

12 February 2020

**SENATOR AQUILINO PIMENTEL III**

Chairperson  
Committee on Trade, Commerce and Entrepreneurship  
Senate of the Philippines  
Roxas Blvd., Pasay City

Dear **Senator Pimentel**:

We are pleased to submit the Department's position on Senate Bill Nos. 105 and 820, entitled:

**“An Act Institutionalizing the Poverty Reduction Through Social Entrepreneurship (PRESENT) Program and Promoting Social Enterprises with the Poor as Primary Stakeholders”**

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



**RAMON M. LOPEZ**  
Secretary

OFFICE OF THE SECRETARY

DTI Position on

**Senate Bill Nos. 105 and 820**

**“An Act Institutionalizing the Poverty Reduction Through Social Entrepreneurship (PRESENT) Program and Promoting Social Enterprises with the Poor as Primary Stakeholders”**

The Department welcomes the intention of the proposed bills to give formal recognition to social enterprises and provide a unique treatment to them in corporate compliance regulations and taxation. Under the existing regime, as per Republic Act (RA) No. 11232, otherwise known as the *Revised Corporation Code of the Philippines*, entities organized with a social target, or for the purpose of accomplishing a charitable or public service mission, must register/incorporate themselves as non-stock corporations that are non-profit, i.e., without income generating functions. Social enterprises are not yet accorded any recognition nor do they definitively fit the classification for non-stock corporations given their characteristics combining income generation with, and towards, charity.<sup>1</sup>

Ethical businesses and corporate social responsibilities are differentiated from social enterprises in that (i) their primary purpose continues to be wholly for-profit; (ii) their initiatives are to reduce their own risks and negative impact to the community (e.g. pollution, occupational safety, labor welfare, etc.); and, (iii) their initiatives are to cultivate a positive brand to better engage clients and market its products. On the other hand, social enterprises are not-for-profit, low-profit, or charitable for-profit entities whose primary purpose is the accomplishment of a charitable mission instead of revenue/dividends for the owners/shareholders, although they adopt enterprising practices so as to deliver on their mission. The business component of social enterprises addresses the perennial problem of financial sustainability and compensation differentials in conventional foundations and nongovernment organizations (NGOs); thus, effectively reducing dependence on donations, fundraisers, and volunteers, as well as improving the quality and reach of their charitable/social activities.

The DTI notes that a similar law, RA 10693, otherwise known as the *Microfinance NGOs Act*, was already passed but it was to give recognition and unique treatment to “microfinance NGOs”, which are similar to social enterprises in that they also have a charitable, non-profit primary purpose but accomplish this through enterprising activities – in the case of microfinance NGOs, by providing traditional financial services geared towards the poor.

In view of the foregoing, the DTI forwards the following inputs vis-à-vis the provisions of the proposed bills:

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<sup>1</sup> [Consolidated list of relevant laws in the Philippines concerning charitable entities]. *Nonprofit Law in the Philippines*. Council on Foundations. Retrieved from: <https://www.cof.org/content/nonprofit-law-philippines>

- On the definition of terms, specifically for “Social Enterprise”

Relevant Provision(s)	DTI Inputs
<p style="text-align: center;"><b>SBNs 105 and 820</b></p> <p>“SEC. 3. Definition of Terms. As used in this Act, the following terms shall mean:</p> <p>XXX</p> <p>g) Social Enterprise refers to a social mission-driven organization, whether an association, sole proprietorship, partnership, cooperative, corporation or any other legal form, that conducts economic activities, and provide goods and/or services directly related to its primary mission of improving the well-being of the poor, basic and marginalized sectors and their living environment. A social enterprise explicitly declares and pursues poverty reduction as its principal objective by purposefully rendering both transactional and transformational services. Social enterprises engage and invest in the poor to become effective workers, suppliers, clients and/or owners and ensure that a substantive part of the wealth created by the enterprise is distributed to or benefits them. In addition to reinvesting its surplus or profits back to the enterprise to sustain the fulfillment of its social mission, a social enterprise also uses its surplus or profits and mobilizes other resources to assist the poor to become partners in social enterprise or value chain management and governance and to become partners in community, sectoral and societal transformation.</p> <p>A social enterprise registered as a sole</p>	<p>The Department recommends a clear-cut operational definition for social enterprises that establish their own distinct classification of legal personality and organization. The registration of social enterprises should specifically be reserved for entities as such, <i>sui generis</i> from sole proprietorships, partnerships, stock corporations, nonstock corporations, microfinance NGOs, cooperatives, etc. The unique definition is to prevent abuse in using social enterprise recognition, prevent confusion, and streamline structural treatments such as in taxation, compliance regulations, and granting of incentives.</p> <p>The DTI’s recommended language for the definition is, to wit:</p> <p>“Social Enterprise – refers to a non-stock, non-profit, or a stock, close corporation, duly registered with the Securities and Exchange Commission (SEC), with the primary purpose of accomplishing a charitable mission for the benefit of a marginalized social sector by simultaneously implementing a poverty reduction strategy, as well as engaging in transactional and transformative business activities, in accordance with the national PRESENT Program.”</p> <p>The above recommended language was formulated based on existing legal definitions for low-profit limited liability company (L3C)<sup>2</sup>, community interest company (CIC)<sup>3</sup>, community contribution company (CCC)<sup>4</sup>,</p>

