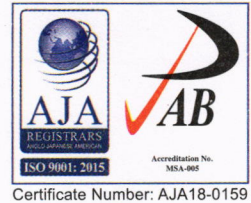




Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



Legal Opinion (L.O.) No.:	L0-2019-07
Date:	May 29, 2019

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**SUBJECT: BIMA's Proposed Business Model in Partnership
with Globe Telecommunications, Inc.**

Dear Attys. Acosta, Simundac, Samaco and Farcon:

This pertains to your letter dated 05 November 2018 regarding BIMA's proposed business model in partnership with Globe Telecommunications, Inc. (Globe).

Pursuant to your letter, your client, Milvik (Bima) Philippines Insurance Agency, Inc. ("BIMA"), intends to take full advantage of mobile technology, particularly for selling and distributing low cost Personal Accident ("PA") Microinsurance Covers issued by its principal — Pioneer Life, Inc. ("PIONEER") — with different amounts of coverage with the corresponding premium payment for such under a group insurance.

Further, your letter enumerates the different steps that BIMA will conduct in order to distribute and eventually sell the said product, including the different functions and roles of BIMA and its partner for this plan.

Your letter likewise mentions your legal bases and arguments for the non-applicability of the following IC Circular Letters, namely:

1. Circular Letter No. 2016-61 dated 16 November 2016 entitled "*Guidelines in Defining the Engagement of Telemarketing Services by Insurance Companies*,

Insurance Brokers, and General Agencies, as well as Enumerating the Requirements Therefor" ("TELEMARKETING CIRCULAR"). This is because the conduct of telephone follow-up calls to potential customers have already signified their consent to receive marketing calls or materials. It was likewise stated that in all cases, the use of telephone call/s for the marketing of insurance products will not be the first point of contact with the potential customer and that BIMA will not engage in unsolicited telephone calls but will only conduct telephone calls for follow-ups to already existing clients or to potential consenting clients who, by their prior consent freely given, has allowed the receipt of further marketing material through telephone calls.

2. Circular Letter No. 2014-47 dated 21 November 2014 entitled "*Guidelines on Electronic Commerce of Insurance Products*" does not apply in BIMA's business model since the sale of the aforementioned microinsurance products will not be done online or via the internet.

Upon careful evaluation of the matters raised, hereunder are the Commission's findings.

I. ON THE APPLICABILITY OF TELEMARKETING CIRCULAR

As defined in Section II(b) of the Telemarketing Circular, Telemarketing is defined as *"the marketing of goods or services by means of telephone calls, **typically unsolicited**, to potential customers. This is a method of direct marketing in which a salesperson solicits prospective customers to buy products or services, either over the phone or through a subsequent face to face or web conferencing appointment scheduled during the call. Telemarketing can also include recorded sales pitches programmed to be played over the phone via automatic dialing."*

For purposes of interpreting the usage of the term, "Telemarketing" under the circular, this Commission finds that it is necessary to consider the whole definition.

In this regard, this Commission finds that in view of the accessory usage of the word **"typically"**, the definition therefore is broad enough to include those acts which may or may not be unsolicited. What is more controlling is the second sentence, as highlighted, of said definition which indicates the nature of the activity and the different acts that will be performed.

A Microinsurance PA that will be offered/sold, being an insurance contract¹, must be assented to by both parties, either in person or through their agents². Being consensual, a contract is perfected by mere consent from the moment there is a meeting of the offer and the acceptance upon the object and the cause that would constitute the contract³.

The inclusion of the act that "BIMA will not engage in unsolicited telephone calls but will only conduct telephone calls xxx **or to potential consenting clients who, by**

¹ Section 2(a) of R.A. 10607

² *VIRGINIA PEREZ vs. COURT OF APPEALS AND BF LIFEMAN INSURANCE CORPORATION*, G.R. No. 112329, 28 January 2000.

³ *THE INSULAR LIFE ASSURANCE COMPANY, LTD., vs. ASSET BUILDERS CORPORATION*, G.R. No. 147410, 05 February 2004.

their prior consent freely given, has allowed the receipt of further marketing material through telephone calls⁴ is an indicative act necessary to secure consent to purchase said Microinsurance PA from a potential client who consented in the receipt of further marketing materials. This act makes this kind of transaction within the purview of the term telemarketing. The act of informing further marketing materials through telephone calls are acts necessary to secure the consent of a potential customer and is within the purview of the term "Telemarketer" as defined in Section 1(c) of the Telemarketing Circular.

