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

Certificate Number: AJA18-0159

Legal Opinion No:	2020 - 15
Date:	16 November 2020

MR. KAMRUL H. TARAFDER
President and CEO
ASA PHILIPPINES FOUNDATION, INC.
15th Floor Prestige Tower,
F. Ortigas Jr. Road, Ortigas Center
Pasig City 1605, Philippines

SUBJECT: **LEGAL OPINION ON ASA PHILIPPINES FOUNDATION, INC.'S DOUBLE ASSISTANCE AND MAAASAHAN PROGRAMS**

Dear Mr. Tarafder:

This pertains to the above subject wherein ASA Philippines Foundation, Inc. (ASA) requested this Commission in a letter dated 08 October 2020 to confirm its position that the Double Assistance (Free DBA) and MaaASAhan Programs are not within the regulatory supervision and regulation of this Commission which consequently does not requires appropriate licensing and other requirements in accordance with Republic Act No. 10607, Joint IC-CDA-SEC Memorandum Circular Nos. 01-2010 and 02-2010 dated 29 January 2010 and 25 June 2010, Executive Order No. 192, Series of 2015 and Republic Act No. 9829.

It was further stated in said letter from ASA that, *inter alia*, the aforementioned programs are ASA's initiatives to ease the financial difficulties of its borrower-clients in times of their pressing needs and that it is part of ASA's Corporate Social Responsibility. These are gestures of ASA's goodwill to the people it is trying to help through its various microfinance products and that the funds for these programs are from ASA's 15%-16% annual net income or 5%-7% annual gross income from its microfinance business.

A consolidated perusal of ASA's letter and the attached ASA's 2020 Guidebook indicates that the Free DBA is a free burial assistance program granted to ASA's borrowers/clients and their designated nominees in case either of them dies.

In Free DBA, ASA's borrower/client may receive a certain amount of money which ranges from Php 10,000.00 to Php 25,000.00, depending on the category of the borrowers'/clients' membership, upon the death of the designated nominee. On the other hand, a designated nominee may receive a certain amount of money which ranges from Php 5,000.00 to Php 15,000.00, depending on the category of ASA's borrower/client, upon the death of ASA's borrower/client. These monetary assistances are further subject to the qualifications and requirements stated therein.

On the other hand, MaaASAhan Program is a free medical assistance to ASA's borrowers/clients or its designated nominee. The assistance that the recipient of this program may receive is cash which may range from Php 150.00 to Php 300.00 for ASA's borrower/client or Php 100.00 to Php 200.00 for the designated nominee depending on the category of the borrower/client's membership and is also subject to further qualifications and requirements stated therein.

Both of these programs have no form of premium attached to it.

It bears to stress that the action requested by ASA to this Commission in its aforementioned letter calls for our legal opinion, which we hereby provide below.

NATURE OF FREE DBA AND MAAASAHAN PROGRAMS

1. Section 2(a) of Republic Act No. 10607 defines a contract of insurance as:

> "(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."

Additionally, paragraph (b) of the same section of the aforementioned law defined the term "*doing an insurance business*" as follows:

> "(b) The term *doing an insurance business* or *transacting an insurance business*, within the meaning of this Code, shall include:
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> (1) Making or proposing to make, as insurer, any insurance contract;
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> (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;
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> (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.
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> In the application of the provisions of this Code, ***the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business***." (emphasis supplied)

On the other hand, "*Insurance Activity*" has been defined in Paragraph 1 of Joint IC-CDA-SEC Memorandum Circular 01-2010 dated 29 January 2010 as follows:

> "1. All entities that will engage or are engaged in insurance activities, including microinsurance, are hereby required to secure a Certificate of Authority from the Insurance Commission. For this purpose, insurance activity is hereby defined as an activity wherein:
>
> 1.1. ***Contributions/premiums are regularly collected*** prior to the occurrence of a contingent event; and
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> 1.2. Guaranteed benefits are provided upon the occurrence of a contingent event.
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> This definition ***excludes risk pooling practices such as the "damayan" or "abuloy" system wherein the individuals or groups of individuals voluntarily pledge and contribute a certain amount of money to a fund and the benefits are not pre-determined but are contingent to the amounts collected***. Membership to the fund is voluntary and the amount collected in such fund or portions thereof will be given to the aggrieved party (who is likewise a contributor to the fund) upon the occurrence of an unforeseen or contingent event." (emphasis supplied)

2. In one case, the Supreme Court ruled that ***the test to determine if a contract is an insurance contract or not, depends on the nature of the promise, the act required to be performed, and the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite.***[1] Basically, an insurance contract is a contract of indemnity. In it, one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[2]

3. In applying the afore-cited legal provisions and jurisprudence on the matter, this Commission is of the opinion that there is no undertaking and indemnity to speak of considering that these **programs are part of ASA's Client's Assistance Program**,[3] a program similar to the tenor of a Corporate Social Responsibility activities being done by various juridical entities. **The purpose of the assistances is to ease the burden of borrowers and their families in difficult times**.[4] The title of these activities may vary or change time to time depending upon the context and situation of ASA.[5] To reiterate, the funds for these programs were derived and allocated from a certain portion of ASA's income from its microfinance operations.

