



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



Insurance Commission Rulings (ICR) No.:	05-2020
Date:	15 June 2020

MR. MASA AKI IKUSHIMA

President

AEON Credit Service (Philippines) Inc.

3rd Floor, Hanston Square, San Miguel Ave.,
Ortigas Center, Pasig City

ATTENTION : **Attys. John Glim Gaité and Antonette Comia**
Legal and Compliance Department

SUBJECT : **Inquiry on the Applicability or Non-Applicability of
the License Requirement to Group Policyholders**

Dear Mr. Ikushima:

This refers to your letter dated 2 December 2019 requesting from this Commission a legal opinion on the applicability or non-applicability of the license requirement to a group policyholder and relevant consequent activities thereto.

In the said letter you stated that AEON Credit Service (Philippines) Inc. ("AEON") is a duly registered Philippine corporation that acts as a financing company as defined under Republic Act No. 8556 otherwise known as "Financing Company Act of 1998".

To protect AEON in case of accidental death or permanent disability of your borrowers, your management proposes that AEON enter into a group insurance contract with a licensed insurance provider. In the said group insurance contract, AEON will be named as the group policyholder and AEON's borrowers will be the members, wherein the latter will pay a fixed premium in addition to his first monthly installment.

To appropriately proceed with the proposed transaction and contract, your company would like to seek the opinion of this Commission on the following legal issues:

1. Whether AEON can be properly considered as a group policyholder in accordance with the Insurance Commission Circular Letter (CL) No. 2017-57 dated 12 December 2017 entitled “Guidelines on Group Policy for Both Life and Non-Life Insurance Companies”;
2. Whether AEON can offer and promote to its loan borrowers/customers the credit personal accident insurance protection under the Group policy it will enter into with the insurer without being licensed as an agent or a broker; and
3. Whether the insurance company can pay AEON a Service Fee for administering the Group Policy. Would this constitute a payment of commission?

Upon review of the pertinent law and circular letters relevant to the case at hand, the following are the answers to your queries:

I. AEON is considered as a group policyholder in accordance with CL No. 2017-57.

Section 1.2 of CL No. 2017-57 provides for the two main insurable groups, to wit:

“Insurable groups can broadly be classified in to two main groups, namely: a) employee group, where all members work for the employer proposing to cover them; and **b) affinity group, whose members have a commonality other than employment** and whose insured members are not its employees such as depositors or borrowers of banks or lending companies, passengers of transportation operators, members of a professional associations, cardholders of credit card companies, members of an employees welfare association, beneficial owners of a trust handled by a trustees, among others. In an employee group, the employer becomes the policyholder and the employees are the insured persons. **In the affinity group, the policyholder is the association, trustee, union, and other organization to which an individual insured must belong or be associated with to be insured.**” (Emphasis Supplied)

In this instance, AEON’s customers/ loan borrowers become its members. The member’s commonality is the fact that they are all loan borrowers of AEON. It’s affinity to AEON as its customers/ loan borrowers makes them an affinity group of a group insurance as prescribed above.

Considering that AEON would be the group policyholder and the loan borrowers/ customers the individually insureds, it is the opinion of this Commission that AEON fits one of the insurable group classification definition of affinity group. Thus, AEON is considered as a group policyholder.

II. AEON is not allowed to offer and promote the group policy to its borrowers/customers.

Section 2 (b) of the Insurance Code, as amended, provides what doing insurance or transacting insurance business is:

“The term “doing business” or “transacting an insurance business”, within the meaning of this Code, shall include:

1. **Making or proposing to make**, as insurer, any insurance contract;

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In the application of the provisions of this Code the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.”

Further, Section 309 of the Insurance Code, as amended, provides that:

“Any person who for compensation, **solicits** or obtains insurance on behalf of any insurance company or transmits to a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all duties, requirements, liabilities and penalties to which an insurance agent is subject.”

From the foregoing, if AEON will promote or offer the group policy, it will be tantamount to doing or transacting insurance business thru making or proposing to make or soliciting an insurance contract. That said act will necessitate the application and issuance of license to transact as an agent.

III. The insurance company may pay AEON a service fee for administering the group policy.

Sections 5.5 and 5.6 of CL No. 2017-57 provide for the legitimacy of a service fee or collection fee that may be paid by the insurer to the policyholder vis-à-vis prohibition on giving remuneration, commission or payment by the insurer to policyholder’s officer, employee or director.

“Section 5.5. **A service fee or collection fee may be paid by the Insurer to the Policyholder.** It is understood that the payment of a service fee or collection fee to the Policyholder

is necessary to help defray the costs for servicing and administering the plan.” (Emphasis supplied)

“Sec. 5.6. No insurance company shall give any officer, employee or director to the policyholder a **remuneration, commission or payment of any other description from the insurer by reasons of the issuance or administration of the group policy.**” (Emphasis supplied)

From the foregoing, the insurance company/ insurer of the group policy is legally allowed to pay the group policyholder a certain amount of service or collection fee in administering the group policy.

Accordingly, AEON is allowed to receive from the insurance provider a service fee for administering the group policy and the said fee should not be construed as a commission.

However, the insurer shall not pay the group policyholder’s employee, officer, or director any fee for administering said group policy.

A service fee is allowed to be collected or paid to the policyholder but not a commission or a remuneration. This is because a commission or remuneration speaks of a fee paid to a person, as in this case to an agent or broker, after facilitating a sale transaction – contract of insurance.

Since, AEON cannot perform activities of an agent nor a broker due to lack of license and authority to act as one, it cannot collect a commission or remuneration. To do so would violate the provision on doing insurance business and the licensing requirements as provided for in the Insurance Code of the Philippines, as amended, and pertinent Insurance Commission Circulars.

It shall be understood that this Insurance Commission Ruling is based solely on the facts presented and disclosed 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.

DENNIS B. FUNA
Insurance Commissioner

