



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

Legal Opinion (LO) No.:	2021-15
Date :	22 November 2021

ATTY, NARCISO P. NARIO, JR.
Corporate Secretary
**UNITED COCONUT PLANTERS LIFE ASSURANCE
CORPORATION (COCOLIFE)**
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**SUBJECT: Request for Legal Opinion Regarding the Legality of
Owning and Managing an Agency by a Member of the
Board of Directors**

Dear Atty. Nario:

This refers to your letter dated 05 March 2021 requesting this Commission for a legal opinion regarding the legality and propriety of a member of the Board of Directors in an insurance company to own and manage an insurance agency.

Based on your letter, the following queries were raised:

1. Can a member of the Board of Directors lawfully own and manage an agency which would sell insurance products of the company where he sits as a director;
2. If yes, what are the restrictions or limitations, if any; and
3. Does owning and managing an agency violate any provisions of the Revised Insurance Code and the Revised Code of Corporate Governance for Insurance Commission Regulated Companies and other issuances of this Commission

Generally, anyone can own or manage an insurance agency, as long as they have complied with the licensing requirements of this Commission. However, owning or managing an insurance agency is subject to certain prohibition/s.

Section 2.5 of Insurance Memorandum Circular No. 3-93 dated 28 June 1993 provides that, to quote:

“2.5 No person shall be licensed to act as an insurance agent or general agent of more than one (1) life insurance company, and/or as general agent of more than one (1) non-life insurance company and as insurance agent of more than seven (7) other non-life insurance companies. No person licensed as an insurance agent or general agent shall be licensed as an insurance broker, nor shall a person licensed as an insurance broker be licensed as an insurance agent or general agent in the same kind of insurance business. The same limitation shall apply to the individual named in the license issued to a partnership, association or corporation to act as an insurance agent. No person, however, shall be licensed to act as general agent and actively engaged as such for at least one year.” (Emphasis ours)

Based on IMC Circular No. 2-94 dated 15 July 1994, to wit:

“No application for license of an employee with the rank of manager and above of an insurance company to act as its agent or general agent shall be entertained unless it is accompanied by a board resolution authorizing said employee to act as such.”

Applying the above-quoted rules, this Commission finds that there are no outright prohibition for a member of the Board of Director to own or manage an insurance agency as long as it can secure an authorization through a board resolution.

Be that as it may, please note that Recommendation 2.1 of CL No. 2020-71 dated 13 June 2020, otherwise known as the Revised Code on Corporate Governance provides that Board members should **act on a fully informed basis, in good faith, with due diligence and care, and in the best interest** of the company and all shareholders.

The above-cited principle is in relation with the provisions provided for in the Revised Corporation Code making directors liable under the following:

- (a) commit bad faith in directing the affairs of the corporation; or
- (b) acquire any personal or pecuniary interest in conflict with their duty as such directors; or
- (c) attempt to acquire, in violation of their duty, any interest adverse to the corporation; or

(d) contract with the corporation, unless ratified or deemed allowable under the law (Secs. 31 and 32, Corporation Code).

Thus, it is basic that a director should not use his position to make profit or to acquire benefit/s or advantage for himself and/or his related interests.

Likewise, whenever an actual or potential conflict of interest should arise on the part of a concerned director, it should be **fully disclosed** and such director **should not participate** in the decision making process thereof. As a matter of fact, a director who has a continuing conflict of interest of a material nature should consider resigning from the Board on the ground that he is supposed to observe loyalty to the corporation where he/she is a member of the Board of Directors.

The Supreme Court, in the case of “James Lent and Maharlika Schulze vs. Tullett Prebon (Philippines), G.R. No. 189158, January 11, 2017” where the corporate secretary is considered to be in a conflict of interest scenario from a director’s act of advancing the interest of an emerging competitor in the field rather than fiercely protecting the business of his own company. The Supreme Court further ruled that the breach of fiduciary duty as such director is evident from his participation in recruiting the brokers employed in the corporation, inducing them to accept employment contracts with the newly formed firm engaged in competing business, and securing these new hires against possible breach of contract complaint by the corporation through indemnity contracts.

Further, the article “Avoiding Conflicts of Interest on a Board of Directors” written by Jeremy Barlow, provided a definition on conflict of interest as a **transaction or arrangement that benefits an officer, board member, or employee on a personal level**. The article further provided an example where conflict of interest shall arise:

“A board member works as an insurance agent outside of duties on the board. The organization places their commercial insurance policies with the insurance agency where the board member works full time. The insurance agency pays the insurance agent a commission for all new business that the agent brings into the agency. The agency paid a commission to the agent for the board bringing their insurance policies to the agency. In this situation, the insurance agent has directly profited from his relationship on the board.”

Since the insurance industry is imbued with public interest, members of the Board of the insurance company **should, always be mindful to avoid any possible conflict of interest**.

Please note that 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.

For your information and guidance.

Very truly yours,



DENNIS B. FUNA
Insurance Commissioner