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[1] ***WHITE GOLD MARINE SERVICES, INC. vs. PIONEER INSURANCE AND SURETY CORPORATION***, G.R. No. 154514, July 28, 2005
[2] *Ibid.*
[3] ASA Philippines, Inc. Guidebook, p. 242, 2020 edition
[4] *Ibid.*
[5] *Ibid.*

In sum, these programs do not fall within the purview of a contract of insurance.

4. After establishing that there is no insurance contract to speak of, paragraph number 1 of Section 2(b) of Republic Act No. 10607 no longer applies. In addition, there is no showing that ASA is introducing itself as an insurer or as a surety. Nor does these programs constitute the doing of an insurance, including reinsurance business, or doing any act in substance equivalent to the doing of an insurance business that is designed to evade the pertinent provisions of Republic Act No. 10607.

5. It is important to state that the fact that no premium or any profit is not a valid defense to conclusively determine whether an entity is doing or transacting an insurance business or not pursuant to the categorical provision of Section 2(b) of Republic Act No. 10607. However, this Commission opines that these programs are - at best- similar to the gratuitous nature of the "damayan" or "abuloy" system as defined and illustrated in the afore-cited paragraph 1 of IC-CDA-SEC Joint Memorandum Circular dated 29 January 2010 primarily because **these are not committed benefits**[6] and the **continuation or extension may depend on ASA's financial ability on an annual basis**.[7] To execute these programs, the funds for these programs are pooled from the allocated portion of ASA's income from its microfinance operations since no premium is being collected from it.

6. We also opine that it is immaterial if the various amounts being extended by ASA to its borrowers/clients and their designated nominees are fixed and categorized with different requirements. What is more controlling is that the various amounts in these programs are dependent or contingent on the financial capability of ASA to actually give the various amounts, thereby making it gratuitous and still voluntary in nature. It also shows that these amounts are not obligatory and ASA's borrowers/clients and/or the designated nominees are not absolutely mandated to receive or is absolutely legally entitled to it as this will make some of ASA's borrowers/clients and/or the designated nominees unable to receive the fixed and categorized amounts in these programs in the event of the insufficiency of the funds allocated, ***thereby excluding these programs within the ambit*** of insurance activity of the aforementioned IC-CDA-SEC circular.

7. Neither can this Commission consider ASA as a Health Maintenance Organization (HMO) nor can this Commission consider ASA's programs as Pre-Need Plans since these programs do not have any form of premium attached to it, as primarily required in Section 2 of Executive Order No. 192, Series of 2015 and Section 4(b) of Republic Act No. 9829 which respectively states:

> "***Section 2. Definition of HMO.*** *In accordance with DOH Administrative Order No. 34 (s. 1994), an HMO refers to a juridical entity legally organized to provide or arrange for the provision of pre-agreed or designated health care services to its enrolled members* ***for a fixed pre-paid fee for a specified period of time***." (emphasis supplied)

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[6] *ASA Philippines, Inc., Guidebook, Supra..*

[7] *Ibid.*

"*SEC. 4. Definition of Terms. – Whenever used in this Code, the following terms shall have their respective meanings:*
(a) xxx
(b) "Pre-need plans" are contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, ***in exchange for cash or installment amounts*** *with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments, contracts or deeds as may in the future be determined by the Commission.*" (emphasis supplied)

8. Also, it is worthy of emphasis that there is no showing that ASA has a pre-agreed or designated health services or designated health services to its enrolled members. As elucidated by the Supreme Court in one case, ***a participating provider of health care services is one who agrees in writing to render health care services to or for persons covered by a contract issued by health service corporation in return for which the health service corporation agrees to make payment directly to the participating provider.***[8]

In view of the foregoing, this Commission opines that ASA and its' said programs are not regulated, which consequently does not require licensing, by this Commission.

Please note that the above 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

[8] ***PHILIPPINE HEALTH CARE PROVIDERS, INC.,*** *vs.* ***COMMISSIONER OF INTERNAL REVENUE***, G.R. No. 167330, September 18, 2009