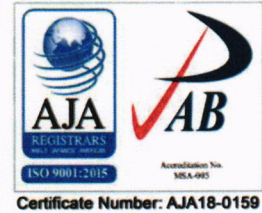




Republic of the Philippines
Department of Finance
INSURANCE COMMISSION



Legal Opinion No.:	LO-2019-03
Date:	14 March 2019

MR. ANGELO ANTONIO P. BUENDIA
President – Designated Spokesperson
Of the Compulsory OFW Insurance Providers
PAMIOFW MANAGEMENT SERVICE AND
INSURANCE INTERMEDIARIES, INC.
Unit 2403 One Corporate Center
Dona J. Vargas Ave., corner Meralco Avenue,
Ortigas Center, Pasig City

SUBJECT: **Clarification on Compulsory OFW Insurance**

Dear Mr. Buendia:

This pertains to your letter dated 9 June 2017 written in your capacity as the designated spokesperson of the compulsory OFW insurance providers requesting for policy interpretation/clarification and/or legal opinion on several items in connection with the existing benefits under the Compulsory Insurance for Agency-Hired Overseas Filipino Workers provided under Section 37-A of Republic Act No. 8042, as amended by Republic Act No. 10022.

Specifically, you are requesting for this Commission's interpretation and opinion on the following items:

- I. Period of effectivity of the Compulsory OFW Insurance relative to Accidental Death/Natural Death Claims;
 - II. Filing of a claim for Permanent Total Disablement;
 - III. Circumstances when Repatriation Claims may be granted; and
 - IV. Filing and Coverage of Money Claims.
- I. Period of Effectivity of Insurance Contract relative to Accidental or Natural Death Benefits***

In your letter, you stated that the effectivity of the mandated Personal Accident Insurance cover is for the duration of the employment contract and

during actual deployment overseas of an OFW. Consequently, once the OFW has returned to the Philippines by reason of termination of employment, the insurance cover is deemed terminated. By way of example, you stated that if an OFW dies in the Philippines upon arrival to the Philippines or any time thereafter, although the cover has not expired, such policy may no longer be called upon to pay for death benefits.

Section 23 of the Republic Act No. 10022 expressly provides that the compulsory insurance policy shall be effective for the duration of the migrant worker's employment.

Additionally, Section 2 Rule XVI of *Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 as Amended by RA 10022 ("IRR")* provides that the insurance policy shall be effective for the duration of the migrant worker's employment contract.

Thus, an insurance policy remains valid only for the duration of the employment contract of an OFW as long as this stipulation is clearly stated in the insurance policy.

It should be noted that in controversies on the terms and conditions of a policy issued in favor of an OFW in compliance with R.A. No. 10022 between the insured and the insurance company, the same should be resolved in the former's favor and all ambiguities in an insurance contract are construed against the insurer and are resolved in favor of coverage¹.

II. Permanent Total Disablement

a. Whether or not the disablement should be due to work-related causes

In your letter, you inquired whether a migrant worker may claim for permanent total disablement (PTD) benefits if the conditions defined under the coverage appeared only when the migrant worker is already in the Philippines. Based on your letter, it is your position that if the cause is not work-related, the same is not covered under the insurance contract.

Section 1, Guideline VII on Minimum Benefits of the Guidelines provides-

"Section 1. Minimum Benefits

The minimum insurance benefits contemplated herein shall include the following:

xxx xxx xxx

¹ Section 2, Guideline I and Section 11, Guideline V of *Insurance Guidelines on Rule XVI of the Omnibus Rules and Regulations Implementing Republic Act 8042 (The Migrant Workers and Overseas Filipinos Act of 1995), as amended by Republic Act 10022 Relative to Compulsory Insurance Coverage for Agency-Hired Overseas Filipino Workers*

(c) Permanent total disablement, with at least Seven Thousand Five Hundred United States Dollars (US\$7,500.00) disability benefits payable to the disabled migrant worker. Xxx.

All such disabilities must be due to accident or by any health-related cause or sickness or ailment suffered during the duration of the migrant worker's employment.

xxx xxx xxx" (Emphasis supplied).

Based on the above-quoted provision, the following are the conditions for the availment of the PTD benefit: 1) the disability must be due to either accident, or by any health-related cause or sickness, or ailment; and 2) such accident, cause or sickness, or ailment must be suffered during the duration of the migrant worker's employment.

The Guidelines does not distinguish whether such accident, sickness or ailment is work-related or not as long as the disability is caused by accident, or by any health-related cause or sickness, or ailment during the duration of the employment.

Thus, it is the opinion of this Commission that an OFW may validly claim for PTD if such disability is due to any accident, sickness or ailment suffered during the duration of his/her employment, irrespective of whether the same is work-related.

Neither does the Insurance Guidelines distinguish when such condition/s appeared for as long as such disability is due to any accident, sickness or ailment suffered during the duration of the OFW's employment. Thus, PTD benefits may be availed of irrespective whether such condition appeared only when such OFW is already in the Philippines.

It should be emphasized that the rationale of the Compulsory OFW Insurance being providing of immediate assistance to our OFWs, not protection against exposure to work-related risks.

b. Prescriptive Period

On your inquiry on the prescriptive period for filing of PTD claim, R.A. No. 10022 does not provide for the prescriptive period for filing a claim against the compulsory insurance contract for agency-hired OFWs.

It is the opinion of this Commission that reference should be made to the insurance contract in the determination of the prescriptive period for filing PTD claims.

III. Repatriation Claims

a. Definition of "just" causes

In your letter, you inquired on what is included in the term "just cause" for the purpose of determining payment of repatriation cost.

Section 23 of Republic Act No. 10022 provides that:

“(d) Repatriation cost of the worker when his/her employment is terminated without any **valid cause**, including the transport of his or her personal belongings. xxx”

Additionally, Section 1 of Guideline VII of the Insurance Guidelines, on the other hand, provides:

“Section 1. The minimum insurance benefits contemplated herein shall include the following:

xxx xxx xxx

(d) Repatriation cost of the worker when his/her employment is **terminated by the employer without any valid cause**, or **by the employee with just cause**, including transport of his/her personal belongings. xxx

xxx xxx xxx” (Emphasis Supplied).

It is the opinion of this Commission that, in order to determine whether or not the termination of employment is for “just cause” for purposes of determining payment of repatriation cost, reference should be made to the employment contract between the OFW and his/her employer.

This is based on the general rule in contracts that the terms of the contract must prevail. Thus, if the terms of the contract of employment provide for the definition of just and valid causes for termination, the same must prevail.

If an employment contract fails to define the just cause for the termination of the same, it is the opinion of this Commission that the term “just cause” as defined under Article 282 of the Labor Code of Philippines should be used.

Following the pronouncement of the Supreme Court in **Triple Eight Integrated Services, Inc. vs. National Labor Relations Commission, et. al.**, *G.R. No. 129584, 03 December 1998*, it is an established rule that *lex contractus* (the law of the place where the contract is made) governs this jurisdiction.

On the assumption that an employment contract between an OFW and an agency is perfected here in the Philippines and applying the principle of *lex contractus*, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case.

b. Amount of Repatriation Cost

You likewise raised several inquiries which goes into the amount of repatriation cost, particularly, (1) if a claim for repatriation cost can be denied on the ground of fraud in case there is a discrepancy in the amount of airfare or the amount of the ticket was overpriced, (2) what are the acceptable substitute documents for Official Receipts of airline tickets, and (3) meaning of “Actual Cost statement”.

Section 23 of R.A. 1002 does not provide for the minimum or maximum amount of repatriation cost. Section (1) (d) of Guideline VII, on the other hand, provides that the extent of benefits shall be regardless of the cost, the primary test of compliance being the complete repatriation of the worker or his/her remains, as the case may be, and his/her personal belongings.

Based on the foregoing, it is the opinion of this Commission that the amount of repatriation cost must be the actual cost of the repatriation based on supporting documents.

Questions pertaining to actual costs and proof of costs would only determine the amount payable to the claimant and are evidentiary in nature.

At any rate, should there be any question or dispute in the enforcement of any policy issued pursuant to R.A. 10022, the same shall, regardless of the amount, be brought to the Insurance Commission for mediation or adjudication.²

c. Repatriation Cost to Workers Deemed Unfit to Work

As to your inquiry on whether repatriation cost is payable to workers deemed unfit to work after they are subjected to a physical check up at the host country, it should be emphasized that repatriation costs is used for the transport of the migrant worker back to the Philippines whose employment was terminated by the employer without any valid cause or by the employee for just cause.

Thus, it is the opinion of this Commission that repatriation cost of workers deemed unfit to work is not payable if such ground is provided and defined as a just and valid cause for termination of employment by the employer under the contract of employment. In the absence of a definition of what constitutes valid or just cause for the termination of employment by the employer under the contract of employment, it is the opinion of this Commission that the term "just cause" as defined under Article 282 of the Labor Code of Philippines should be used.

