



Legal Opinion (LO) No:	2022-15
Date:	25 August 2022

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SUBJECT: Legal Opinion on the Merger of Life Insurance Company with a Pre-Need Company

Dear Attys. Fabricante and Sac:

This refers to your request for legal opinion dated 24 January 2022 and the various meetings and communications between this Commission and your company on the following questions:

1. *“Can Manulife Philippines and MFP merge with Manulife Philippines as a surviving entity?”*
2. *“If a merger can be entered into, should Manulife Philippines maintain two licenses, one for a life insurance company and another for a pre-need company, given that the only pre-need business it will have is limited to the servicing of the shrinking in-force block of MFP?”*

Upon evaluation of the said letter and as discussed during the said meetings, please be advised that this Commission notes the following facts, to wit:

1. Manufacturers Life Insurance Co., Inc. (Manulife Philippines) currently holds a Certificate of Authority (CA) to engage in the life insurance business;
2. Manulife Financial Plans, Inc. (MFP) also currently holds a CA to engage in the pre-need business;
3. MFP is a wholly owned subsidiary of Manulife Philippines. MFP developed, marketed, and sold pension and educational plans up until 2012. However, since 2012, MFP has not taken on any new business;
4. MFP does not have any employees of its own, as all its operations and servicing are currently being performed by Manulife Philippines;

5. MFP continues to be compliant with all corporate, regulatory, and legal requirements in order to maintain its CA in order to service its remaining 31,693 existing plans; and
6. Both Manulife Philippines and MFP believe that their merger will be beneficial to both companies since operational costs of managing a separate entity would be reduced, and the companies would operate more efficiently as one entity. As to the customers of Manulife Philippines and MFP, there would be no change as to how their policies and plans are managed and maintained.

It must be emphasized at the onset that insurance companies and pre-need companies are governed by two (2) different laws. Insurance companies are governed by the Insurance Code of the Philippines, as amended by Republic Act No. 10607 while pre-need companies are governed by the Pre-Need Code of the Philippines (Republic Act No. 9829). It must also be emphasized that merger is a matter of privilege. Hence, if the constituent corporations were formed under different laws, merger would in general be possible only in the presence of a clear and definite statutory grant of power to merge. Any attempt to merge or consolidate absent that statutory grant of power is *ultra vires* and void.

Section 258, Title 16 of the Insurance Code of the Philippines, as amended by Republic Act No. 10607 provides:

*“Section 258. Upon prior notice to the Commissioner, **two (2) or more domestic insurance companies**, acting through their respective boards of directors, may negotiate to merge into a single corporation which shall be one of the constituent corporations, or consolidate into a single corporation which shall be a new corporation to be formed by the consolidation. A common agreement of the proposed merger or consolidation shall be drawn up for submission to the stockholders or members of the constituent companies for adoption and approval in accordance with the provisions of the respective bylaws of the constituent companies and all existing laws that may be pertinent.”*

Hence, an insurance company can merge only with another insurance company.

On the other hand, Section 8 of Republic Act No. 9829, otherwise known as the Pre-Need Code of the Philippines states that:

“SEC. 8. Amendment of the Articles of Incorporation and Bylaws. – Amendments to the articles of incorporation and bylaws of a pre-need company, including merger, consolidation and dissolution, shall not be approved by the SEC without the favorable recommendation from the Commission.”

Although merger is mentioned under the said provision, there is no express authority for pre-need companies to merge with companies other than pre-need companies.

It is clear that no provision of the Amended Insurance Code of the Philippines and the Pre-Need Code of the Philippines **expressly allows the merger between an**

insurance company and a corporation with different lines of business such as pre-need business.

Moreover, there are no existing Circular Letters and other Insurance Commission issued regulations explicitly or implicitly allowing the merger between an insurance company and other ordinary business corporation.

Other issuances by this Commission as regards mergers and acquisitions only provide guidelines on the merger or consolidation of **two or more companies with the same line of business.**

Applying the above to your queries, the Commission cannot legally allow **the merger of Manulife Philippines, a life insurance company, and MFP, a pre-need company.** Unless the authority for a particular merger is found in the laws governing the constituent corporations, statutory merger between the said two corporations is not possible.

Notwithstanding the foregoing position of this Commission, the parties are encouraged to still submit their alternative proposal/s as regards the plan for corporate group restructuring that the Commission can evaluate.

Please note that the above opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein 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.

Please be guided accordingly.

Very truly yours,



DENNIS B. FUNA
Insurance Commissioner



LSG/JAA/bgmr