



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 September 2019

SEC-OGC Opinion No. 19-41
RE: Retail Trade; Prosthetics

Atty. Demosthenes B. Donato

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7/F Electra House, 115 Esteban Street, Legaspi Village
1229 Makati City, Philippines

Dear Atty. Donato:

This refers to your letter dated 25 March 2019 requesting confirmation of your position that the business of prosthetics, which involves the design, fabrication and assembly of prosthetic implants or artificial limbs for natural persons with missing body parts, constitutes a service activity and not a sale or retail trade activity, pursuant to Article 1467 of the Civil Code and related jurisprudence.

This request was made on behalf of Instalimb Inc. ("Instalimb"), a limited liability company formed, organized and existing under the laws of the State of Japan, which is planning to establish a 100% Japanese-owned manufacturing company in the Philippines by 2020.

It is posited that inasmuch as the build of the human body is *unique* for each and every human being, it necessarily follows that the design, fabrication and assembly of prosthetic implants or artificial limbs is also *unique* for each and every human being. In short, there is no "one-size fits all" prosthetic implant or artificial limb, for the purpose of doing prosthetics in the proper way. Accordingly, the prosthetics methodology of Instalimb takes into consideration the *unique* body build of each individual, and proceeds to design, fabricate and assemble special prosthetic implants or artificial limbs that fit the said *unique* body build. Hence, it is your position that such a business transaction is a service contract and not a sale contract.

The Civil Code provides that "[a] contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the

same is on hand at the time or not, is a contract of sale, **but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work.**¹

The Supreme Court held that “a contract for a piece of work x x x may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not in existence and which would never have existed but for the order of the person desiring it.² In such case, the contract is one for a piece of work, not a sale.³ On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given, then the contract is one of sale.”⁴

Based on the foregoing, such a business entails tailor-fitting of artificial limbs based on a unique or customized design, fabrication and assembly of goods, which in turn depends on the unique body measurements per request of a particular individual as a customer. In short, no prosthetic implant or artificial limb would be readily available for sale. Thus, the business of prosthetics may be considered a contract for a piece of work, not a sale.

Even assuming that the business of prosthetics would be considered as a contract of sale, such sale transaction would not be considered as “retail trade” under the Retail Trade Liberalization Act of 2000⁵ (“RTLA”).

Section 3 of the RTLA defines “retail trade” as “*any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption... xxx.*”

For sales transactions to be considered as “retail,” the following elements should concur:

- (1) The seller should be habitually engaged in selling;
- (2) The sale must be direct to the general public;
- (3) The object of the sale is limited to merchandise, commodities or goods for consumption.⁶

In this case, the object of the transaction is prosthetics, which, may be defined as “replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice x x x to— (1) Artificially replace a missing portion of

¹ Article 1467, Civil Code of the Philippines (1950).

² *Engineering v. Court of Appeals, et. al*, G.R. No. 52267, 24 January 1996.

³ *Id.*

⁴ *Id.*

⁵ Republic Act No. 8762.

⁶ *Marsman v. First Coconut Central Company, Inc.* G.R. No. L-39841, 20 June 1988.

the body; (2) Prevent or correct physical deformity or malfunction; or (3) Support a weak or deformed portion of the body xxx.”⁷

Because of the nature of the business of prosthetics, the following elements of retail trade under the RTLA, namely: (1) that the sale must be direct to the general public, and (2) that the object of the sale is limited to merchandise, commodities or goods for consumption are not present.

(1) That the sale must be direct to the general public

Since Instalimb’s business of prosthetics involves specially manufactured prosthetic implants or artificial limbs for natural persons with missing body parts, then it is necessarily implied that the commodity or good is not available to the general market because it requires an order customized by and for a particular individual.

Even assuming that Instalimb’s manufacturing company would sell its specially manufactured prosthetic implants or artificial limbs to Instalimb’s retail company which in turn will sell the same to the particular customer, the transaction would not be considered as “retail” under the RTLA, to wit:

“Section 2. Sales Not Considered as Retail. – The following sales are not considered as retail:
xxx

e. Sales to industrial and commercial consumers who use the products bought by them to render services to the general public and/or produce or manufacture of goods which are in turn sold by them; xxx.”⁸

(2) That the products sold are consumer goods

Consumer goods may be defined as “goods which are used or bought for use *primarily for personal, family or household purposes*.⁹ In other words, **consumer goods are goods which by their very nature are ready for consumption**.¹⁰

⁷ The United States Code of Federal Regulations, Title 42, Section 440.120(c).

⁸ Section 2(e), Rule I of the Rules and Regulations Implementing Republic Act No. 8762 or the Retail Trade Liberalization Act of 2000.

⁹ *Id.*

¹⁰ *Id.*

The products sold in the business of prosthetics are not consumer goods since by their very nature they are not ready for consumption. As above-discussed in the contract for a piece of work, the business of prosthetics entails tailor-fitting of artificial limbs based on a unique or customized design per request of a particular individual as a customer. In short, no prosthetic implant or artificial limb would be readily available for sale.

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.


CAMILO S. CORREA
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¹¹ SEC Memorandum Circular 2003-15, No. 7.