IV. Filing and Coverage of Money Claims

a. Basis of Money Claims

Based on your letter, it is your position that the payment of money claims shall be limited only to those awarded by and/or settled before the National Labor Relations Commission (NLRC). Therefore, you concluded that settlement before the Philippine Overseas Employment Administration, Overseas Workers Welfare Administration, Department of Labor and Employment cannot and should not be a valid basis for money claims against the

² Section 23 of R.A. No. 10022, Section 11, Rule XVI of the IRR and Section 1, Guideline X of the Insurance Guidelines.

insurance policy unless approved by the National Labor Relations Commission.

Section 23 of R.A. 10022 provides that:

"(f) Money claims arising from employer's liability which may be awarded or given to the worker in a judgment or settlement of his or her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three (3) months for every year of the migrant worker's employment contract;

xxx xxx xxx."

The above-quoted provision should be read with Section 7 of R.A No. 10022 which provides:

"Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

xxx xxx xxx

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from approval of the settlement by the appropriate authority.

"In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

xxx xxx xxx".

It is clear from the foregoing that it is the NLRC that has the exclusive and original jurisdiction to hear and decide money claims, whether by a judgment award or settlement.

Please note that NLRC consists of the regional arbitration branches and sub-regional branches and the NLRC proper.

As for the Single Entry Approach (SeNA) being conducted by the NLRC, it must be emphasized that in the result of these proceedings, it is a common practice that the amount of settlement agreed upon during informal proceedings does not include a breakdown of the claims actually being settled

by the parties leading into a situation wherein the insurance companies are made liable for payment of money claims which should not have been covered under the insurance policy if the same was properly detailed or a breakdown of the claims paid is provided. Please take note that the insurance coverage for money claims is limited to claims arising from employer's liability. Thus, unless and until the settlement agreement made during the SeNA will particularly describe and provide a breakdown of the claims being settled, the insurance company may not be held liable for the settlement amounts made in the Compromise Agreement as a result of SeNA.

For further clarification, the coverage pertains to the unexpired portion of the salary of the worker's employment contract only. The portion of the contract, which is awarded to the worker for unpaid salary for work, rendered, damages, placement fees, overtime and other miscellaneous fees will be shouldered by the agency.

The liability of the insurance company for the unexpired portion of the contract will be congruent with the amount of salary awarded to the worker for work already rendered. As the unexpired portion of the worker's salary diminishes, the liability of the insurance company diminishes comparably as well.

b. Satisfaction of Money Claims Judgment

In your letter, you inquired as to whether or not an OFW can still claim for money claims benefits if the monetary award based on the NLRC decision has been satisfied through garnishment of cash deposit or forfeiture of *supersedeas* bond.

Section 10, Rule XVI of the IRR provides for the rules governing the settlement of money claims.

As laid down under Section 10, Rule XVI of the IRR, after a decision has become final and executory or a settlement/comprise agreement has been reached between the parties at the NLRC, a writ of execution shall be issued mandating the recruitment agency to pay the amount adjudged or agreed upon within thirty (30) days.

Included in the counting of the thirty-day period is the filing of an insurance claim by the recruitment agency to its insurance provider. The insurance provider, on the other hand, shall make the payment to the recruitment agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. If the insurance proceeds is insufficient to satisfy the amount adjudged or agreed upon, the recruitment agency shall be liable to pay the balance thereof.

The money claims benefit is primarily answerable for the worker's claim and, in case of insufficiency, the manning agency is liable to pay the balance. However, if the insurance company fails to make payment within ten (10) days from filing of the claim, the recruitment/manning agency shall pay within a

thirty-day (30) period. Failure to do so would be the only time the performance bond or escrow deposit may be garnished.

As regards the question on the deadline for filing of money claims and settlement of money claims, Guideline IX on Claims Procedure under the Insurance Guidelines provides-

“Sec. 5. Settlement of Money Claims

For the payment of money claims under Section 2 (f) of Rule XVI of the Omnibus Rules, the following rules shall govern:

- 1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, the Labor Arbiter shall motu proprio or upon motion, and following the conduct of pre-execution conference, issue a writ of execution mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof;
- 2) The recruitment/manning agency shall then **immediately** file a **notice of claim with its insurance provider for the amount of the liability insured**, attaching therewith a certified true copy of the decision or compromise agreement;
- 3) Within ten (10) days from the filing of the notice of claim, the **insurance company shall make payment** to the recruitment/manning agency **the amount adjudged** or payment should be made direct to the OFW or migrant worker or beneficiary agreed upon, **or the amount of liability insured, whichever is lower**. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof.
- 4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty-day period, as provided in the first subparagraph hereof;
- 5) If the worker's claim was not settled within the aforesaid thirty-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim; Xxx.”

