

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
INSURANCE COMMISSION
Insurance Commission Building
United Nations Avenue, Manila

**IN THE MATTER OF THE
PROPOSAL FOR THE
DISTRIBUTION OF THE TRUST
FUND ASSETS OF DANVIL
PLANS, INC. IN CONNECTION
WITH THE LIQUIDATION OF
SAID COMPANY PURSUANT TO
SECTION 52 OF REPUBLIC ACT
NO. 9829, OTHERWISE KNOWN
AS THE PRE-NEED CODE.**

CRL Ref. No. 2016-003

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DIRECTIVE

24 February 2016

Before the Insurance Commission is a proposal for the distribution of the remaining trust fund assets of Danvil Plans, Inc. ("Danvil") submitted by its counsel, Villanueva Tiansay and Trinidad Law Offices ("VTT Law"). Said proposal was submitted in the course of the liquidation of Danvil pursuant to Section 52 of Republic Act No. 9829, otherwise known as the Pre-Need Code.

The factual antecedents are as follows:

Berkley International Plans, Inc. ("BIPI"), was registered with the Securities and Exchange Commission ("SEC") on 24 July 1997. On 19 March 2007, Danvil Holdings, Inc. acquired BIPI, including its subsidiaries, from W.R. Berkley International LLC, a company based in Connecticut, USA. In connection with the management buy-out, the SEC approved the change of BIPI's corporate name to Danvil Strategic, Inc. and that of its subsidiaries in October 2007 into the following, viz:

- Berkley International Life Insurance Company, Inc. to Danvil Life Insurance Company, Inc.; and
- Berkley Plans, Inc. to **Danvil Plans, Inc.**

The company has a wholly-owned subsidiary, Family First, Inc., now Danvil Management, Inc., which provides management and consultancy services to the company.

Danvil's last *Dealer's License to Sell Pension Plans* was issued by SEC for the license year 2009. Subsequently, said company opted to stop selling its remaining plans and did not apply for the renewal of its registration as dealer for license year 2010. Hence, the company was placed under the category of a "servicing company" upon the effectivity of Republic Act No. 9829, otherwise known as the Pre-Need Code, which law transferred the supervision of the pre-need industry to this Commission. Following the same, the Examination Team accordingly recommended that Danvil be placed under conservatorship.

This Commission placed Danvil under conservatorship on 14 October 2010 and appointed Ms. Teresita P. Gutierrez as Conservator.

On 28 March 2011, this Commission denied Danvil's application for license for failure to meet the statutory solvency requirement, as the offered asset identified as "*Due from Danvil Strategic [Inc.]*" amounting to Eight Hundred Forty Million Four Hundred Eighty Four Seven Hundred Twenty Three Pesos (Php 840,484,723.00) was not admitted by this Commission to be part of Danvil's assets.

On 22 June 2011, this Commission appointed Atty. Teresita L. Caalim to replace Ms. Gutierrez as Conservator.

On 10 August 2011, this Commission approved Atty. Caalim's proposal for payment of matured plans. The proposal entailed the payment of the following:

- Educational Plans - 50% of maturity value
- Money Back Plans (Pension) - 100% of maturity value
- Pre-Termination Value - 100% of maturity value

The remaining balance of fifty percent 50% was proposed to be paid in five (5) equal annual installments at ten percent (10%) of the maturity value or twenty percent (20%) of the outstanding balance.

This Commission then ordered the financial examination of Danvil in order to verify the respective balances of the trust fund assets and corporate assets of said company, as well as the respective valuations of said assets, as of 31 December 2012.

In consequence, Danvil was ordered to temporarily suspend the payment of claims charged against the company's trust fund assets in order to determine (1) the accuracy of the trust fund balances for the period covered; and (2) whether there is a need to recompute the liquidation value of the plans.

On 10 October 2013, this Commission issued a *Stay Order* providing for the suspension of payments of all claims against Danvil until further notice.

Following this Commission's finding that Danvil can no longer be restored to financial viability, said company was placed under liquidation on 16 December 2014. Atty. Rony D. Togonon was designated as Danvil's Liquidator.

