



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



Legal Opinion (L.O.) No.	LO-2017-07
Date:	SEPTEMBER 15, 2017

ATTY. VINA B. SALONGA

Legal Counsel

LAUSAUTO GROUP

LausGroup Corporate Center
Jose Abad Santos Avenue,
City of San Fernando, Pampanga

SUBJECT: Power of a Corporation to Act As An Insurance Agent

Dear Atty. Salonga:

This is with reference to your letter dated 12 July 2017 in behalf of LausAuto Group requesting for legal opinion on whether or not there is a need to amend the existing Articles of Incorporation of the twenty-three (23) corporations under the LausAuto Group for the said corporations to be licensed as insurance agents.

By way of background, you stated that the twenty-three (23) corporations under the LausAuto Group are **primarily engaged in the business of automotive dealership**. According to you, these corporations will be applying for a license to act as insurance agents before this Commission.

In your letter, you mentioned that the Articles of Incorporation of these corporations include either of the following in its respective purpose clauses, to wit:

- a) "to exercise such other powers as may be essential or necessary to carry out its purpose or purposes stated in the articles of incorporation";
or
- b) "that the corporations shall have the express powers of a corporation as prescribed for under Section 36 of the Corporation Code of the Philippines".

Thus, you inquired whether the existing Articles of Incorporations of the twenty-three (23) corporations under the LausAuto Group are sufficient for the corporation to act as an insurance agent.

In the resolution of this issue, there is a need to review and apply the provisions of the general law governing corporations, the Corporation Code of the Philippines.

In the determination of what business or businesses may be carried on by a corporation, reference must be had to its Articles of Incorporation.

Section 14 of the Corporation Code requires that the purpose or purposes for which the corporation is to be formed must be indicated in the Articles of Incorporation.

The purposes for which the corporation is to be formed are grouped into Primary and Secondary Purposes.

The primary purpose of the corporation, as stated in the articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification. Outside of the primary purpose, the secondary purposes might determine a corporation's classification on the condition that the corporation is actually engaged in the business stated therein.¹

In the determination of what business may be carried on by a corporation, reference must be had to its charter. Unless the power to carry on a particular business is either expressly or impliedly conferred by its charter, it does not exist.²

Hence, the corporate purpose should clearly and specifically define with certainty the scope of business or undertaking of a corporation.

It is well-settled that a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created, or such powers as are necessary for the purpose of carrying out its express powers.³ It is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise.

Express powers include the general powers which are enumerated in Section 36 of the Corporation Code, those which are sanctioned by the State in the corporation's Articles of Incorporation, and the specific powers under Sections 11, 16, and 37 to 44 of the Corporation Code.

Section 36 of the Corporation Code contains an enumeration of the general powers expressly given to every corporation created under the general incorporation law. These powers may be exercised by a corporation whether or not such powers are stated in the Articles of Incorporation or By-Laws.

¹ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz, citing SEC-OGC Opinion No. 08-06, citing Campos, J., et al., The Corporation Code, Vol. 1, 74 (1990)

² Id., citing Chiwakla Line v. Disnukes, 87 Ala. 344, 650, 122, 5LRA 100 cited in Am. Jur. Supra., Sec. 743.

³ SEC Letter dated 20 June 1989 addressed to Mr. Philip C. Comandante, citing 13 Am. Jur. Sec. 739.

Implied or incidental powers, on the other hand, are those which are "essential or necessary to carry-out its purpose or purposes as stated in the Articles of Incorporation".⁴

The power to "exercise such other powers as may be essential or necessary to carry out its purpose or purposes stated in the articles of incorporation" is an implied power of a corporation as recognized under paragraph 11 of Section 36 of the Corporation Code.

Clearly, the implied powers of a corporation pertain only to such powers as are reasonably necessary to enable a corporation to carry out the express powers granted.

A reading of the articles of incorporation of the twenty-three (23) corporation under the LausAuto Group reveal that there is nothing in the purpose clause which confers to the said corporations the authority to engage in business as insurance agent.

The power to engage in business as insurance agents is also not conferred by the Corporation Code, particularly Section 2, 36 and 45; neither can it be said that the power is necessary or incidental to the exercise of the powers conferred by the Insurance Code or by its articles of incorporation.

Thus, it is the opinion of this Commission that it is not sufficient that phrase "to exercise such other powers as may be essential or necessary to carry out its purpose or purposes stated in the articles of incorporation" is included in the secondary purpose clause of the Articles of Incorporation to enable the corporation to engage in business as an insurance agent.

The business of engaging in the business as insurance agents cannot be considered as an implied power as the same is not essential or necessary to carry-out the business to engage in automobile dealership.

Should these corporations engage in the business as insurance agents based on its existing Articles of Incorporation, the same shall be considered as *ultra vires* acts which is prohibited under Section 45 of the Corporation Code of the Philippines which reads:

"Section 45. Ultra vires acts of corporations. - No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

Thus, should the corporations under the LausAuto Group decide to engage in business as insurance agents, the necessary amendment to the purpose clause in its Articles of Incorporation is necessary, i.e., to include as one of its purpose the power to act as insurance agent or general agent for any insurance company as authorized

⁴ Paragraph 11, Section 36 of the Corporation Code.

by the Insurance Commission and to enter into any agreement for such purpose with any insurance company.

It should be noted that, under the Insurance Code, as amended by Republic Act No. 10607, no insurance company doing business in the Philippines, or any agent thereof, shall pay any commission or any compensation to any person for services in obtaining insurance, unless such person shall have first procured from the Insurance Commissioner a license to act as an insurance agent. This requirement applies in the case of a partnership, association or corporation.

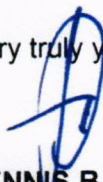
Considering that a corporation that intends to engage in business as an insurance agent is required to secure a secondary license from this Commission, the filing and registration of its articles of incorporation or any amendments thereto requires a favorable endorsement to this Commission.

More importantly, such corporation is required to undergo the licensing process prescribed under the pertinent rules and regulations of this Commission.

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. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

For your strict compliance.

Very truly yours,


DENNIS B. FUNA
Insurance Commissioner

