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

Certificate Number: AJA18-0159

Legal Opinion (LO) No.:	2019-10
Date:	29 October 2019

MR. MASATO KANEKO
General Manager, Project and Machinery Division
Mitsui & Co. (Asia Pacific) Pte. Ltd.
Manila Branch
36/F, GT Tower International, 6815
Ayala Avenue, 1200 Makati City

SUBJECT: **Request for Legal Opinion (Mitsui & Co. (Asia Pacific) Pte. Ltd.)**

Dear **Mr. Kaneko**:

This refers to your letter dated 28 June 2019 requesting for the Insurance Commission's legal opinion on the following:

(1) Whether or not Mitsui & Co. (Asia Pacific) Pte. Ltd.'s (hereinafter "Mitsui") intended business activity is an "insurance business"; and

(2) Whether or not Mitsui's intended business activity is regulated by the Insurance Commission.

Per your letter, you intend to provide used car dealers with certain services and warranty for such services, and enable such car dealers to pass on such warranty benefits to their customers, to wit:

"**Intended Business Activity:**

1. We will establish in the Philippines, a joint venture company ("Service Provider"), which will engage in the business of a) repair services for all kinds of motor vehicles, including the operation of a mobile or roving repair service; b) consultation, inspection, and certification on the quality of used motor vehicles; and c) assisting used car dealers in providing warranty to its consumers by conducting an inspection and certification of the quality of used motor vehicles and assisting such used car dealers in the processing of claims in relation to their warranty.

2. Based on the foregoing purpose, the Service Provider will provide the following services (the "Services") to used car dealers ("Service Recipient"):

Inspection Service xxx

Advisory Service – Based on the result of such inspection service, Service Provider will issue an Advice on the condition of certain parts of the vehicle and the reasonable period within which these parts can be expected to work in good condition.

The Advice may be issued by Service Provider to Service Recipient without warranty or with warranty for an extra fee. The **warranty on the Advice** (based on the inspection) will provide Service Recipient the benefit of free repair on any part of the used car covered by the warranty in the event that it malfunctions or breaks down on its own and not due to any external reason or forces, within the warranty period. This warranty and its benefit of free repair may be passed on by Service Recipient to its customer or used car buyer.

Warranty Processing Service xxx

Repair service – The Service Provider shall repair without additional cost to Service Recipient and its customer, any part of the vehicle for which Service Provider has provided Advice with warranty, in the event that such part malfunctions or breaks down on its own within the warranty period. **Service Provider shall not provide warranty and free repair service on such vehicle in case damage is due to any fortuitous event, act of God, negligence, or if the same is beyond the terms of warranty as provided in the service agreement between Service Provider and Service Recipient.**"

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

I. The intended business activity is not an insurance business

As to the first query, the Insurance Commission finds that Mitsui's intended business activity, as described in your 28 June 2019 letter, does not constitute doing an insurance business. Pertinent to this is Section 2(a) of Republic Act No.

10607 or the Amended Insurance Code which defines a "contract of insurance" as follows:

> "(a) A *contract of insurance* is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. xxx"

Hence, in order for a contract of insurance to exist, the following distinguishing elements must concur:

(a) The insured has an insurable interest;

(b) The insured is subject to a risk of loss by the happening of the designated peril;

(c) The insurer assumes the risk;

(d) Such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk; and

(e) In consideration of the insurer's promise, the insured pays a premium.[1]

Not all of the aforementioned distinguishing elements are present in Mitsui's intended business activity and, as such, the same cannot be considered a contract of insurance. More specifically, Mitsui's intended business activity does not involve an assumption of risk on the part of the Service Provider. Instead, under Mitsui's Used Car Warranty Business Model, the warranty is provided on the advice given by the Service Provider as to the condition of the used car. Hence, as opposed to assuming risk, the Service Provider is merely guaranteeing the accuracy of the advice they have provided with regard to the condition of certain parts of the vehicle and the reasonable period within which these parts can be expected to work in good condition.

