



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



Legal Opinion (L.O.) No.:	LO-2018-09
Date:	April 5, 2018

**MR. DANIEL T. DALY**  
President & CEO  
Pacific Cross Philippines  
Pacific Cross Center, 8000 Makati Avenue,  
1200 Makati City

**SUBJECT: Legal Opinion on Foreign Ownership of Shares in a Domestic Insurance Company**

**Dear Mr. Daly:**

This pertains to your letter dated 14 December 2017 requesting from this Commission a ruling on whether or not Pacific Cross International Limited (PCIL), a company incorporated in the British Virgin Islands and having its corporate office at 11/F Overseas Trust Bank Building, Gloucester Road, Hong Kong can own more than 40% of Pacific Cross Insurance, Inc. (PCII).

As presented in your letter, PCII is a company duly registered with the Securities and Exchange Commission and the Insurance Commission wherein PCII is Sixty Point Twenty Five Percent (60.25%) owned by Filipino individuals and domestic holding entities as of 15 November 2017.

Ms. Consuelo G. Clark, a Filipino, currently owns Thirty Six Point Fourteen Percent (36.14%) of PCII shares while Worth Holdings, Inc. (WHI), a corporation duly organized and existing under the Philippine laws, currently owns Twenty Three Point Forty Percent (23.40%) of PCII shares.

Both Consuelo G. Clark and WHI intends to sell their entire shares and their prospective buyer is PCIL.

PCIL currently owns Thirty Nine Point Seventy Five Percent (39.75%) of PCII and if the sale of shares will proceed, PCIL will effectively control Ninety Nine Point Twenty Nine Percent (99.29%) of PCII.

Hence, your request for the Insurance Commission's legal opinion on the matter.

The issue to be resolved is whether or not PCIL, being a foreign corporation, is allowed under the Insurance Code<sup>1</sup>, to own more than 40% of PCII, a duly licensed domestic insurance company.

Upon careful evaluation, this Commission answers in the affirmative.

Relative to your query are pertinent laws and issuances on foreign ownership over corporations in the Philippines.

With the liberalization of foreign investments, full ownership over corporations by foreign entities may be allowed as long as the investment to be made does not fall in the areas of economic activity where a certain percentage of ownership is reserved to Filipinos.

Section. 3(g) of Republic Act No. 7042<sup>2</sup> states that, to wit:

*"...g) the term "Foreign Investments Negative List" or "Negative List" shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the equity capital of the enterprises engaged therein."*

**In relation to the above-mentioned provision, an insurance company does not fall under the list of areas of investment in which foreign ownership is limited by mandate of Constitution and other laws such as Executive Order No. 184<sup>3</sup>.**

Further, Section 290 (a) (b) (c) & (d) of the Insurance Code provides that, to wit:

*"Section 290. As used in this title, the following terms shall have the respective meanings hereinafter set forth unless the context shall otherwise require:*

---

<sup>1</sup> P.D. No. 612, as amended by Republic Act No. 10607

<sup>2</sup> Foreign Investments Act of 1991 as amended by R.A. No. 8179

<sup>3</sup> The Tenth Regular Foreign Investment Negative List of 2015

(a) *Person means an individual, partnership, firm, association, corporation, trust, any similar entity or any combination of the foregoing acting in concert.*

(b) *Control, including the terms controlling, controlled by and under common control with, means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial contract for goods or non-management services or otherwise. Subject to Section 292, control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote forty percent (40%) or more of the voting securities of any other person: Provided, That no person shall be deemed to control another person solely by reason of his being an officer or director of such other person.*

(c) *Holding company means any person who directly or indirectly controls any authorized insurer.*

(d) *Controlled insurer means an authorized insurer controlled directly or indirectly by a holding company...*

Based on the above-cited provision and as applied on the facts of this case, PCIL is the prospective *holding company* while PCII is the prospective *controlled insurer*. Section 290(c) clearly states that a holding company could be ***any person who directly or indirectly controls any authorized insurer***. The Insurance Code does not distinguish as to the person who could exercise direct or indirect control over an authorized insurer or an insurance company who is authorized to transact insurance business in the Philippines or the controlled insurer under Section 290(d). Stated otherwise, ***the Insurance Code does not distinguish whether the person doing insurance business (individual, partnership, firm, association, corporation, trust, any similar entity or any combination of the foregoing acting in concert) is domestic or foreign.***

Further, the Insurance Code in Section 190 states that, to wit:

*"Section 190. For purposes of this Code, the term insurer or insurance company shall include all partnerships, associations, cooperatives or corporations, including government-owned or -controlled corporations or entities, engaged as principals in the insurance business, excepting mutual benefit associations. Unless the context otherwise requires, the term shall also include professional reinsurers defined in Section 288. Domestic company shall include companies formed, organized or existing under the laws of the Philippines. Foreign company when used without limitation shall include companies formed, organized, or existing under any laws other than those of the Philippines."*

Section 190 categorically states that an insurance company may be a corporation. It bears emphasizing that the same provision does not also distinguish as to whether such corporation is domestic or foreign. A further evaluation of the Insurance Code will also show that nothing in the said law provides for a certain percentage of ownership over an insurance company by a corporation, domestic or otherwise.

Based from the foregoing, as far as the Insurance Code is concerned, there is no restriction on foreign investments over insurance companies. Hence, this Commission finds that Pacific Cross International Limited (PCIL), a company incorporated in the British Virgin Islands and having its corporate office at 11/F Overseas Trust Bank Building, Gloucester Road, Hong Kong may own more than 40% of Pacific Cross Insurance, Inc. (PCII).

However, please note that in case a person becomes a controlled insurer, Section 294 (a) and (b) of the Insurance Code further requires that:

*"Section 294. (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, once the proposed sale of shares proceeds, PCII must comply with the requirements under the above-stated provision.

However, please note that the above ruling of the Insurance Commission is without prejudice to the application of pertinent laws, rules and regulations being implemented by other government regulatory agencies.

Further, 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 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.

Please be guided accordingly.



**DENNIS B. FUNA**  
Insurance Commissioner