<sup>2</sup> [Compilation of legislations in the United States authorizing L3Cs]. *Laws*. Americans for Community Development. Retrieved from: <https://americansforcommunitydevelopment.org/laws/>

<sup>3</sup> *Companies (Audit, Investigations and Community Enterprise) Act 2004*. United Kingdom of Great Britain and Northern Ireland. Retrieved from: <http://www.legislation.gov.uk/ukpga/2004/27/part/2>

<sup>4</sup> *Bill 23 – 2012 Finance Statutes Amendment Act, 2012*. Province of British Columbia (Canada). Retrieved from: [https://www.leg.bc.ca/pages/bclass-legacy.aspx#/content/legacy/web/39th4th/1st\\_read/gov23-1.htm](https://www.leg.bc.ca/pages/bclass-legacy.aspx#/content/legacy/web/39th4th/1st_read/gov23-1.htm)

proprietorship, partnership or corporation must fulfill the eligibilities set forth in Section 14 to avail of the benefits and incentives under this act.”	microfinance NGO, and with guidance from the criteria used by the Philippine Social Enterprise Network <sup>5</sup> .
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- On the basic features and characteristics of social enterprises

Relevant Provision(s)	DTI Inputs
<p><b>SBNs 105 and 820</b></p> <p><i>None</i></p>	<p>Following the recommended definition for social enterprises, the Department recommends the addition of a new section detailing their basic features and characteristics, the language being:</p> <p>“SEC. XXX. Basic features and characteristics of Social Enterprises –</p> <p>(a) Must include “Social Enterprise” or the abbreviation “SE” as part of their corporate and trade name;<sup>6</sup></p> <p>(b) Must have a primary purpose of accomplishing a charitable mission for the benefit of a marginalized social sector by simultaneously implementing a poverty reduction strategy, as well as engaging in transactional and transformative business activities, in accordance with the national PRESENT Program;</p> <p>(c) Must adopt a poverty reduction strategy that is aligned with the national PRESENT Program;</p> <p>(d) Must not have a significant purpose of generating revenue, or appreciating of assets, for the benefit of the principals, board members, founders, owners, or shareholders of the corporation;</p>

<sup>5</sup> *Reaching the Farthest First: The State of Social Enterprise in the Philippines*. Philippine Social Enterprise Network. 2016. Retrieved from: [http://philsocialenterprisenetwork.com/social\\_report\\_bc\\_fa\\_102517\\_web-compressed.pdf](http://philsocialenterprisenetwork.com/social_report_bc_fa_102517_web-compressed.pdf)

<sup>6</sup> This requirement is in keeping with current registration conventions wherein the *sui generis* classification or nature of entity/organization must be reflected in the name for convenient identification. This would also serve as an immediate guide for consumers and investors.

	<p>(e) For stock, close social enterprise corporations, at least 60% of their net profit are to be disbursed for the accomplishment of the charitable mission and implementation of the poverty reduction strategy, while the remainder may be used for retained earnings or dividends; the regulatory council may issue further prescriptions and changes as necessary;</p> <p>(f) For non-stock, non-profit social enterprise corporations, at least 60% of their gross expenditure are used for the accomplishment of the charitable mission and implementation of the poverty reduction strategy, while the remainder are for administration and operational costs. Any income generated must be dedicated for the primary purpose and the continuance of the corporation only, although surpluses may also be used for corporate expansion, as well as rewards to members/personnel and stakeholders; the regulatory council may issue further prescriptions and changes as necessary;</p> <p>(g) Cannot execute the following corporate powers, as laid out by the Revised Corporation Code of the Philippines, without prior approval from the regulatory council, unless the regulatory council has issued guidelines for the same, in which case execution must be compliant to the guidelines:</p> <ol style="list-style-type: none"><li>1. Dissolution;</li><li>2. Power to Increase or Decrease Capital Stock; Incur, Create, or Increase Bonded Indebtedness;</li><li>3. Power to Deny Preemptive Right;</li><li>4. Sale, Transfer, or Other</li></ol>
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	<p>Disposition of Assets;</p> <ol style="list-style-type: none"> <li>5. Power to Acquire Own Shares;</li> <li>6. Power to Invest Corporate Funds in Another Corporation or Business or For Any Other Purpose;</li> <li>7. Power to Declare Dividends;</li> <li>8. Power to Enter into Management Contract;</li> </ol> <p>(h) May solicit and accept donations and gifts from the public;</p> <p>(i) Must refrain from political or legislative advocacy and lobbying;</p> <p>(j) Must comply with the issuances set forth by the regulatory council and provide the necessary reports, documents, financial statements, and other requirements within the prescribed periods;</p> <p>(k) Must establish and implement responsible management strategies on corporate governance, finance, and social impact;</p> <p>(l) Must be subject to regular assessments and reviews conducted by the regulatory council or an authorized/accredited third-party.”</p> <p>The above recommended language was also formulated based on existing frameworks previously cited in the definition. The Department welcomes further revisions to the language.</p>
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- On the creation of a Social Enterprise Development Council and Center for Social Enterprise Development