A *Notice to the Public* was published in the Philippine Star, a newspaper of general circulation, for three (3) consecutive Saturdays informing parties having claims against Danvil to file their claims with the Liquidator or with this Commission not later than one hundred eighty (180) days from the date of the last publication of the *Notice* on 31 January 2015, or until 30 July 2015. Otherwise, said parties' claims shall forever be barred and the latter shall not be allowed to participate in any manner whatsoever in any kind of disposition, partition, distribution, or settlement in the liquidation proceedings.

On 30 March 2015, this Commission approved the engagement of Mr. Lyndon Fadri, FASP, ASA, as the consulting actuary for Danvil.

On 18 August 2015, VTT Law wrote the Liquidator recommending that instead of distributing the entire trust fund assets of Danvil to its approximately 24,000 planholders, Danvil's obligations to the latter be settled in the following manner:

- a. Planholders with mature plans will receive the full maturity benefits;
- b. For planholders with fully paid (but not yet matured) plans, the premiums they paid will be returned to them in full;
- c. For planholders actively paying their plans, the premiums they paid will likewise be returned to them in full;
- d. For planholders whose plans were pre-terminated prior to 31 December 2013 and whose pre-termination value has been held by this Commission due to suspension of all benefits, they shall be paid 50% of the premiums paid since they exercised the option to pre-terminate.

Danvil views the distribution of the entire trust fund assets as excessive of what is legally contemplated and due said planholders under the Pre-Need Code and its Implementing Rules and Regulations.

Danvil's counsel further proposed that *"any remaining balance in the trust fund must be released back to Danvil (to form part of its corporate assets) for payment of its outstanding obligations and reimbursement of the advances made by Mr. Daniel Villanueva for the company's expenses"*.

On 14 December 2015, VTT Law again wrote this Commission reiterating their alternative proposal in their letter 18 August 2015 and requested that Danvil *"be advised of the steps that will be taken by the Honorable Commission in respect of the payment of the matured plans."*

Considering that Danvil did not oppose the payment of full maturity benefits to planholders with mature plans (as per letter "a" of Danvil's alternative proposal) as of 10 October 2013 (*"Stay Order Date"*), this Commission, on 16 December 2015, approved payment of (1) full maturity benefits to three thousand forty eight (3,048) planholders with matured educational plans in the total amount of **Three Hundred Five Million Six Hundred Thirty One Thousand Pesos (Php 305,631,000.00)** in checks; and (2) full maturity benefits to sixty nine (69) planholders with matured

pension plans in the total amount of **Six Million Eight Hundred Sixty Thousand One Hundred Pesos (Php 6,860,100.00)** in checks. On 23 January 2016, another *Notice to the Public* was published in the Philippine Star informing the public of payment of these claims. Payment of this first batch of claims commenced on 26 January 2016.

Meanwhile, on 6 January 2016, this Commission extended the appointment of Atty. Togonon as Danvil's Liquidator for a period of six (6) months, or until 15 June 2016.

On 13 January 2016, the Chief, CRL Division, the Liquidator, and two (2) lawyers representing Danvil met to discuss said company's alternative proposal. During the meeting, the Liquidator suggested that pending this Commission's resolution of the legal issue involving the alternative proposal, the latter may approve Danvil's proposal of returning full premiums paid to (1) planholders with fully paid but not yet matured plans; and (2) planholders actively paying their plans; and return of fifty percent (50%) of premiums paid to planholders whose plans were pre-terminated prior to 31 December 2013 and whose pre-termination values have been held by this Commission due to suspension of payments. Danvil's counsel interposed no objection to the suggestion, but added that the same planholders must be made to execute a *Release, Waiver, and Quitclaim*. The initial position of the consulting actuaries, however, is that said planholders may not be made to respectively execute a *Release, Waiver, and Quitclaim* as this Commission may ultimately decide that said planholders be given liquidation values that may yield higher amounts than a full return of premiums paid.

On 23 January 2016, another *Notice to the Public* was published in the Philippine Star informing the public of payment of the first batch of claims (i.e., those involving fully paid and matured plans). Payment of this first batch of claims commenced on 26 January 2016.

