



LEGAL SERVICE
GENERAL ADMINISTRATION AND SUPPORT
SERVICES GROUP
 DSWD-GF-004 | REV 03 | 22 SEP 2023

DRN: LS-L-LO-24-11-15664

MEMORANDUM

FOR : **ATTY. EMMELINE AGLIPAY VILLAR**
 Undersecretary for International Affairs Attached and Supervised Agencies

FROM : **THE ASSISTANT SECRETARY FOR GENERAL ADMINISTRATION AND SUPPORT SERVICES GROUP AND CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE**

SUBJECT : **LEGAL OPINION ON THE MINUTES OF THE MEETING FOR THE GABAY PROJECT (DEVELOPED BY DSWD, JJWC, ACTION INC AND JICA)**

DATE : **29 NOVEMBER 2024**

This pertains to the Memorandum¹ from the Office of the Undersecretary for International Affairs, and Attached and Supervised Agencies (OUS-IAASA) dated 14 November 2024 requesting the Legal Service (LS) for vetting of the Minutes of the Meeting (MoM) for the Project Aiming to Establish the Community-Based Juvenile Intervention Facilitator System for Children in Conflict with Law (CICL) and Children at Risk (CAR) in the National Capital Region (NCR) and Region 3, also called the "GABAY Project".

Per your Memorandum, the Japan International Cooperation Agency (JICA) developed the document, MoM, after a series of meetings between and among JICA, the Juvenile Justice Welfare Council (JJWC) and A Child's Trust Is Ours to Nurture, Inc. (ACTION Inc) on a Japanese Technical Cooperation under JICA partnership program. While the document is labelled as MoM, JICA and ACTION Inc., consider it a binding document on all the parties who will sign it, hence akin to a Memorandum of Agreement (MOA).

Our Opinion

This level concurs with the Undersecretary in her observations and comments set forth in her 14 November 2024 Memorandum, specifically the parties' specific responsibilities in the project and the fund appropriations associated with its implementation, to wit:

1. The MoM is unclear as to the specific responsibilities of each partner;

2. In the measures to be taken by the JJWC, it states that the JJWC will "cooperate" with ACTION Inc., to ensure the project's success. However, it

¹ Annex A- Memorandum dated 28 October 2024



does not define exactly what "cooperation" would entail. Further, **the lack of specific details on the extent of cooperation gives ACTION Inc and JICA a blanket authority to demand whatever cooperation they would want from JJWC.**

3. Based on the information gathered by my office, from the JJWC, the Project has a total projected cost in the amount of Php 16, 224,062.56 (covering the periods of November 2024 to April 2027; 2 years and 6 months), to be shouldered by the JICA.

4. Parenthetically, we have also learned from the JJWC that in one of the meetings for the Program, the JJWC was requested to provide Php 2,000,000.00 for the first year of implementation. **However, the JJWC did not approve the request due to unavailability of funds for the purpose."**

To assist your office, this level finds it important to outline the necessary steps before the signing of the MoM in order to achieve the objectives provided in the MoM.

Phase 1- Preparatory Stage

As part of the preparatory stage, the parties may convene to address any concerns that were not discussed in a series of previous meetings earlier conducted, particularly those raised by the proponent in the 14 November 2024 Memorandum. This meeting will also provide an opportunity for further negotiation, allowing the parties to state issues or reservations regarding the project. Once all concerns have been addressed, the parties may proceed to Phase 2.

Phase 2- Planning Stage

The planning stage entails one of the most crucial stage in the successful implementation of Gabay project. It is essential that the specific responsibilities and obligations of each party are clearly defined during this stage to ensure the smooth and effective implementation of the project. Furthermore, outlining the roles of each party will eliminate any ambiguity and prevent undue granting of blanket authority to any single party, which was one of the concerns of the proponent as per 14 November 2024 Memorandum.

Phase 3 - Collaborative Partnership

Once all concerns have been addressed and meeting of minds has been reached, the proponent may utilize the pro-forma Memorandum of Understanding (MOU) which the LS will attach in the Memorandum. After all parties have agreed to the contents of the MOU, they may proceed to formalize the collaborative partnership and incorporate all the conditions and stipulations agreed upon by them into a MOU.

Recommendation

In view of the foregoing discussions, this level opines that the Undersecretary defer for now in signing the MoM until all the material issues and concerns stated in the

14 November 2024 Memorandum have been discussed in detail and addressed by all the Parties during the preparatory and planning phase.

In the case of IP E-Game Ventures Inc., v. Tan, the Supreme Court held that:


"A contract is the law between the parties. Obligations arising from contract have the force and effect of law between the contracting parties and should be complied with in good faith, unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties."²

In this regard, it is crucial that the terms and stipulations provided in the MoM, a contract that is essentially a MOA, accurately reflect the terms and stipulations agreed upon and consented to by all parties.

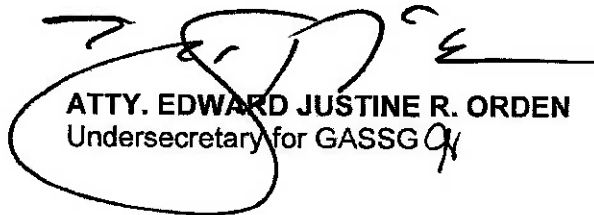
For your consideration.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.


ATTY. GINA V. WENCESLAO
MCMUG/ KMGB/ 10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG

² IP E-Game Ventures Inc., v. Tan, G.R. No. 239576 dated 30 June 2021