Also, BIMA is the agent of Pioneer Life, Inc. BIMA's classification as a general agency or not, is immaterial at this point in view of the following:

- a. The Telemarketing circular included the definition of an insurance agent and soliciting official in accordance with Section II (e) and (g).
- b. The mandatory provisions of telemarketing arrangements or agreements under Section IV of the Telemarketing Circular for Insurance Companies included the telemarketers who are insurance agents and not insurance agents, including the permissible acts that they can perform, respectively.
- c. Further, there was no showing that BIMA was authorized by the Insurance Company they represent for this kind of transaction. As such, if BIMA intends to proceed with this business model, the Insurance Company whom they represent must first comply with all the requirements in accordance with the Telemarketing Circular in view of the acts that fall within the purview of the term telemarketing which accordingly, will make BIMA as the telemarketers of this product.

In view of the foregoing, the requirements under the Telemarketing Circular must be complied with first.

II. ON THE APPLICABILITY OF THE LAW AND OTHER CIRCULARS ISSUED BY THIS COMMISSION

While we agree that the Circular on Guidelines on the Electronic Commerce of Insurance Products does not cover any SMS transactions, we would like to point out that there are other existing and applicable law and circulars that are needed to be complied with. For this purpose, it is paramount for BIMA to consider the following discussions:

1. Foremost, Section 232 of R.A. No. 10607 clearly states that, to wit:

" No policy, certificate or contract of insurance shall be issued or delivered within the Philippines unless in the form previously approved by the Commissioner, and no application form shall be used with, and no rider, clause, warranty or endorsement shall be attached to, printed or stamped upon such policy, certificate or contract unless the form of such

⁴ Letter dated 05 November 2018 from V&A Law Center, p. 7

***application, rider, clause, warranty or endorsement
has been approved by the Commissioner."***

Based from the above, it bears to emphasize that any insurance product that is to be sold under this business model or otherwise must be previously approved by the Insurance Commission.

2. It must be emphasized that your business model indicates that what is intended to be sold is a microinsurance product. It bears to emphasize that under **Insurance Memorandum Circular No. 1-2010** otherwise known as "Regulations for the Provisions of Microinsurance Product and Services", Microinsurance is defined as *an activity providing specific insurance, insurance-like and other similar products and services that meet the needs of the low-income sector for risk protection and relief against distress, misfortune and other contingent events...*xxx In this regard, the fact that the premium is considerably low does not automatically make a product a microinsurance. The fact that it will cater to the low-income sector is necessary in the approval of the same. For this reason, the same Circular requires a distinguishing logo for microinsurance products, a requirement not found in the approval of other non-microinsurance products.

For the approval of Microinsurance products, please be guided by our **Insurance Memorandum Circular No. 1-2010** and **Circular Letter No. 39-2011** otherwise known as "Re-Approval of Microinsurance Products".

3. Likewise, please be guided by the contents of the details of the microinsurance PA in accordance with paragraph 29 of Circular Letter No. 2015-54 dated 16 October 2015 which states that:

"For transparency and protection of clients, MI contracts and Certificates of Cover (CoC) shall bear the business address and contact information (phone, cell phone and email address) of the following:

- a. MI Provider
- b. Agent/Broker
- c. xxx"

4. It is noteworthy to emphasize that BIMA's business model indicates several steps on the selling of microinsurance PA and that there are no steps indicated on how BIMA's microinsurance agents will aid any claimants in filing any insurance claims. This Commission finds that there should be a step for this aspect since there are also microinsurance agents of BIMA who will also be in-charge of selling the microinsurance PA taking into consideration the definition of the term "*microinsurance regular agent*" under paragraph 21 (b) of the aforementioned circular which states that:

"21. Definition of MI Agents and Brokers

- a. As a general rule, xxx

b. A microinsurance regular agent **shall be an individual or an entity duly licensed by the IC** as life and/or non-life microinsurance agent under IC Circular no.6-2011 dated February 15, 2011, representing the interests of the MI providers. The MI regular agent may represent and partner with one life insurance and/or up to seven non-life insurance entities. An MI regular agent, **shall**:

- i. Solicit/sell individual or group microinsurance products carried by its provider-partners;
- ii. Perform document processing functions on behalf of its MI provider-partners; and
- iii. **Assist claimants in the preparation of microinsurance claims documentation requirements.**" (emphasis supplied)

5. That the Business Process Diagram that you have provided on page 2 of your letter does not show the exact participation of Pioneer Life, Inc. This Commission finds that it is important to include the participation of Pioneer Life, Inc. in the said diagram since BIMA, being only an insurance agent, does not have the authority to issue a microinsurance policy but it is Pioneer Life, Inc., which is the insurance company, which possesses such authority.
6. Further, Step II of BIMA's business model states that "xxx the next step is for BIMA to collect the necessary information from the customer to execute an Insurance Policy with Pioneer. This is done either face to face or through telephone call."⁵ This Commission finds that with regard to the manner by which this Step will be performed, it must be noted that it must always conform to the Customer Due Diligence requirements under **IC Circular Letter No. 2018-48** otherwise known as the "*Anti-Money Laundering and Combating the Financing of Terrorism Guidelines for Insurance Commission Regulated Entities*" dated 14 September 2018 and likewise to **IC Circular Letter No. 2007-15** otherwise known as "Guidelines for the Implementation of Know Your Client (KYC) and Customer Due Dilligence (CDD) Requirements". It shall be the duty of Pioneer Life to ensure compliance with said circulars.

