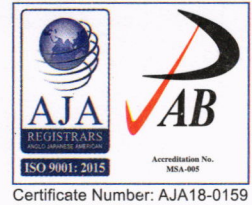




Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
1071 United Nations Avenue  
Manila



Insurance Commission Ruling (ICR) No.	2019-02
Date	17 June 2019

**MR. RAMON YAP DIMACALI**  
President  
FPG Insurance Company, Inc.  
Zuellig Building 6F, Makati Avenue  
corner Paseo De Roxas  
Makati City

**SUBJECT: In The Matter of Paid-up Capitalization  
of FPG Insurance Company, Inc.**

Dear **Mr. Dimacali:**

For resolution herein is the issue: **What is the proper Paid-up Capital which FPG Insurance Company, Inc., a non-life insurance company with a one hundred percent foreign equity as of 2016, must possess taking into consideration Presidential Decree No. 612 otherwise known as "The Insurance Code", Department Orders No. 27-06 and 15-2012, and the present Insurance Code, as amended by Republic Act No. 10607.**

#### **RELEVANT LAWS**

#### ***Capital Requirement under Presidential Decree No. 612, otherwise known as "The Insurance Code"***

The Capital requirement which an insurance company must comply is provided under Section 188 which provides that, to quote:

Sec. 188. Except as provided in section two hundred eighty-one, no domestic insurance company shall, in a stock corporation, engage in business in the Philippines unless possessed of a paid-up capital stock equal to at least five million pesos: Provided, That a domestic insurance company already doing business in the Philippines with a paid-up capital

stock which is less than five million pesos shall have a paid-up capital stock of at least three million pesos by December thirty-one, nineteen hundred seventy-eight, four million pesos by December thirty-one, nineteen hundred seventy-nine and five million pesos by December thirty-one, nineteen hundred eighty: Provided, further, that **the Secretary of Finance may, upon recommendation of the Insurance Commissioner, increase such minimum paid-up capital stock requirement, under such terms and conditions as he may impose, to an amount which, in his opinion, would reasonably assure the safety of the interests of the policyholders and the public.**

The Commissioner may, as a pre-licensing requirement of a new insurance company, in addition to the paid-up capital stock, require the stockholders to pay in cash to the company in proportion to their subscription interests a contributed surplus fund of not less than one million pesos, in the case of a life insurance company, or not less than five hundred thousand pesos, in the case of an insurance company other than life. He may also require such company to submit to him a business plan showing the company's estimated receipts and disbursements, as well as the basis therefore, for the next succeeding three years.

If organized as a mutual company, in lieu of such capital stock, it must have available cash assets of at least five million pesos above all liabilities for losses reported, expenses, taxes, legal reserve, and reinsurance of all outstanding risks, and the contributed surplus fund equal to the amounts required of stock corporations. A stock insurance company doing business in the Philippines may, subject to the pertinent law and regulations which now are of hereafter may be in force, alter its organization and transform itself into a mutual insurance company.

### ***Capital Requirements under Department Order No. 27-06***

On September 01, 2006, the Secretary of Finance, upon the recommendation of the Insurance Commissioner, signed Department Order (DO) No. 27-06 which sets new capital requirements to be observed by life, non-life, and reinsurance companies.

At the time, it was noted that the minimum capitalization requirements were inadequate. As such, it resulted in low retention ratios and companies heavily relied on reinsurance. Thus, the DO 27-06 was issued to secure the solvency positions of insurers, reduce insolvency risk and afford better protection for the insuring public.

As required under DO 27-06, insurance companies, depending on its Filipino or foreign ownership structure, must meet the minimum statutory net worth and minimum paid-up capital on a certain period as classified therein, to wit:

- I. Any licensed wholly Filipino-owned domestic life or non-life insurance company existing, operating, or otherwise doing business in the Philippines, licensed as of the effectivity of this Order, must possess

of capitalization hereunder specified in accordance with the following schedule of compliance:

Minimum Statutory Net Worth	Minimum Paid-Up Capital	By (Compliance Date)
A. Php100 Million	Php 50 Million	December 31, 2006
B. Php 150 Million	Php 75 Million	December 31, 2007
C. Php 200 Million	Php100 Million	December 31, 2008
D. Php 250 Million	Php125 Million	December 31, 2009
E. Php 350 Million	Php175 Million	December 31, 2010
F. Php 500 Million	Php250 Million	December 31, 2011

- II. Any life or non-life insurance company existing, operating, or otherwise doing business in the Philippines with *forty percent (40%) or less* foreign equity must possess of capitalization hereunder specified in accordance with the following schedule of compliance:

Minimum Statutory Net Worth	Minimum Paid-Up Capital	By (Compliance Date)
A. Php 200 Million	Php 100 Million	December 31, 2006
B. Php 300 Million	Php 150 Million	December 31, 2007
C. Php 400 Million	Php 200 Million	December 31, 2008
D. Php 500 Million	Php 250 Million	December 31, 2009
E. Php 600 Million	Php 300 Million	December 31, 2010