Relevant Provision(s)	DTI Inputs
<b>SBN 105</b>	
“SEC. 5. Social Enterprise Development Council – To carry out the policy declared under this Act, a Social Enterprise Development Council, hereinafter referred to as the	The Department notes that while the proposed bills are one in creating a Center for Social Enterprise Development (CSED) that would be the main agency responsible in implementing the PRESENT program

<p>“Council,” is hereby created as an agency attached to the Office of the President. It shall be the primary agency tasked to carry out the promotion, growth and development of social enterprises in the country. XXX</p> <p>XXX</p> <p>SEC. 6. Center for Social Enterprise Development – There shall be established a Center for Social Enterprise Development (CSED) under the supervision of the Council and to be headed by an Executive Director, which shall have the primary responsibility of implementing comprehensive policies for social enterprise development. XXX”</p>	<p>and facilitating social enterprises, they differ in the creation of a council that would develop the PRESENT program, handle policy and regulatory matters for social enterprises, and oversee the CSED – SBN 105 proposes the creation of a new council, whereas SBN 820 proposes for an expansion of the MSMED Council.</p> <p>The Department opines that the regulatory council and implementing agency for social enterprises should be separate from the MSMED Council since the nature of MSMEs are wholly for-profit while social enterprises would be recognized as a unique classification whose primary purpose dwells on a charitable/social dimension.</p>
<p style="text-align: center;"><b>SBN 820</b></p> <p>“SEC. 5. National Enterprise Development Council – The existing Micro, Small and Medium Enterprise Development (MSMED) Council, which is an attached agency of the Department of Trade and Industry, shall be strengthened and expanded to effectively spur the growth and development of MSMEs and SEs throughout the country, and to carry out the policy declared under this Act. It shall now be known as the National Enterprise Development Council, herein referred to as the Council. XXX</p> <p>XXX</p> <p>SEC. 6. Center for Social Enterprise Development – XXX”</p>	<p>As such, the Department supports the creation of a separate regulatory council and implementing agency (the CSED), although we recommend the language on powers, responsibilities, and functions to be retained. This is notwithstanding that social enterprises must still register their incorporation as “social enterprises” with the Securities and Exchange Commission (SEC).</p> <p>Furthermore, given the similar functions and responsibilities, the DTI recommends for the proposed regulatory council on social enterprises to be merged with the existing Microfinance NGO Regulatory Council, adopt the same composition and structure, but create additional three (3) council members to accommodate representation from the social enterprise sector. Following this merging, the CSED’s functions should also be expanded to include microfinance NGOs, and to be permanently designated as the secretariat of the merged council.</p>

- On incentives and special benefits to social enterprises

Relevant Provision(s)	DTI Inputs
<p style="text-align: center;"><b>SBN 105</b></p> <p>“SEC. 7. Social Enterprise Development Fund – There shall be included in the budget of the DTI under the annual General Appropriations Act an initial amount of Nine Hundred Million Pesos (Php900,000,000.00) for the establishment of a Social Enterprise Development (SEDF) which shall be utilized as grants to SEs for the plans set forth under the PRESENT program. XXX</p> <p>XXX</p> <p>SEC. 8. Special Credit Windows – The Land Bank of the Philippines, Development Bank of the Philippines and other government financial institutions shall establish special credit windows for the following purposes:</p> <p>XXX</p> <p>SEC. 9. Social Enterprise Guarantee and Surety Fund – There shall be established a Social Enterprise Guarantee and Surety Fund (SEGSF) which shall be funded from equity contributions of government financial institutions. The SEGSF shall be used to provide guarantee cover to participating financial institutions and other parties in extending financing to social enterprises. XXX</p> <p>SEC. 10. Public Procurement for Social Enterprises – For purposes of government procurement, the Government Procurement Policy Board (GPPB) shall recommend and approve policies to facilitate the full participation</p>	<p>The Department forwards the following recommendations with respect to the various facets of incentives and special benefits to social enterprises, to wit:</p> <ul style="list-style-type: none"> <li>• The proposed SEDF should be appropriated and managed by the merged regulatory council and expanded CSED, instead of the DTI, given that their mandate would be closer to the targeted audience.</li> <li>• The proposed SEGSF and its intentions should be subsumed already within the SEDF;</li> <li>• Although RA 10667, otherwise known as the <i>Philippine Competition Act</i>, intends for public procurement to be more competitive, the DTI can amend Department Administrative Order (DAO) No. 19-01, s. 2019<sup>7</sup> to extend existing preferences in public procurement to social enterprises that would participate as domestic bidders;</li> <li>• The specific allocation of annual budgets for projects/procurement sourced from social enterprises is not supported by the DTI as this effectively restricts competitive procurement by way of giving exclusivity to one sector. This would be a violation of the intentions of the <i>Philippine Competition Act</i> and <i>Government Procurement Reform Act</i>;</li> <li>• In lieu of creating another mandatory allocation that would constrain the resources and business strategies of</li> </ul>

