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

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Legal Opinion No.	LO-2018-10
Date	April 16, 2018

MR. EUSEBIO H. TANCO
Director
Philplans First Inc.
12th Floor, STI Holdings Center
6764 Ayala Avenue
1226 Makati City

Subject: **Legal Opinion on Investment Restrictions of Directors and Officers of Pre-Need Companies**

Dear **Mr. Tanco:**

This refers to your letter dated 28 December 2017, requesting for guidance on Section 13 of Republic Act No. 9829 or the Pre-Need Code of the Philippines pertaining to restrictions on investments of directors and officers of pre-need companies.

We understand, based on your letter, that two of the directors in Philplans First, Inc. ("Philplans") have investments in shares of publicly-listed companies where the Philplans' trust fund have investments in. Nevertheless, you state that the investments of the concerned directors were made *prior* to Philplans' trustee bank's investment of the said company's trust fund in the same publicly-listed companies.

Our Opinon

Section 13 of the Pre-Need Code of the Philippines provides that *"no director or officer of any pre-need company shall, after his election or appointment as such, directly or indirectly, for himself or as the representative or agent of others, have an investment in excess of Five Million Pesos (Php 5,000,000) in any corporation or business undertaking in which the pre-need company's trust fund has an investment in or has a financial interest with. xxx"*

The evil sought to be avoided by the said provision is to prevent directors and officers from using their positions in the company *after his election or appointment as*

such to take undue advantage of the pre-need company's trust fund investments for personal interest, and to avoid conflict of interest.

Basic principles in statutory construction provide that laws are to be construed liberally, so that their spirit and reason will be preserved (*benignus leges interpretandae sunt, quod voluntas eraum conservetur)*, and that when there is ambiguity, the interpretation of such that will avoid inconveniences and absurdity is to be adopted *(Interpretatio talis in ambiguis semperfienda est ut evitetur inconvenienset absurdum)*.

Applying the foregoing principles it appears that Section 13 of the Pre-Need Code should not apply in the present case as it would result in absurdity and would not coincide with the spirit and intent of the law.

The directors' acquisition of shares pre-dated the investment of the trust fund. Thus, there could not have been an intention on the part of the directors to use their positions in the company to take undue advantage in the investments of the pre-need company, especially since the discretion as to where the trust fund investments shall be made lies entirely on the trustee bank of the pre-need company and not to the pre-need company's directors and/or officers.

Moreover, it would result in absurdity to compel the directors to relinquish their investments made in good faith, prior to and without knowledge that an investment was going to be made in the future in the same companies by the pre-need company's trustee bank, merely on account of their position in the pre-need company.

In view thereof, we are of the opinion that the provisions of Section 13 of the Pre-need Code does not apply in the present case.

Please note that the opinion rendered by this Commission 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.

Thank you.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner