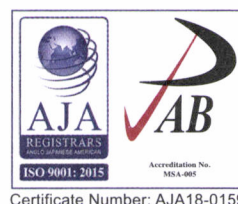




Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



Insurance Commission Ruling (ICR) No.	2019-05
Date:	29 October 2019

MR. ELMER M. LORICA

President

Philippine Federation of Pre-Need Plan Companies, Inc.
5/F Basic Petroleum Bldg.
104 Carlos Palanca St.,
Legaspi Village, Makati

**SUBJECT: Investigation on the Conduct of Business
Operation of Evergreen Memorial Chapels
of San Miguel Pasig City**

Dear **Mr. Lorica:**

This pertains to the 06 August 2018 letter of Philippine Federation of Pre-Need Plan Companies, Inc., requesting for an investigation on Evergreen Memorial Chapels of San Miguel Pasig City, with registered business name “The Evergreen Chapels (Pasig), Inc.” (hereinafter “Evergreen” or “the Company”), for allegedly doing pre-need business without the required license from the Insurance Commission.

In a letter dated 05 September 2018, this Commission directed Evergreen to submit a written explanation as regards its business operation, as well as why no cease and desist order shall be issued against the Company. Evergreen was further directed to appear before the Commission to explain its business operation. Finally, this Commission directed Evergreen to refrain from selling and offering any pre-need products, or from engaging in any business operation considered as a pre-need business.

In a letter dated 16 September 2018, Evergreen submitted that it is not engaged in the pre-need business and that its contracts to provide funeral and cremation services are not pre-need plans.

During the 18 September 2018 conference attended by Evergreen, the following information were duly noted by the Hearing Officer:

- (1) Evergreen is registered with the Securities and Exchange Commission;
- (2) The type of products/services offered by Evergreen are: funeral, cremation, embalming, and document processing;
- (3) The products/services offered by Evergreen are available to specific persons and are non-transferable;
- (4) Payment by installments is not allowed but individuals availing of the products/services are required to pay a non-refundable deposit of any amount;
- (5) Agents are entitled to a twenty percent (20%) commission;
- (6) There are agreements between the pre-need companies and the clients; and
- (7) Whenever the services of Evergreen are secured by pre-need companies, Evergreen gives twenty percent (20%) of the total contract price to the pre-need companies as commission.

On 25 September 2018, Evergreen submitted the following documents to the Commission:

- (1) Articles of Incorporation;
- (2) Certificate of Registration with the Bureau of Internal Revenue (BIR);
- (3) Affidavit of Undertaking executed by Mr. Jesse S.V. Baloca;
- (4) Working agreements with Pre-need Company Providers;
- (5) 2018 General Information Sheet (GIS); and
- (6) Audited Financial Statements (2010-2016).

Upon evaluation of the available documents, this Commission finds that Evergreen is not engaged in pre-need business and that its contracts are not in the nature of pre-need plans.

Evergreen's Articles of Incorporation provides that the primary purpose of the Company is:

"To engage in the business of providing/rendering funeral services and chapel rentals as well to acquire, own, lease equipment, devices and machinery necessary to operate funeral/chapel and maintain the facilities and common grounds. Business also includes buying, selling, importing of urns, caskets and all other types of equipment, similar items or articles and/or receptacles for the furtherance of the foregoing activities."

The foregoing is reiterated in Evergreen's Certificate of Registration with the BIR where the Company's line of business/industry is stated as "funeral and related activities" and in the 2018 GIS where the Company's primary purpose/activity/industry presently engaged in is designated as "funeral services". The Affidavit of Undertaking executed by Mr. Baloca likewise states that Evergreen is:

"[...] in the business of selling, providing/rendering funeral, memorial, and cremation services, which includes and the renting of chapels and the operation of a crematorium; as well as acquiring, leasing, owning devices and machinery necessary to operate the funeral/chapels and crematory. The business also includes buying, selling, importing of urns, caskets and all other types of equipment, similar items or selling, importing of urns, caskets and all other types of equipment, similar items or articles and/or receptacles for the furtherance of the foregoing activities/business.

[Evergreen is] not conducting business as a preneed company and [has] no plans to sell preneed services."

Finally, under the working agreements with Pre-need Company Providers, Evergreen is designated as "the Mortuary", which "is engaged in the business of rendering memorial or funeral services and selling memorial caskets and other articles pertinent thereto". The said agreements likewise provide that "the [pre-need company providers] shall deduct from the amount paid to [Evergreen] a twenty percent (20%) referral fee based on the amount of the mortuary bill."

Pertinent to the determination of whether or not Evergreen is engaged in pre-need business is Section 4, subsections (b) and (c) of Republic Act 9829 or the "Pre-Need Code of the Philippines" ("the Pre-Need Code"), which defines a "pre-need company" as follows:

"(c) "Pre-need company" refers to any corporation registered with the Commission and authorized/licensed to sell or offer to sell pre-need plans. The term "pre-need company" also refers to schools, memorial

chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.”

Based on Section 4(c) in relation to Section 10 of the Pre-Need Code, before a person or entity operates as a pre-need company or engage in the business of a pre-need company, the same must first be licensed by this Commission in accordance with the Pre-Need Code. Hence, a person may not sell or offer to sell pre-need plans absent the requisite license duly issued by this Commission. Failure to comply with the aforementioned registration requirement prior to selling or offering to sell a pre-need plan shall subject the non-compliant person or entity to criminal penalties, as provided under Section 54 of the Pre-Need Code.

