



Legal Opinion (LO) No:	2023-02
Date:	03 January 2023

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**SUBJECT: Request for Legal Opinion Regarding the Validity of Compulsory Coverage of Bureau of Fire Protection (BFP) Personnel to AFPMBAI Protek.**

Dear **SFO1 Chan**:

This refers to your letter dated 21 July 2022, with subject, "*Request for Legal Opinion Regarding the Validity of the Compulsory Coverage of BFP Personnel to AFPMBAI Protek*," received by the Insurance Commission (Commission) through email on even date.

From your letter, the Commission encapsulates the material facts, as follows: you are covered by an insurance plan called MBAI Protek. Since 2017, there has been a monthly deduction equivalent to 1.5% of your base pay from your salary. This deducted amount constitutes the premium for the said insurance. However, you have no knowledge of the insurance coverage and consequently, cannot consent to the salary deduction. Meanwhile, the BFP issued Memorandum dated 05 August 2022, entitled, "*AFPMBAI PROTEK Sign-Up Campaign*," which states:

x x x

2. The Armed Forces and Police Mutual Benefit Association (AFPMBAI) continuously supports our country's men and women in uniform by providing them and their families with financial security, protection and ultimately, "Buhay na Panatag." Hence, AFPMBAI is launching the "***MBAI Protek Sign-Up Campaign***" which will document the members' Authority to Deduct (ATD) forms for their own security.

3. The Authority to Deduct (ATD) form ensures that PNP, BFP, BJMP and PCG members are aware that 1.5% of their base pay is a mandatory deduction for their MBAI Protek basic membership insurance plan as well as to formally document

the authorization for the 1.5% required deduction. This deduction is indicated in the BFP payslip as **AFPMBAI PREMIUM**.

x x x

In your letter, you raised the following questions for the Commission's legal opinion, viz.:

1. Whether or not a BFP personnel may be made subject of an insurance contract with a private insurance provider and, therefore, required to execute an Authority to Deduct 1.5% of his base pay against his will? (*sic*)
2. Assuming that the answer is in the affirmative, does the BFP Finance Division have the authority to automatically deduct any amount from the salary of the BFP personnel to serve as his/her insurance premium without first securing his/her Authority to Deduct (ATD)?
3. Assuming that the answer in question number 2 is in the negative, is the BFP personnel entitled to a refund of the amount automatically deducted to his salary without his prior consent?

After thorough consideration, the Commission opines, as follows:

***BFP Personnel may be insured with a private insurance provider***

The Insurance Code<sup>1</sup> enunciates that anyone except a public enemy may be insured.<sup>2</sup> As such, BFP Personnel may be insured by an insurance contract with any insurer. The character of the insurer finds no relevance because Section 78 of the Insurance Code provides:

Section 78. **Employees of the Republic of the Philippines, including its political subdivisions and instrumentalities, and government-owned or -controlled corporations**, may pay their insurance premiums and loan obligations through salary deduction: *Provided*, That the treasurer, cashier, paymaster or official of the entity employing the government employee is authorized, notwithstanding the provisions of any existing law, rules and regulations to the contrary, to make deductions from the salary, wage or income of the latter pursuant to the agreement **between the insurer and the government employee** and to remit such deductions to the insurer concerned, and collect such reasonable fee for its services. (***Emphasis supplied***)

By using the term "insurer," Section 78 does not distinguish between private or public insurance provider. *Ubi lex non distinguit nec nos distinguere debemus*. Where the law

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<sup>1</sup> Republic Act No. 10607 entitled, "An Act Strengthening the Insurance Industry, Further Amending Presidential Decree No. 612, otherwise known as the Insurance Code, As Amended by Presidential Decree Nos. 1141, 1280, 1455, 1460, 1814 and 1981, and Batas Pambansa Blg. 874, and for Other Purposes."

