



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

Legal Opinion (LO) No.:	2021 - 16
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ATTY. ROEL A. REFRAN

Chief Operating Officer and Senior Vice President

Philippine Stock Exchange, Inc.

PSE Tower, 5th Avenue cor. 28th Street,

Bonifacio Global City, Taguig City

roel_refran@yahoo.com

Subject: **Query on Extended Warranty**

Dear **Atty. Refran:**

This refers to your email last 24 September 2021, seeking clarifications on extended warranties, particularly:

- (1) Why is the Insurance Commission not requiring the manufacturers who sell extended warranty contracts to be covered by the requirements for insurance policies? What would be the additional requisites and cost implications if these product manufacturers are asked to go to the Insurance Commission to comply?
- (2) Can the manufacturers just invoke the Civil Code provisions on contracts being the source of obligations, and since this is a one-to-one arrangement, then public interest is not being prejudiced. What do you think would be a fair assessment of this argument?
- (3) What are your key suggestions to move forward and address this gap in practice versus the legal arguments for regulating this contract?

**I. Extended warranty contracts sold
by manufacturers are not
insurance contracts under the
Insurance Code, as amended**

Anent your first query, the Insurance Commission does not require manufacturers

selling extended warranty contracts to be covered by the requirements for insurance policies because such **extended warranty contracts offered by manufacturers are not insurance products under Republic Act No. 10607 or the Insurance Code, as amended.** In order to determine whether or not the requirements for the issuance of insurance policies under the Insurance Code, as amended, apply to a particular extended warranty contract, it is necessary to first clarify when an “extended warranty” constitutes an insurance product and when the same is in the nature of a manufacturer’s warranty.

While the Insurance Code, as amended, does not provide for a definition of the term “warranty”, we find the 21 February 2008 opinion issued by the Office of General Counsel, representing the position of the New York State Insurance Department, instructive, 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. In the said opinion, the Office of General Counsel distinguished 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.)

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.

Hence, 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.

It must be noted 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.

Considering that extended warranty contracts issued by manufacturers operates as a warranty governed by the Consumer Act vis-à-vis the Civil Code and not as an insurance product, such contracts do not require prior approval from the Insurance Commission before issuance.

As to your question as to the additional requisites and cost implications if manufacturers are required to comply with the requirements for the issuance of insurance products, please note that before a corporation, partnership, or association of persons may be allowed to transact insurance business in the Philippines, such corporation, partnership, or association must first possess the capital and assets required of an insurance corporation, and must have first obtained a certificate of authority from the Commission, in accordance with Section 192 of the Insurance Code, as amended. As such, not only will manufacturers have to comply with IC Circular Letter No. 2015-58-A dated 21

December 2019 or the “Guidelines on the Approval of Non-Life Insurance Policy Forms”, they will also have to comply with the capitalization and other licensing requirements imposed by the Commission on insurance companies.

Nevertheless, considering that the extended warranty contracts offered by manufacturers are not insurance products as defined by the Insurance Code, as amended, the requirements for the approval and issuance of insurance contracts do not apply to such extended warranties.

II. Manufacturers may invoke Civil Code provisions insofar as their extended warranties are concerned

With regard to your second query on whether manufacturers may invoke Civil Code provisions on contracts being the source of obligations, we answer the same in the affirmative.

As discussed above, the extended warranties offered by manufacturers are not in the nature of insurance contracts under the Insurance Code, as amended, but are instead warranties as contemplated under the Consumer Act and the Civil Code. Hence, the same are governed by the pertinent provisions of the Consumer Act vis-à-vis the Civil Code, and not by the Insurance Code, as amended, as well as the other issuances, rules and regulations issued by the 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,

DENNISE. FUNA
Insurance Commissioner