<sup>7</sup> In cognizance of Section 43.1 of the 2016 Revised Implementing Rules and Regulations of RA 9184, otherwise known as the *Government Procurement Reform Act*. DTI DAO No. 19-01, s. 2019 provides the framework for operationalizing the granting of preferences to domestic bidders/domestically-sourced items in government procurement by setting the certifications as such. The certification allows procurement awarding to domestic firms making the lowest bid, provided that it is not more than 15% in excess of foreign bidders/imported items.



<p>of social enterprises in public procurement processes and to ensure the maximum public benefit and impact of government procurement projects. In support of this provision, the DBM shall direct agencies of government to allocate at least ten percent (10%) of their annual budgets specifically for projects to be procured from social enterprises.</p> <p>SEC. 11. Insurance for Social Enterprises – The Insurance Commission shall issue the necessary rules and regulations and implement measures to ensure that the insurance industry shall provide insurance products, both life and non-life, for social enterprises and their stakeholders among the poor. Furthermore, social enterprises shall be eligible to be licensed agents or delivery channels for their clients and constituents.</p> <p>XXX”</p>	<p>financial institutions, the existing mandatory allocation of loanable funds for micro, small, and medium enterprises (MSMEs) should just be opened to social enterprises also; and</p> <ul style="list-style-type: none"> <li>• Social enterprises should not offer insurance products/services although they may still enter into partnerships with insurance firms in keeping with their charitable mission and poverty reduction strategy.</li> </ul>
<p><b>SBN 820</b></p> <p>“SEC. 8. Social Enterprise Development Fund – XXX</p> <p>SEC. 9. Special Credit Windows – XXX</p> <p>SEC. 10. Social Enterprise Guarantee and Surety Fund – XXX</p> <p>SEC. 11. Compliance to Mandatory Allocation of Credit Resources – Loans granted by financial institutions to Social Enterprises shall be computed by the Bangko Sentral ng Pilipinas as twice the loan amount for purposes of determining financial institutions’ compliance to the mandatory allocation of credit resources to micro, small and medium enterprises under Republic Act 9501 or the “Magna Carta for Micro, Small and Medium Enterprises”.</p> <p>SEC. 12. Public Procurement for Social Enterprises – XXX</p>	

SEC. 13. Insurance for Social Enterprises – XXX

SEC. 14. Cash Incentives for Persons with Disabilities – To level the playing field and in recognition of the circumstances of stat-up SEs primarily employing PWDs, the SEDF credited in Section 8 of this Act shall provide a cash incentive for every PWD, in accordance with Republic Act 7277 or the “Magna Carta for Disabled Persons”, and other marginalized sectors as may be provided by this law, representing at least twenty five percent (25%) of the daily minimum wage, until such time that the said SE is able to achieve financial sustainability.

XXX”

The Department reiterates its support to the objectives of the proposed bill with consideration of its inputs. We note that the intentions of the social enterprise sector cut across the three focus areas of the MSME Development Plan 2017-2022, namely, (i) Business Environment, that seeks to improve the business climate and access to finance; (ii) Business Capacity, that seeks to enhance management and labor capacities and improve access to technology and innovation; and (iii) Business Opportunities, that seek to improve market access. Therefore, elements of the MSME Development Plan 2017-2022 and its implementing instrumentalities may be tweaked to accommodate social enterprises, similar to the inclusion of environmental sustainability (Green Growth Initiative), as well as women and youth entrepreneurship (GREAT Women Project and the Youth Entrepreneurship Program).

Finally, we recommend for the proposed bills to be consolidated into one, with consideration of our inputs, as well as from other stakeholders, especially the SEC, and the designated implementing agencies for the proposed incentives and special benefits.



**Bureau of Trade and Industrial Policy Research**

**24 January 2020**

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