



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



|                         |                  |
|-------------------------|------------------|
| Legal Opinion (LO) No.: | LO-2018-03       |
| Date:                   | January 30, 2018 |

**MR. ARNULFO H. DIVINA**  
Insurance Agent  
14 Agueda Street,  
Brgy. Bahay Toro,  
Quezon City

**SUBJECT: Inquiry on the Matter of Doing Insurance  
Business in the Philippines**

**Dear Mr. Divina:**

This pertains to your letter dated 31 August 2017 requesting for opinion in the matter of doing insurance business in the Philippines.

In the said letter, you raised the following issues, to wit:

1. Whether a single transaction of making or proposing to make, as insurer, an insurance contract within the Philippine territory by an unauthorized foreign insurer, represented by an unauthorized agent, to cover citizens and residents of the Philippines, already constitute a violation of the Insurance Code. If so, what is/are the particular provision/s of the Insurance Code is/are violated and what is/are the penalties imposed for the violation?;
2. Is it lawful for an unauthorized foreign insurer to offer or propose to make, as insurer, an insurance contract in the Philippines, to cover the citizens and residents of the Philippines and after the offer is completed, issue the insurance policy from its country of origin?; and
3. If the Insurance Commission has no jurisdiction over unauthorized industry players, which office has the jurisdiction over them?

After a careful evaluation of the issues presented, this Commission hereby renders its opinion on the matter as discussed hereunder.

As regards your first question, Section 193 of the Insurance Code, as amended, provides that:

"SEC. 193. No insurance company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner upon application therefor and payment by the company concerned of the fees hereinafter prescribed. (emphasis supplied)

Xxx"

The Corporation Code of the Philippines also provides that:

Section 125. Xxx

Foreign banking, financial and insurance corporations shall, in addition to the above requirements, comply with the provisions of existing laws applicable to them.

Xxx"

In a number of jurisprudence, the Supreme Court has pronounced that it is a pre-requisite for a foreign corporation to secure a license before it can do business in the Philippines.

In the case of White Gold Marine Services, Inc. vs. Pioneer Insurance and Surety Corporation et al., G.R. No. 154514, 28 July 2005, the Supreme Court pronounced that, since a contract of insurance involves public interest, regulation by the State is necessary. Thus, no insurer or insurance company is allowed to engage in the insurance business without a license or a certificate of authority from the Insurance Commission.

Likewise, in the case of Avon Insurance PLC, et al. vs. Court of Appeals, et. al, G. R. No. 97642, 29 August 1997, the Supreme Court resolved that "before a foreign corporation can transact business in the country, it must first obtain a license to transact business here and secure the proper authorizations under existing law."

With regard to the authority of agents to transact or do insurance business in the Philippines, Section 307 of the Insurance Code provides that:

Sec. 307 xxx

"No person shall act as an insurance agent or as an insurance broker in the solicitation or procurement of applications for insurance, or receive for services in obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines, or any agent thereof, without first procuring a license so to act from the Commissioner, which must be renewed every three (3) years thereafter. (emphasis supplied)

From the foregoing, it is imperative that before a foreign insurance company transacts any insurance activity or business in the Philippines, a license or certificate of authority duly issued by the Insurance Commission must first be secured.

Likewise, before a person may act as an insurance agent, he/she must have a license issued by the Insurance Commission.

This authority or license is only effective within the jurisdiction of the issuing authority, as in the present case, within the Philippine territory.

Failure to secure the necessary license constitutes doing insurance business, which is a clear violation of the provisions of the Insurance Code, as amended

It is also worth noting that the law does not make any distinction whether the transaction is one that is isolated or in the regular course of business, for a foreign insurance company to secure a license from the Commission.

The following Sections provide for the penalty of the above-mentioned violations of the Insurance Code, as amended:

“SEC. 318. Except as otherwise provided by law or treaty, it shall be unlawful for any person, partnership, association or corporation in the Philippines, for himself or itself, or for some other person, partnership, association or corporation, either to procure, receive or forward applications of insurance in, or to issue or to deliver or accept policies or contracts of insurance of or for, any insurance company or companies not authorized to transact business in the Philippines, covering risks, life or non-life, situated in the Philippines; and any such person, partnership, association or corporation violating the provisions of this section shall be deemed guilty of a penal offense, and upon conviction thereof, shall for each such offense be punished by a fine of Two hundred fifty thousand pesos (P250,000.00), or imprisonment of six (6) months, or both, at the discretion of the court: *Provided, That the provisions of this section shall not apply to reinsurance.*”

“SEC. 438. In addition to the administrative sanctions provided elsewhere in this Code, the Insurance Commissioner is hereby authorized, at his discretion, to impose upon insurance companies, their directors and/or officers and/or agents, for any willful failure or refusal to comply with, or violation of any provision of this Code, or any order, instruction, regulation, or ruling of the Insurance Commissioner, or any commission or irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Insurance Commissioner, the following:

“(a) Fines not less than Five thousand pesos (P5,000.00) and not more than Two hundred thousand pesos (P200,000.00); and

“(b) Suspension, or after due hearing, removal of directors and/or officers and/or agents. ”

With regard to the second question presented, Section 2(b) of the Insurance Code, as amended, provides that:

Sec.2 xxx

“(b) The term *doing an insurance business* or *transacting an insurance business*, within the meaning of this Code, shall include:

“(1) Making or proposing to make, as insurer, any insurance contract;

“(2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

“(3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;

“(4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

Xxx”

Considering the above-mentioned provision, the company's mere act of offering or proposing to make an insurance contract in the Philippines already constitutes doing insurance business. Therefore, making or proposing or offering to make an insurance contract, without license, even if payment or issuance of contract will not be done in the Philippines is unlawful.

Anent your last question, Section 437 of the Insurance Code, as amended, provides that:

“Sec. 437. Xxx

The Insurance Commissioner shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters xxx are faithfully executed xxx.

"In addition to the foregoing, the Commissioner shall have the following powers and functions:

Xxx

"(c) Impose sanctions for the violations of laws and the rules, regulations and orders issued pursuant thereto;

(f) Issue cease and desist orders to prevent fraud or injury to the insuring public;

Xxx "

The Insurance Commission is mandated by law to regulate and supervise the conduct of insurance companies and other related entities. It is conferred with the power and the authority to see to it that the insuring public is protected from all forms of fraudulent activities which may be detrimental to the insurance industry. Also, as above-stated, the Commission has the power to impose sanctions for any violations of laws, rules and regulations issued.

Hence, the Commission has jurisdiction over all matters regarding insurance within the territory of the Philippines.

This authority, however, does not preclude the jurisdiction of regular courts and agencies to prosecute any fraudulent or deceitful acts of an entity or person which includes doing business in the Philippines without the necessary license.

It shall be understood that this legal opinion is based solely on the facts presented and disclosed and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.



**DENNIS B. FUNA**  
Insurance Commissioner