- III. Any life or non-life insurance company "existing, operating, or otherwise doing business in the Philippines with more than *forty percent (40%) but less than sixty percent (60%)* foreign equity must possess of capitalization hereunder specified in accordance with the following schedule of compliance:

Minimum Statutory Net Worth	Minimum Paid-Up Capital	By (Compliance Date)
A. Php 300 Million	Php150 Million	December 31, 2006
B. Php 400 Million	Php200 Million	December 31, 2007
C. Php 500 Million	Php250 Million	December 31, 2008
D. Php 600 Million	Php300 Million	December 31, 2009
<b>E. Php 700 Million</b>	<b>Php350 Million</b>	<b>December 31, 2010</b>

- IV. Any life or non-life insurance company existing, operating, or otherwise doing business in the Philippines with at least sixty percent (60%) foreign equity must possess of capitalization hereunder specified in accordance with the following schedule of compliance:

Minimum Statutory Net Worth	Minimum Paid-Up Capital	By (Compliance Date)
A. Php 500 Million	Php 250 Million	December 31, 2006
B. Php 600 Million	Php 300 Million	December 31, 2007
C. Php 700 Million	Php 350 Million	December 31, 2008
D. Php 850 Million	Php 425 Million	December 31, 2009
<b>E. Php 1.00Billion</b>	<b>Php 500 Million</b>	<b>December 31, 2010</b>

- V. Any reinsurance company existing, operating, or otherwise doing business in the hilippines must possess of capitalization hereunder specified in accordance with the following schedule of compliance:

Minimum Statutory Net Worth	Minimum Paid-Up Capital	By (Compliance Date)
A. Php 750 Million	Php 375Million	December 31, 2006
B. Php 1.00 Billion	Php 500Million	December 31, 2007
C. Php 1.25 Billion	Php 625Million	December 31, 2008
D. Php 1.50 Billion	Php 750Million	December 31, 2009
E. Php 2.00 Billion	Php 1.00Billion	December 31, 2010

### ***Capital Requirement under Department Order No. 15-2012***

On 01 June 2012, the Secretary of Finance, upon recommendation of the Insurance Commission, issued another Department Order (DO 15-2012) to further supplement DO 27-06 and in order to ensure sufficient protection to the insuring public.

As required under DO 15-2012, an existing or licensed life or non-life insurance company must have a Paid-up Capital (PUC) in accordance with the amounts and schedule of compliance provided therein, to wit:

<b>Paid-Up Capital</b>	<b>Compliance Date</b>
Php 250,000,000.00	On or before December 31, 2012 <i>(Pursuant to DO 27-06 and IMC No. 10-2006)</i>
Php 400,000,000.00	On or before December 31, 2014
Php 600,000,000.00	On or before December 31, 2016
Php 800,000,000.00	On or before December 31, 2018
Php 1,000,000,000.00	On or before December 31, 2020

***Capital Requirement under the Insurance Code, as amended by RA 10607***

Barely a year after DO 15-2012 was issued, Republic Act No. 10607 otherwise known as "AN ACT STRENGTHENING THE INSURANCE INDUSTRY, FURTHER AMENDING PRESIDENTIAL DECREE NO. 612, OTHERWISE KNOWN AS "THE INSURANCE CODE", AS AMENDED BY PRESIDENTIAL DECREE NOS. 1141, 1280, 1455, 1460, 1814 AND 1981, AND BATAS PAMBANSA BLG. 874, AND FOR OTHER PURPOSES" (Amended Insurance Code) was enacted.

Under Section 194 of the said law, it requires that a domestic insurance company already doing business in the Philippines shall have a net worth by June 30, 2013 of Two hundred fifty million pesos (P250,000,000.00). Furthermore, said company must have by December 31, 2016, an additional Three hundred million pesos (P300,000,000.00) in net worth; by December 31, 2019, an additional Three hundred fifty million pesos (P350,000,000.00) in net worth; and by December 31, 2022, an additional Four hundred million pesos (P400,000,000.00) in net worth. In determining the Net Worth of a company, it shall consist of:

- (a) Paid-up capital;
- (b) Retained earnings;
- (c) Unimpaired surplus; and
- (d) Revaluation of assets as may be approved by the Commissioner.

On 13 January 2015, the Insurance Commission issued Circular Letter No. 2015-02A clarifying provisions of Sections 194, 197, 200 and 289 of the new law which provides for the minimum capitalization and net worth requirements of new and existing insurance companies in the Philippines to ensure the compliance with the aforesaid minimum capitalization and net worth requirements by the insurance companies. However, it must be noted that said Circular expressly supersedes Department Orders 27-06 and 15-2012 among other Circulars.

