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

Legal Opinion (LO) No.:	2021 - 16
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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

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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;