In order to determine whether Evergreen is engaged in pre-need business absent the requisite license from the Commission, it must first be ascertained whether or not the services offered by the Company are in the nature of pre-need plans.

Section 4(b) of the Pre-Need Code defines “pre-need plans” as follows:

“Pre-need plans” are contracts, agreements, deeds or plans for the benefit of the planholders which **provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date**, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments, contracts or deeds as may in the future be determined by the Commission.” (Emphasis supplied.)

Meanwhile, Section 2 of CL 2015-57 enumerates the contracts, arrangements and schemes that are considered as pre-need life plans, to wit:

2.1 .The following contracts or arrangements executed prior to the death of the person to whom funeral services and/or funeral merchandise are to be applied shall be considered as pre-need life plans:

a) Agreements involving a casket and/or urn whether sold alone or together with other funeral services/merchandise where:

1) The contract was executed before the death of the person to whom the casket and/or urn is to be applied and the payment period of the contract is more than one (1) year; or

- 2) The person to whom the casket and/or urn is to be applied is not identified and the payment period of the contract is more than one (1) year; or
 - 3) The casket and/or urn remains with the seller or is not delivered to the buyer after Ninety (90) days from full payment, even if the payment period is one (1) year or less.
- b) A conditional sale contract where ownership is transferred to the buyer but the casket and/or urn is deposited with the seller, the payment period is more than one (1) year, and the contract was executed not at point of need or the person to whom the casket and/or urn is to be applied was not identified.
 - c) A contract to deliver casket and/or urn or funeral services accompanying the sale or contract to sell of columbarium niche/s regardless of whether such casket and/or urn or funeral services are to be provided without consideration.
 - d) A sale of casket and/or urn where the payment period exceeds one (1) year.
 - e) Any other sale of funeral casket and/or urn or memorial services that is structured to conceal the provision of future funeral services or products for payment made in the present.

2.2. An arrangement or contract involving payment of membership fees, registration fees or similar fees in an association, cooperative, organization or any entity in consideration of the provision of funeral services or casket and/or urn, whether incidental or otherwise and subject to Section 2.1 .

2.3 Layaway arrangement with the same conditions or status as enumerated under Section 2.1.”

Likewise provided in CL 2015-57 are the contracts, agreements and arrangements not considered as pre-need life plans. Section 3 thereof provides the following enumeration:

“Section 3. Contracts, Agreements and Arrangements Not Considered as Pre-need Life Plans

3.1. Arrangement with the funeral home or establishment for the delivery of casket and/or urn and services upon the death of a person **where the**

payment shall only be made upon the death of the person or delivery of the funeral goods and services.

3.2. Contracts for the delivery of casket and/or urn and funeral services which were **made at the time of actual need or immediately after the death of the person to whom such services shall be applied.**

3.3. Sale only of cemetery lot, crypt, niche, mausoleum, grave marker, or monument, without accompanying funeral services.

3.4. Sale or contract to sell of casket and/or urn even when packaged with other funeral services or funeral goods where at the time of sale the specific casket and/or urn subject of the sale exists or shall exist within one (1) year and, in case payment is by installment, the payment period does not exceed one (1) year, provided, that the casket and/or urn is delivered to the buyer within ninety (90) days from full payment thereof.” (Emphasis supplied.)

Based on the provisions quoted above, the services offered by Evergreen are clearly not in the nature of pre-need plans. For one, the services offered by Evergreen do not fall under the enumeration provided in Section 2 of CL 2015-57. In addition, whereas pre-need plans “provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date [...] in exchange for cash or installment amounts”, Evergreen’s contracts for its funeral and cremation services provide for neither a payment period nor payment by installments. In fact, full payment must be made one (1) business day before the scheduled interment and/or transfer of the remains. As such, payment is made only upon the delivery of the funeral goods and services. Hence, Evergreen’s contracts for its funeral and cremation services do not constitute pre-need plans, as defined in the Pre-Need Code and in CL 2015-57.

This Commission notes that Evergreen has entered into contracts with various pre-need companies. Under the said contracts, Evergreen agrees to perform memorial services and to provide articles pertinent to planholders of such pre-need companies upon demand at time of need. It must be emphasized, however, that the planholders for whom the memorial services are performed are planholders of the pre-need companies and not of Evergreen. In fact, under the Mortuary Agreement, the bill for memorial services and products for planholders shall be paid to Evergreen not by the planholders but by the pre-need companies, subject to a twenty percent (20%) referral fee to be deducted from the total bill.

Considering that the contracts entered into by Evergreen in relation to its rendition of funeral services do not constitute pre-need plans, this Commission finds that Evergreen is not engaged in pre-need business. Hence, Evergreen may continue

selling and offering to sell its services without securing a license from the Insurance Commission.

The foregoing notwithstanding, please note that these findings are based solely on the documents presented and the investigation conducted by this Commission. This is without prejudice to documents or proofs that may be obtained in the future that could substantially alter the present findings.

However, in the event that Evergreen opts to sell or offer to sell pre-need products, or act as a pre-need company, it must first secure a license from the Insurance Commission and submit its pre-need products to the Commission for approval.

For your guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner



Copy furnished:

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