There being no assumption of risk in the present case, the fourth element of an insurance contract, i.e., that such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk, is likewise absent. The Used Car Warranty Business Model does not operate as

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[1] *Philamcare Health Systems, Inc. v. Court of Appeals and Julita Trinos*, G.R. No. 125678, 18 March 2002.

a risk-distributing device but, instead, offers certain services and warranty for such services.

In addition to the foregoing, Mitsui's intended business activity likewise does not constitute "doing or transacting an insurance business": Section 2(b) of the Amended Insurance Code provides a list of acts that may be considered as "doing or transacting an insurance business", to wit:

> "(b) The term *doing an insurance business* or *transacting an insurance business*, within the meaning of this Code, shall include:
>
> (1) Making or proposing to make, as insurer, any insurance contract;
>
> (2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;
>
> (3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;
>
> (4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code. xxx"

Since the intended business activity of Mitsui neither falls under the definition of a contract of insurance under Section 2(a) nor constitutes doing or transacting an insurance business under Section 2(b) of the Amended Insurance Code, this Mitsui's intended business activity is not an insurance business.

Even assuming *arguendo* that all the aforementioned distinguishing elements are present, Mitsui's intended business activity still cannot be considered as insurance in light of its primary purpose. In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, the Supreme Court ruled that "even if a contract contains all the elements of an insurance contract, if its primary purpose is the rendering of service, it is not a contract of insurance."

In the case at bar, Mitsui's intended business activity consists of providing various services, namely, inspection service, advisory service, warranty processing service, and repair service. Since the primary purpose of Mitsui's intended business activity is the rendition of service, it is therefore not an insurance business pursuant to the ruling in *Philippine Health Care Providers, Inc. v. CIR*.

Finally, it must be noted that a warranty, which Mitsui intends to offer in the present case, is distinct from an insurance. This position is discussed in the 21 February 2008 opinion issued by the Office of General Counsel representing the position of the New York State Insurance Department, to wit:

> "A warranty relates in some way to the nature or efficiency of a product or service. Commonly, the warrantor agrees to repair or replace a product that fails to perform properly, such as a contract covering a defect in materials or workmanship or a contract otherwise covering the breakdown of a product. **Where the maker of a contract has a relationship to the product or service, or does some act that imparts knowledge of the product or service to the extent of minimizing, if not eliminating, the element of chance or risk** contemplated by Insurance Law § 1101(a), **then the contract is a warranty. Where there is no such relationship or act, the maker of the contract undertakes an obligation involving a fortuitous risk, and the agreement is an insurance contract and constitutes the doing of an insurance business.**" (Emphasis supplied.)

In *Peralta v. Asia Life Insurance Company*, G.R. No. L-1670, the Supreme Court reiterated its intention to supplement statutory laws with general principles on insurance prevailing in the United States. Considering that the Amended Insurance Code does not specifically define the term "warranty", we find the foregoing opinion instructive in the resolution of the issues at hand.

Under Mitsui's Used Car Warranty Business Model, the Service Provider "will inspect the used car and provide report on its condition and may offer warranty for Advice on condition of certain parts." Upon request, the Service Provider "will issue an Advice on the condition of certain parts and the reasonable period within which these parts can be expected to work in good condition." The rendition of the aforementioned inspection and advisory services clearly constitutes the doing of some act that imparts knowledge of the product or service to the extent of minimizing, if not eliminating, the element of chance or risk. Hence, following the distinction between warranty and insurance made by the Office of the General Counsel, Mitsui's intended business activity is that of a warranty and not of insurance.

The foregoing considered, this Commission finds that Mitsui's intended business activity does not constitute doing or transacting an insurance business.

II. The intended business activity is not regulated by the Insurance Commission

As to the second query, considering that Mitsui's intended business activity is not an insurance business and considering that the same constitutes neither the conduct of pre-need business under Republic Act No. 9829 or the "Pre-Need Code of the Philippines" nor the operation as a health maintenance organization under Executive Order No. 192, s. 2015, Mitsui's intended business activity therefore falls outside the purview of this Commission's regulatory powers.

Please note, however, 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.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner