



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



Legal Opinion (LO) No.:	2021-01
Date:	19 January 2021

ATTY. SHIRLEY G. VELASQUEZ-VIRAY
ATTY. MA. CELINE ANGELA DE GUZMAN
Puyat Jacinto & Santos (PJS Law)
 10/F 8 Rockwell Building, Plaza cor. Hidalgo drives
 Rockwell Center, Makati City
sgvelasquez@pjslaw.com
ckdeguzman@pjslaw.com

Subject: Legal Query on Extended Warranties/
 Indemnification

Dear Attys. Velasquez-Viray and De Guzman:

This refers to your email last 20 November 2020, seeking confirmation as to the following:

- (1) The Extended Warranty is not an insurance product under the Insurance Code, but a warranty governed by the Consumer Act of the Philippines and the Civil Code of the Philippines; and
- (2) The contractual liability insurance policy entered into between Client and Electronics Company does not require Client to register as an insurance company in the Philippines.

Per your email, your client is a company organized in the United States of America engaged in the business of providing insurance and reinsurance (“the Client”). One of the Client’s customers is a US-based electronics manufacturer and distributor which sells in the Philippines through internet sales, retail sales, and agent sales (“the Electronics Company”). The business operations of the Electronics Company and its contractual relationship with the Client is described in your email, to wit:

“The Electronics Company manufactures and distributes certain electronic devices, and provides all sales and aftersales services and administration. **Such products and devices are sold with an extended product warranty, which covers any and all expenses of any repairs, replacements, or similar, which are needed after the products are sold to its customers (“Extended Warranty”). Such extended warranty may also be purchased as a separate item by its customers. All claims under the Extended Warranty are settled by the Electronics Company in the form of repair or replacement of the device, and no cash settlements are paid under the same.** The Electronics Company’s products, including such extended warranty option, are sold in the Philippines through the selling platforms identified above.

Our Client provides indemnification to Electronics Company through its United Kingdom and United States-regulated insurer platforms. For a fixed fee, our Client indemnifies the Electronics Company for all costs/expenses arising from claims made under the Extended Warranty. Such contract is made outside the Philippines, such that the Client’s contract is with the Electronics Company alone, and there is no privity of contract between Client and Electronics Company’s customers. For each warranty product the Electronics Company sells to a consumer (whether sold together with the electronics products or sold separately), it pays to the Client an amount corresponding to the portion of the sales allocated to the warranty product, and the Client insures the Electronics Company’s liability through a contractual liability insurance policy. In practice, this means that the Client indemnifies the Electronics Company for the cost of claims made by consumers against the latter.” (Emphasis supplied)

Upon careful consideration of the matters raised, hereunder are the Commission’s findings.

I. The Extended Warranty sold by the Electronics Company is not an insurance product under the Insurance Code, as amended

As to the matter of whether the Extended Warranty sold by the Electronics Company to its customers constitutes an insurance product, we affirm your position that it is not an insurance product under Republic Act No. 10607 or the Insurance Code, as amended.

At this juncture, it is necessary to clarify when an “extended warranty” constitutes an insurance product and when the same is in the nature of a manufacturer’s warranty.

In an opinion dated 21 February 2008, the Office of General counsel, representing the position of the New York State Insurance Department, made a distinction between a warranty and an insurance, 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.)

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

Meanwhile, Section 2(a) of the Insurance Code, as amended, 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. x x x”

As found by the Supreme Court in *Philamcare Health Systems, Inc. v. Court of Appeals*, G.R. No. 125678, an insurance contract exists where the following elements 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.

The foregoing considered, an "extended warranty" constitutes an insurance product if it falls within the definition of an "insurance contract" under Section 2(a) of the Insurance Code, as amended, and if all the elements set out in Philamcare Health Systems are present. In the event that not all of the elements of an insurance contract are present, such that the maker of the contract does not assume risk as part of a general scheme to distribute actual losses among a large group of persons but, instead, merely guarantees that the product will function as claimed and promises to provide repair or replacement as necessary, such "extended warranty" operates as a warranty governed by Republic Act No. 7394 or the Consumer Act of the Philippines ("the Consumer Act"), in relation to the Civil Code.

