emphasis and italics supplied.
[4] *See Commissioner of Internal Revenue v. Shinko Electric Industries Co. Ltd.*, G.R. No. 226287, 06 July 2021.
[5] Italics supplied.
[6] G.R. No. 168757, 19 January 2011. Italics supplied. Citations omitted.
[7] *Now* Section 24 of the RCC.
[8] Italics supplied.

relations, liabilities, responsibilities, or duties stockholders, members, or officers of corporations to each other or to the corporation,[9]and based on your representation as to the absence of any nationality or residency requirements for subordinate officers in NIC's By-Laws, we answer your third query in the *negative.*

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted and 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.[10] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

[9] Section 146, RCC.
[10] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.