



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



Legal Opinion (LO) No.:	2018-17
Date:	19 November 2018

MR. JAMES G. MATTI

President

WILLIS TOWERS WATSON

INSURANCE BROKERS PHILIPPINES, INC.

23/F W City Center, 7th Avenue

corner 30th Street, Bonifacio Global City

Taguig City, 1634

**SUBJECT: Outsourcing of Third Party/ Payment Gateway
Provider for Premium Collection on behalf
of a Brokering Company**

Dear Mr. Matti:

This pertains to your letter informing this Commission regarding your newly developed web-based system called BenefitsMarketplace, a tool which your clients can use to manage employee benefits plans.

In line with this, you seek our guidance on the following areas which relate to the implementation of your system:

1. May the Willis Towers Watson Insurance Brokers Philippines, Inc. ("Willis Brokers") outsource the premium collection, through on-line payment, from the individual employees using a third party/payment gateway provider (a non-regulated entity) and thereafter, the latter shall remit the premiums collected to the insurer?
2. In an instance where Willis Brokers and the payment gateway provider collect premium payments from individuals, can deductions of certain percentage made as service fee from premiums collected, provided that:
 - a. The fee deducted is agreed with the insurer; and
 - b. The insurer bears the fees deducted?
3. Where Willis Brokers will be involved in the referral of employees of corporate clients to wellness and lifestyle program and/or vendors, may Willis Brokers collect the fees/payment on behalf of the product vendors and remit them to the latter?

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

As regards your first inquiry, please be informed that outsourcing of third party/ payment gateway provider may be allowed.

Paragraph 2 of Section 307, of the Insurance Code, as amended, provides that a license should first be procured in order for a person to act as an insurance broker, to wit:

“Section 307. 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 fees in the obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines, or any agent thereof, without first procuring license so to act from the Commissioner...”

Further, Section 310 of the same Code states that:

“Section 310. Any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all duties, requirements, liabilities and penalties to which an insurance broker is subject.”

Considering the above-mentioned provisions, only those which are duly licensed by the Insurance Commission shall have the authority to solicit or procure insurance or receive fees or commissions.

In your letter, you mentioned that the third party/ payment gateway provider shall be used to collect premiums from individuals/employees and thereafter remit the same to the insurance company.

Since, the third party/ payment gateway provider's role is only to collect premiums from individuals/employees and remit the same to the insurance company, outsourcing is allowed without having to secure license from the Commission; provided, that the third party will not go beyond its role. Otherwise, necessary license shall be required.

It is worth noting that Willis Brokers shall be solely responsible, accountable and liable for any transactions coursed through the said third party/ payment gateway provider by the insured individuals/employees. Also, the outsourced third party shall not in any manner be privy to the insurance contract between the insurance company and the insured, as well as that of the contract of the insurance company and Willis Brokers, as the broker.

In your second inquiry, you mentioned about the service fee which will be deducted from the premiums paid on-line. According to you, Willis Brokers and the insurance company shall agree upon the said deduction and that the deduction shall be borne by the insurance company.

The Insurance Code, the rules, regulations, memoranda and circulars do not prohibit such agreement. However, this is without disregard to the following provisions that govern the liability of a broker vis-à-vis its fiduciary capacity for premium collection, to wit:

“Section 315. The premium, or any portion thereof, which an insurance agent or insurance broker collects from an insurance agent or insurance broker collects from an insurance and which is to be paid to an insurance company because of the assumption of liability through the issuance of policies or contracts of insurance, shall be held by the agent or broker in a fiduciary capacity and shall not be misappropriated or converted to his own use or illegally withheld by the agent or broker.”

“The Insurance broker shall maintain on behalf of the insurance company concerned a special account, solely for premium collections, in a bank duly authorized by the Central Bank of the Philippines. The full amount of the premium collected shall be deposited in the above-mentioned account not later than the next working day following its collection.

The special account may be used only to transfer sums to the insurance companies to which the premiums collected belong, and for payment from the account of commissions payable to the insurance broker, where this is authorized in writing by the insurance companies.” (Item 7 of Circular No. 83)

From the foregoing, you should include in your agreement a system that shall separate the client’s payment from that of the broker’s service fee, among others.

Likewise, a breakdown or list of itemized charges together with the corresponding amount also be identified and indicated by the parties.

With regard to your last inquiry, you may do referrals of the Wellness and Lifestyle Programs provided that such activity is stated in your Articles of Incorporation.

Nonetheless, the payments collected from such activity should not be commingled with that of the premiums collected from your broking activities. Premiums collected from the latter should be properly accounted for separately from the income gained in your referral activity.

Also, the income from the referral activity should not be included as premium collected in your Statement of Accounts.

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