## RELEVANT FACTS

FPG Insurance Company is a non-life insurance company duly organized and existing in accordance with the laws of the Republic of the Philippines and a holder of a Certificate of Authority to transact non-life insurance business which was issued by the Insurance Commission.

Based on available records, FPG had a foreign equity of less than sixty percent (60%) in 2012. Per the company's 2012 approved synopsis, it had a PUC of Php 350 million and the same amount was maintained until 2013. **By 2014, its PUC was increased to Php 350 million in an apparent compliance with the PUC requirement set forth under DO 27-06 for insurance companies having a foreign ownership of forty percent to sixty percent (40%-60%).** In 2016, when the Amended Insurance Code was already in effect, FPG's ownership structure had changed into a one hundred percent (100%) foreign-owned non-life insurance company but nevertheless FPG maintained its PUC of Php 350 million up to the present. In view of the change in ownership structure of FPG into a one hundred percent (100%) foreign owned non-life insurance company, a question now arises as to whether it should be required to increase its PUC to Php 500 million in accordance with DO 27-06, or simply maintain its current PUC of Php 350 million.

## ISSUE

What is the Paid-up Capital that should be maintained by FPG Insurance Company taking into consideration the above-cited relevant laws and regulations.

## RULING

After carefully evaluating the relevant factual circumstances, laws, rules, regulations, and Supreme Court Decisions, this Commission finds that **FPG need not increase its PUC to Php 500 million and only needs to maintain its current PUC of Php 350 million** as discussed hereunder.

It must be emphasized that under Section 188 of PD No. 612, which was enacted on 18 December 1974, companies which would like to operate or those which are already operating in the insurance business must possess of a certain paid-up capital stock. Clearly, insurance companies were under the regime of observing compliance with the required PUC set forth under PD No. 612.

As the insurance business grew, DO 27-06 was issued by the Department of Finance to secure the solvency positions of insurers, reduce insolvency risk and afford better protection for the insuring public.

Subsequently, the Department of Finance issued another Department Order (DO 15-2012) to further supplement DO 27-06 and in order to ensure sufficient protection to the insuring public and further strengthen the integrity of the insurance industry.

It must be noted that during the effectivity of PD No. 612 and the above Department Orders, insurance companies who were able to comply with the PUC requirements were duly issued their corresponding Certificate/s of Authority to engage in insurance business, including FPG.

Specifically for FPG, the latter was compliant with the PUC of Php 350 million which was required at the time for insurance companies having a foreign equity of 40%-60%.

However, on 15 August 2013, RA No. 10607, which amended the Insurance Code (PD No. 612) was signed into law by then President Benigno C. Aquino III, and took effect on 20 September 2013. RA No. 10607 shifted the PUC requirement to the net worth requirement. This shift, however, does not abandon the PUC requirement that has already been observed. In other words, since the PUC requirement under observance immediately prior to the shift to the net worth method was at Php 350 million, then such PUC that has been complied with must continue to be observed.

While FPG subsequently became a hundred percent (100%) foreign owned insurer, it did become so **AFTER** the effectivity of the Amended Insurance Code – when the PUC requirement has already been superseded by the net worth requirement.

**The net worth requirement is set forth under Section 195 of the Amended Insurance Code which is a complete departure from the PUC requirement set forth under Section 188 of PD No. 612.**

An examination of both laws (RA No. 10607 and PD No. 612) would reveal that there now appears to be an inconsistency between the amending law (net worth requirement) and the amended law (PUC requirement). Nonetheless, it can be clearly deduced that the legislative intent is to depart from the previous capital requirement of PUC and that insurance companies would now instead comply and maintain the new net worth requirement in accordance with RA No. 10607.

Be that as it may, it must be noted that the PUC requirement which have been duly complied by insurance companies prior to the effectivity of RA No. 10607 was not rendered meaningless.

The rule is settled that after a statute is amended, the original act continues to be in force with regard to all rights that had accrued prior to the amendment or to obligations that were contracted under the prior act, and such rights or obligations will continue to be governed by the law before its amendment.<sup>1</sup>

Thus, the PUC requirement which has been duly complied with by insurance companies, including FPG which complied with the PUC requirement of Php 350 million by reason of

its foreign equity at the time, prior to the effectivity of RA No. 10607 will continue to be observed and maintained.

**WHEREFORE**, premises considered, this Commission finds that FPG Insurance Company need not further infuse its current Paid-up Capital but is nevertheless required to maintain the same until such time that a new regulation is issued increasing the same for compliance by all insurance companies.



**DENNIS B. FUNA**  
Insurance Commissioner



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<sup>1</sup> See Agpalo, Ruben E., Statutory Construction, 6th Edition, 2009, pp. 532, citing *Buyco v. Phil. National Bank*, 112 Phil. 588 (1961).