Moreover, in this particular step, BIMA's services is outsourced by the Insurance Company, an Insurance Commission Regulated Entity ("ICRE"). Relevant to this is **Section 11 of Circular Letter No. 2018-60** otherwise known as "Amendments to Sections 4(J), 8, 11, 12, 21, 32, 33, 35, 36, 37, 38, 47 and 48 of CL No. 2018-48 dated 14 September 2018 on Anti-Money Laundering and Combating the Financing of Terrorism Guidelines for Insurance Commission Regulated Entities" dated 15 November 2018 which states that:

"SEC. 11. Section 38 of the same CL is hereby amended to read as follows:

⁵ *Ibid.*, p. 3

Section 38. Outsourcing. - The ICREs may outsource the conduct of customer due diligence and record-keeping, to a counter-party, intermediary or agent.

The outsource, counter-party or intermediary shall be regarded as agent of the ICRE- that is, the processes and documentation are those of the ICRE itself... xxx"

7. It must also be noted that the proposed business model involves a group insurance. Hence, the provisions of **IC Circular Letter No. 2017-57** otherwise known as "Guidelines on Group Insurance of Both Life and Non-life Insurance Companies" applies.

Particularly, Section 6.1-6.3 of **IC Circular Letter No. 2017-57** states that, to wit:

"6.1. The group policy shall be identified as a group policy. For proper identification, the word "group" or "master" may be affixed in the name of the policy or in the policy number. No individual policy form or those not approved as a group policy form shall be issued to cover group of individual persons, which shall normally be covered and is rated under group insurance.

6.2. The cover page or first page, or specifications page shall identify the name of the policyholder, the policy number, and the effective date of the group policy. For life insurance and other insurance products to be issued by a life insurance company, the information shall include the benefits, effective date of the individual coverage, expiry date, participation requirement, eligibility conditions, and whether the insurance is contributory or non-contributory.

6.3. Each insured member shall be provided by the insurer, which may be made through the policyholder, a statement, proof of cover, confirmation or certificate of insurance."

In this regard, it shall be the duty of Pioneer Life to ensure that each individual insured member shall be provided with a statement, proof of cover, confirmation or certificate of insurance, either through manual or electronic means.

Moreover, per BIMA's proposed business model, they shall be responsible for the following processes, among others:

1. Education and explanation of the product to the customer.
2. Registration of Customer Information in the BIMA database.
3. Dissemination of confirmation notification to the customer.
4. Acceptance of premium payment from the policyholder.

While we commend BIMA for its active engagement with the customers, BIMA should ensure that it will provide sufficient disclosures to inform the policyholders/insured that said products are products of and underwritten by Pioneer Life and BIMA merely acts as a representative of Pioneer Life.

Further, the law firm should advise BIMA and Pioneer Life that as Agent and Life Insurer, they should both comply with our Circular Letter 33-2013 or the Market Conduct Guidelines.

Most importantly, it appears in your letter that there is a product/business model to be observed which would require a separate application in accordance with existing circulars.

In this regard, a request for approval shall be submitted pursuant to **Circular Letter No. 1990-11** otherwise known as "Minimum Requirements for the Approval of Insurance Plans/Forms for Policy, Certificate of Contract of Insurance, Application, Rider, Clause, Warranty or Endorsement", **Circular Letter No. 1994-25** otherwise known as "Approval of Insurance Products" and **Circular Letter No. 2005-27** otherwise known as "Expedition Approval of Traditional Life Insurance Products" in relation to **Circular Letter No. 2017-57** otherwise known as "Guidelines on Group Insurance of Both Life and Non-life Insurance Companies".

For purposes of securing an approval of your business model and the submission of the corresponding requirements, kindly coordinate with our Actuarial Division.

Moreover, please note that due to the participation of Globe Telecomm in your proposed business model, it is worthy to note that this is subject to the Rules and Regulations of the National Telecommunications Commission as well as the *Data Privacy Act of 2012*.

For further clarification, you may coordinate with our Atty. Brian Gale T. Sibuyan of the Regulation Enforcement and Prosecution Division with contact number at 523-84-61 up to 70 local 115.

For your guidance.

Thank you.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