It may not also be amiss to note that:

1. As of 31 October 2015 and prior to the payment of the first batch of Danvil claims, said company's aggregate trust fund assets amounted to **Two Billion Eight Hundred Eighteen Million Sixty Five Thousand Eight Hundred One Pesos and 97/100 (Php 2,818,065,801.97)**;
2. Based on the computation of the consulting actuary, there is a total of twenty thousand one hundred ninety four (20,194) planholders with fully paid but not matured educational plans as of the *Stay Order Date*. The aggregate contract price for this classification of claims is **One Billion Eight Hundred Forty One Million Three Hundred Forty Two Thousand Seven Hundred Thirteen Pesos (Php 1,841,342,713.00)**. Also, as per computation of the consulting actuary, there is a total of one hundred ninety two (192) planholders with fully paid but not matured pension plans as of the *Stay Order Date*. The aggregate contract price for these plans is **Eleven Million Nine Hundred Twenty Five Thousand Three Hundred Twenty Eight Pesos (Php 11,925,328.00)**;

3. Meanwhile, a total of six hundred four (604) planholders pre-terminated their plans before 31 December 2013 as well as before the date of liquidation, whose benefits amount to **Sixty One Million Nine Hundred Fifty Nine Thousand Nine Hundred Thirty Five Pesos (Php 61,959,935.00)**.

After a prudent consideration of the circumstances, this Commission is convinced that Danvil's alternative proposal for distribution of said company's remaining trust fund assets constitutes the most fair and equitable proposal for the distribution of said assets and benefits all of said company's planholders.

Hence, Danvil's alternative proposal contained in its letters dated 18 August 2015 and 14 December 2015 is hereby **approved**. As proposed, **Danvil will be the first distressed pre-need company to fully (100%) refund premium payments made by its planholders.**

Accordingly, the Liquidator is directed to prepare a Liquidation Plan for the following planholders as follows:

1. For planholders with fully paid (but not yet matured) plans, the premiums they paid will be returned to them in full;
2. For planholders actively paying their plans, the premiums they paid will likewise be returned to them in full;
3. For planholders whose plans were pre-terminated prior to 31 December 2013 and whose pre-termination value has been held by this Commission due to suspension of payment of all benefits, they shall be paid fifty percent (50%) of the premiums paid since they exercised the option to pre-terminate.

Moreover, a Fund must be set aside for the payment of expenses incurred and to be incurred by the Liquidator in the process of liquidating the remaining trust fund assets. A reasonable amount must also be set aside as a Contingency Fund, to be available for payment of contingent claims that may arise, and to serve as a buffer and allowance for fluctuations caused by the pre-termination of trust fund assets.

Hence, provisions for (1) expenses incurred in connection with the liquidation of the remaining trust fund assets; and (2) the Contingency Fund in the total amount of **One Hundred Million Pesos (Php 100,000,000.00)** shall be set up and to be accounted for by the Liquidator, which Fund shall be held for a period of one (1) year, unless extended by the Insurance Commissioner.

Any excess, after deducting the above-mentioned claims and expenses from the remaining trust fund assets, shall be considered as Danvil's corporate assets and shall be disposed of in accordance with law.

Subsequently, the following shall be implemented by the Liquidator:

1. Immediate closure of the trust accounts of Danvil with three (3) of its four (4) trustee banks: Land Bank of the Philippines ("Land Bank"), Banco de Oro ("BDO"), and Metropolitan Bank and Trust Company ("Metrobank"), with the trust account with Union Bank of the Philippines ("UnionBank") to be withdrawn in phases instead of one count so that the investment will not be adversely affected by pre-termination;
2. Preparation of withdrawal letters addressed to the trustee banks to be signed by the Chief, CRL Division and the Liquidator as check signatories;
3. Deposit the liquefied trust fund to Land Bank, United Nations Avenue Branch, United Nations Avenue, Manila;
4. Transfer the necessary amounts from the trust fund to the designated accounts necessary to implement the Liquidation Plan; and
5. Transfer the amount of **Two Million Pesos (Php 2,000,000.00)** to a current account with Union Bank to support the administrative and operational expenses of Danvil for the current year.

Let a copy of this *Directive* be posted to this Commission's website (www.insurance.gov.ph). All stakeholders are enjoined to visit the same occasionally for other announcements.

SO ORDERED.

Manila, Philippines; 24 February 2016.



EMMANUEL F. DOOC
Insurance Commissioner

Copy furnished:

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