



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



Legal Opinion (LO) No.	2022-12
Date	19 April 2022

ATTY. JUDY HAO

Senior Partner

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**SUBJECT : Request for Confirmation on the Application of
Circular Letter No. 2017-58**

Dear Atty. Hao:

This refers to your letter dated 25 March 2022 requesting for confirmation that prior approval from this Commission, pursuant to Circular Letter No. 2017-58 entitled "*Guidelines on the Approval of Acquisition of Control of Health Maintenance Organizations*" ("subject Circular Letter"), is not applicable to the offshore acquisition of a foreign company ("proposed transaction") which has an indirect control over two (2) domestic health maintenance organizations (HMO).

In your 25 March 2022 letter, you stated that your client, a foreign corporation ("acquirer"), is proposing a merger with another foreign company ("target company") which is a parent company (three levels up) of a Philippine holding company. The Philippine holding company, in turn, owns sixty percent (60%) of two (2) Philippine HMOs. As a consequence of the proposed transaction, the acquirer, through the Philippine holding company, will effectively own thirty percent (30%) to thirty six percent (36%) of the domestic HMOs.

Section 1 of the subject Circular Letter defines the term "control" as:

For purposes of these Guidelines, the term "control" shall mean the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial

contract for goods or nonmanagement services or otherwise, or as defined, by pertinent decisions of the Supreme Court.”

A careful reading of the subject Circular Letter would lead to a conclusion that its application does not depend on whether or not the proposed transaction is an offshore transaction. Instead, its applicability is determined whether a proposed transaction would result in the acquisition of control over a health maintenance organization duly licensed to transact business in the Philippines.

The term “control” is broadly defined under Section 1 of the subject Circular Letter and it is noted that there is no legislative framework on the regulations of HMOS.

Thus, Section 290(b) of the Insurance Code, as amended by Republic Act No. 10607, the presumption on the existence of control is herein applied by analogy and suppletorily considering that “*insurance companies, pre-need companies, and HMOs function under a common concept of receiving compensation, either through premiums or contributions, and in turn, promise certain contractual benefits in the future*”¹.

Section 290(b), Title 20 (Holding Companies) of the Insurance Code, as amended by Republic Act No. 10607, provides:

“(b) *Control*, including the terms *controlling, controlled by* and *under common control with*, means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial contract for goods or non-management services or otherwise. Subject to Section 292, control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote forty percent (40%) or more of the voting securities of any other person: *Provided*, That no person shall be deemed to control another person solely by reason of his being an officer or director of such other person.”

Based on the facts alleged in your 25 March 2022 letter on the proposed transaction and the application of Section 290(b) of the Insurance Code, as amended by Republic Act No. 10607, this Commission is of the opinion that the proposed transaction will not result in the acquisition of control over an HMO that would require prior approval from this Commission pursuant to the subject Circular Letter considering that the acquirer, through the Philippine holding company, will effectively own only thirty percent (30%) to thirty six percent (36%) of the domestic HMOs.

Note, however, that such prior approval must be obtained should there be any transaction that would result in the change in the identity of the holding company of, or otherwise result in the acquisition of control over, the two (2) domestic HMOs.

¹ Fifth Whereas Clause of Executive Order No. 192, series of 2015 entitled “Transferring The Regulation And Supervision Over Health Maintenance Organizations From The Department Of Health To The Insurance Commission, Directing The Implementation Thereof And For Other Purposes”