In addition, please note that an "extended warranty" governed by the provisions of the Consumer Act and the Civil Code on warranties is offered by the manufacturer or service provider, and is limited to repair or replacement in case of defect and/or normal wear and tear during the warranty period. On the other hand, an "extended warranty" which constitutes an insurance product is offered by a party other than the manufacturer or service provider, and offers coverage beyond the terms of a manufacturer/service provider's warranty. Hence, "extended warranties" which are essentially insurance products typically cover loss or damage not arising from defect in workmanship or normal wear and tear, as in the case of theft or accidental damage.

Insofar as the subject Extended Warranty offered by the Electronics Company is concerned, not all of the distinguishing elements of an insurance contract are present and, as such, the same does not constitute an insurance contract. In particular, there is no assumption of risk on the part of the entity offering the Extended Warranty which, in this case, is the Electronics Company. Instead, the Electronics Company merely guarantees the quality of the products sold and promises to cover any and all expenses of any repairs or replacements necessary after the products are sold.

Considering that there is no assumption of risk, the fourth element, 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 Extended Warranty does not operate as a risk-distributing device but, instead, offers services to the Electronics Company's customers.

In addition to the foregoing, we likewise note that in selling the Extended Warranty to its customers, the Electronics Company does not undertake for a consideration to indemnify its customers against loss, damage or liability arising from an unknown or contingent event. Instead, the Electronics Company merely undertakes to repair or

replace the products sold which are covered by the Extended Warranty, subject to the terms thereof.

In view of the foregoing, **we affirm your position that the Extended Warranty is not an insurance product under the Insurance Code, as amended, but, instead, a warranty governed by the Consumer Act, in relation to the Civil Code.**

II. The contractual liability insurance entered into between the Client and Electronics Company does not require the Client to register as an insurance company in the Philippines

As to the second matter raised in your email, we affirm your position that the contractual liability insurance policy entered into between the Client and Electronics Company does not require the Client to register as an insurance company in the Philippines.

Section 193 of the Insurance Code, as amended, provides that “no insurance company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner upon application therefor and payment by the company concerned of the fees hereinafter prescribed.” Meanwhile, Section 2(b) of the Insurance Code, as amended, provides for the acts which constitute “doing an insurance business” or “transacting an insurance business”, to wit:

- “(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. x x x”

Per your email, one of the Client’s customers is the Electronics Company, a US-based electronics manufacturer and distributor which sells in the Philippines through internet sales, retail sales, and agent sales. The Electronics Company offers the

Extended Warranty to its customers and all claims under the said warranty are settled by the Electronics Company in the form of repair or replacement of the device. Meanwhile, the Client provides indemnification to the Electronics Company, through the former's United Kingdom and United States-regulated insurer platforms, for all costs/expenses arising from claims made to the Electronics Company under the Extended Warranty.

We note that per your submission, the contractual liability insurance is entered into solely by the Client and the Electronics Company, and that the customers of the Electronics Company who availed of the Extended Warranty are not privy to the said contractual liability insurance. Hence, in case of claims by the customers under the Extended Warranty, the customers transact solely with the Electronics Company. The Electronics Company, in turn, seeks indemnity from the Client in relation to the costs that the former has incurred in relation to its fulfillment of the terms of the Extended Warranty. We likewise note that the contractual liability insurance contract is entered into by the Client and the Electronics Company outside the Philippines, such that the Client is not performing in the Philippines any of the acts regarded as doing insurance business under Section 2(b) of the Insurance Code, as amended.

The foregoing considered, the Client cannot be considered as doing or transacting insurance business in the Philippines and, thus, need not register as an insurance company in the Philippines.

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 