<sup>2</sup> *Id.*, Section 7.

does not distinguish, neither should we.<sup>3</sup> What is important is that the insurance provider is duly authorized to transact insurance business.<sup>4</sup>

***AFPMBAI is not just a private insurance provider; it is a mutual benefit association established for the welfare of its members***

The Insurance Code defines a mutual benefit association (MBA) as –

**Section 403. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and/or no fixed amount from whomsoever may contribute, shall be known as a mutual benefit association within the intent of this Code.**

x x x. (*Emphasis supplied*)

Here, the MBAI Protek provider is AFPMBAI, a registered MBA.<sup>5</sup> Unlike an ordinary insurance provider, AFPMBAI's business is not conducted for profit, but mainly for the welfare of its members. The law allows AFPMBAI to receive a fixed and regular dues or assessments from its members in exchange for life insurance benefits.<sup>6</sup>

***MBAI Protek is a group insurance providing insurance benefits to BFP-AFPMBAI members***

Like all other contracts, insurance contracts require consent of the contracting parties.<sup>7</sup> Insurance contract must be voluntarily entered into by the parties, otherwise the contract suffers defect.<sup>8</sup>

As an exception, the employer, which **includes the state and any political subdivision** thereof, may **contract for group insurance**.<sup>9</sup> In this case, the employer is treated as the policyholder who has the obligation "[t]o **contract with insurance**

<sup>3</sup> Spouses Plopenio vs. Department of Agrarian Reform, G.R. No. 161090, 04 July 2012.

<sup>4</sup> INSURANCE CODE, Sec. 6.

<sup>5</sup> List of MBA with Valid and Existing Certificate of Authority as of 30 November 2022; <https://www.insurance.gov.ph/mutual-benefit-associations/>.

<sup>6</sup> INSURANCE CODE, Sec. 403.

<sup>7</sup> Perez vs. Court of Appeals, G.R. No. 112329, 28 January 2000.

<sup>8</sup> CIVIL CODE, Art. 1390 in relation to Sec. 82 of the Insurance Code.

<sup>9</sup> Circular Letter (CL) No. 2017-57, Sec. 1.5; Emphasis supplied.

company for the coverage of individual members under a group policy taking into consideration the best interest of its members”<sup>10</sup> and “[t]o negotiate for a reasonable premium which its members may partially or fully pay.”<sup>11</sup>

Based on records, MBAI Protek is a **group insurance** covering the members of the Armed Forces of the Philippines, Philippine National Police, BFP, Bureau of Jail Management and Penology, and Philippine Coast Guard, in the active service, among others. Thus, as an employee of the BFP, your coverage under the MBAI Protek becomes mandatory. With the mandatory coverage under MBAI Protek, payment of premium becomes indispensable. Since the BFP, as the policyholder, negotiated the premium, then collateral matters, such as mode of payment had already been part thereof. The Commission notes that the “*MBAI Protek Sign-Up Campaign*,” is impelled to raise awareness about this mandatory deduction.<sup>12</sup> This implies existing payment arrangement between your employer BFP and AFPMBAI. In this respect, the Commission deems it proper for you to seek inquiry from your employer, BFP whether the automatic deduction has been part of this payment arrangement.

Nevertheless, the Commission finds that the return of premium is not possible.

Under the Insurance Code, a person insured is entitled to a return of premium if no part of his interest in the thing insured be exposed to any of the perils insured against.<sup>13</sup> However, if a peril insured against has existed, and the insurer has been liable for any period, **however short**, the insured is not entitled to return of premiums, so far as that particular risk is concerned.<sup>14</sup> The insurer becomes entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.<sup>15</sup> Here, your insurance coverage under the MBAI Protek has been in effect since 2017. From that period, your exposure to risk prevents the return of the premium; and concomitantly, AFPMBAI becomes entitled to receive the payment.

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.

For your information and guidance.

Very truly yours,

  
**DENNIS B. FUNA**  
Insurance Commissioner



<sup>10</sup> Id., Sec.3.1 (a).

<sup>11</sup> Id., Sec. 3.1(b)

<sup>12</sup> Memorandum dated 05 August 2022, par. 3.

<sup>13</sup> INSURANCE CODE, Sec. 80 (a)

<sup>14</sup> Id., Sec. 81.

<sup>15</sup> Id., Sec. 77.