



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



Legal Opinion (L.O.) No.	LO-2017-06
Date	August 25, 2017

MR. JOHN D. CASEY
President & CEO
Pacific Cross Philippines
Pacific Cross Center,
8000 Makati Avenue,
1200 Makati City

SUBJECT: Inquiry Regarding Out-sourcing of Personnel

Dear Mr. Casey:

This refers to the query of Pacific Cross Insurance, Inc. and Pacific Cross Health Care, Inc. (singularly referred to as Pacific Cross) on the propriety of outsourcing its non-sales processes and transferring the corresponding non-sales personnel to its affiliate, International Administrators limited-ROHQ (IAL-ROHQ).

In a resolution adopted by its Board of Directors and majority Shareholders, Pacific Cross resolved to re-organize its support services operation and to enhance its frontline services. Pursuant to the said resolution, Pacific Cross had outsourced its non-sales processes/services from its affiliate, IAL-ROH. The latter was setup as an exclusive service provider of the Pacific Cross' group of companies coming from different territories. Hence, SEC, BOI, LGU and BIR permits were secured in its implementation.

Moreover, IAL-ROHQ absorbed the affected non-sales personnel of Pacific Cross when it implemented the streamlining of personnel and other departments but the full complement for Medical and Travel Sales Departments remain with Pacific Cross. However, only one (1) personnel remains with each of the departments that were transferred to IAL-ROHQ.

In a letter dated 09 May 2017, your company submitted the following documents in support of its request for approval of the aforesaid out-sourcing of personnel:

- a. License to Transact Business in the Philippines issued by the Securities and Exchange Commission (SEC) for International Administrators Limited dated 02 September 2016;

- b. Board of Investments (BOI) recommendation to the SEC for the issuance of Certificate of Registration and License to establish a ROHQ to International Administrators Limited under the name "International Administrators Limited – ROHQ;"
- c. Certificate of Registration issued by the Bureau of Internal Revenue (BIR Form No. 2303) for International Administrators Limited;
- d. IAL-ROHQ's 2017 Business Permit issued by the City Government of Makati;
- e. List of services provided by IAL-ROHQ to Pacific Cross and corresponding limitation and restrictions;
- f. Service Level Agreement between Pacific Cross and IAL-ROHQ;
- g. Organizational Structure of IAL-ROHQ;
- h. Pacific Cross Group of Companies Organizational Structure;
- i. List of employees of IAL-ROHQ as of 31 March 2017;
- j. Contract of Lease between Pacific Cross and IAL-ROHQ.
- k. Relevant Financial Statements; and
- l. Compensation Structure

From the foregoing documents, it is observed that, foremost, IAL-ROHQ was duly incorporated under Philippine Laws as it has the necessary license and authorization to conduct business in the Philippines.

Further, it is also observed that Pacific Cross is an affiliate of IAL-ROHQ considering that both of them are under a holding company, Pacific Cross International Limited which is incorporated in British Virgin Islands. Despite being a controlled insurer, Pacific Cross is not registered under the holding company system as mandated under Section 294 of the Insurance Code, as amended by R.A. 10607 (Amended Insurance Code), *to wit*:

"(a) Every person who on the date this Code takes effect is a controlled insurer and every person who thereafter becomes a controlled insurer, shall, within sixty (60) days thereafter, or within thirty (30) days after becoming a controlled insurer, whichever is later, register with the Commissioner. Such registration shall be amended within thirty (30) days following any change in the identity of its holding company. The Commissioner may grant one or more reasonable extensions of the time to register.

"(b) Every registrant shall furnish the Commissioner with the following information concerning its holding company:

"(1) A copy of its charter or articles of incorporation and its bylaws;

"(2) The identities of its principal shareholders, officers, directors and controlled persons; and

"(3) Information as to its capital structure and financial condition, and a description of its principal business activities."

Clearly, Pacific Cross must be registered with the Commission as a controlled insurer.

Concomitantly, considering that Pacific Cross is a controlled insurer and considering that it intends to enter into a transaction with IAL-ROHQ, an affiliate, Section 298 of the Amended Insurance Code, pertaining to transactions within a holding company system, is likewise applicable, viz:

"Transactions within a holding company system to which a controlled insurer is a party shall be subject to the following:

"(a) The terms shall be fair and equitable;

"(b) Charges or fees for services performed shall be reasonable;

"(c) Expenses incurred and payments received shall be allocated to the insurer on an equitable basis in conformity with customary insurance accounting practices consistently applied.

"The books, accounts and records of each party to all such transactions shall be maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties."

In order to determine whether the above-conditions are complied with, the Commission, through its Regulation, Enforcement and Prosecution Division, requested additional documents *i.e.* financial statements of Pacific Cross and IAL-ROHQ and compensation structure, copies of which were received by the Commission on 03 July 2017.

Upon thorough perusal of the documents submitted, the Commission finds that the fee in the Service Level Agreement between Pacific Cross and IAL-ROHQ is compliant with Section 298 of the Insurance Code, as amended by R.A. 10607.

Thus, this Commission hereby approves Pacific Cross's outsourcing of personnel to IAL-ROHQ provided that the continuing requirements under Section 298 of the Amended Insurance Code and other applicable laws are present.

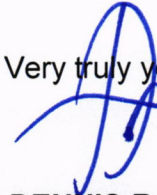
Please note that the opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein. This opinion shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in the other cases whether for similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Also, please be advised that the above-mentioned findings of the Commission does not affect the validity or invalidity of the employment contract/relationship of IAL-ROHQ's absorbed employees considering that the determination of the same falls under another jurisdiction.

Please be guided accordingly.

Thank you.

Very truly yours,



DENNIS B. FUNA
Insurance Commissioner