As regards dispute settlements, Guideline X on Dispute Settlement provides-

“Section 1. Applicable Procedure in Settling Disputes in the Enforcement of Insurance Claims

Any question or dispute in the enforcement of any insurance policy issued under these Guidelines, regardless of the amount, shall be brought before the IC for mediation or adjudication pursuant to the applicable provisions of the Insurance Code or circulars issued by the IC. The existing claims adjudication procedures of the IC shall apply in the settlement of insurance claims disputes under these Insurance Guidelines, taking into consideration the special procedures and periods provided in Section 37-A of the Act, and these Insurance Guidelines. The IC may issue the pertinent circulars for this purpose.

The preceding paragraph applies to seafarers employed/hired by principals/shipowners which obtained insurance cover from insurance companies authorized to do business in the Philippines.

Section 2. Enforcement of NLRC Decisions

Notwithstanding Section 1 hereof, the NLRC shall have the exclusive jurisdiction to enforce against the recruitment/manning agency/insurance provider its decision, resolution or order that has become final and executory or where a settlement/compromise agreement has been reached by the parties.

Section 3. Enforcement of Seafarers' Claims

Any dispute in the enforcement of money claims under the seafarers' standard employment contract covering the minimum benefits under Section 2 Rule XVI of the Omnibus IRR shall be filed with the NLRC. For seafarers covered by the collective bargaining agreements, the cases shall be submitted to voluntary arbitration.

Any complaint against a principal/shipowner and/or manning agent for a violation of the standard employment contract or the provisions of pertinent POEA rules and regulations, covering the minimum benefits under Section 2, Rule XVI of the Omnibus IRR, shall be filed with the POEA. An erring principal/shipowner and/or manning agent may be meted the corresponding administrative penalty pursuant to POEA rules and regulations."

As to the question on whether an OFW who had already finished his/her employment contract may still file for money claim and whether a termination by the employee with just cause is covered under money claims benefit, it is clear from the foregoing (Sec. 5 par. 1, Guideline IX) that what triggers the payment of money claim is the decision of the NLRC and neither of the situations embodied in your query.

As to your query on whether an OFW may directly claim from the insurance company for money claim benefit in the event that the license of the recruitment agency had already been cancelled, the answer should be in the affirmative.

Section 5 par. 3 of Guideline IX provides for payment to the recruiting company or directly to the migrant worker the amount adjudged or the amount of liability insured, whichever is lower.

You also sought clarification on the basis for the settlement of money claim, i.e. whether the same is equivalent to three (3) month salary for every year of the employment contract or the equivalent three month salary for every year of the unexpired portion of the employment contract.

Section 7 of R.A. No. 10022 provides:

Section 7. Section 10 of Republic Act No. 8042, as amended is hereby amended to read as follows:

xxx xxx xxx

"In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized

deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, **plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.**" (Emphasis Supplied).

We invite your attention to the pronouncement of the Supreme Court in **Sameer Overseas Placement Agency, Inc. vs. Cabiles**, G.R. No. 170139, 05 August 2014, the Supreme Court held that the clause "or for three (3) months for every year of the unexpired term, whichever is less" violates the constitutional rights to equal protection and due process.

In the same case, the Supreme Court reiterated its finding in **Serrano vs. Gallant Maritime, Inc., and Marlow Navigation Co., Inc.**, G.R. No. 167614, 24 March 2009, that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.

However, the declaration of unconstitutionality made by the Supreme Court in the above-quoted cases only refers to Section 7 of RA 10022. Thus, this Commission cannot extend and apply such declaration to the provision of Section 37-A providing insurance coverage for money claims equivalent to at least three (3) months salaries for every year of the migrant worker's employment contract. To extend and apply such declaration to the provision of Section 37-A will violate the separability clause provided under RA 10022. Thus, unless and until Sec 37-A is declared unconstitutional, this Commission will uphold its validity.

Finally, as to the question on the liability of the insurance company if the recruitment agency is not the one who deployed the OFW, it is our opinion that the insurance provider will not be liable since there is no valid employment contract, as such, the OFW will be considered as an undocumented OFW.

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 information and guidance.

DENNIS B. FUNA
Insurance Commissioner

