



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



Legal Opinion No.	2023-05
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ATTY. KAYZER ALDRIN Z. SABA
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BDO INSURANCE BROKERS, INC.
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Dear **Atty. Saba**:

This refers to your letter dated 26 September 2022 requesting the Insurance Commission (IC) for guidance on brokering for Protection and Indemnity (P&I) Policies after a certain client sought the assistance to BDO Insurance Brokers, Inc. (BDO Insure) in finding a suitable P&I Club that can provide the client with a P&I coverage, in accordance with the requirements of Maritime Industry Authority (MARINA). However, there is no P&I Club in the Philippines on record as of date.

Given the above scenario, the IC is led to resolve a pivotal issue on whether or not BDO Insure can act as a P&I broker in the absence of a duly authorized P&I Club in the Philippines.

In this regard, please be guided by the following:

**P&I Club is “doing insurance business”
which must be duly licensed by the IC**

Section 2 (b) of Republic Act (R.A.) No. 10607 otherwise known as the Amended Insurance Code enumerates what constitutes “doing an insurance business” or “transacting an insurance business”. These are:

- (1) Making or proposing to make, as insurer, any insurance contract;

- (2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;
- (3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;
- (4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

Under existing jurisprudence, Protection and Indemnity (P & I) Club is a **form of insurance** against third party liability, where the third party is anyone other than the P & I Club and the members.¹ It is an association composed of shipowners in general who band together for the specific purpose of providing insurance cover on a mutual basis against liabilities incidental to ship owning that the members incur in favor of third parties.²

Moreover, P & I Club as a **mutual insurance company** is described in *White Gold Marine Services, Inc. v. Pioneer Insurance and Surety Corp.* as “a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest. Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.”³ This is akin to mutual benefit association which the IC regulates.

Therefore, while the Amended Insurance Code does not specifically mention “P&I Club”, the Supreme Court is replete with decisions which categorically provide that a P&I Club is doing insurance business, and thus, a Certificate of Authority issued by the IC is required pursuant to Section 193 of the Amended Insurance Code.⁴

¹ *White Gold Marine Services, Inc. v Pioneer Insurance and Surety Corporation and The Steamship Mutual Underwriting Association (Bermuda) Ltd.*, G.R. No. 154514, July 28, 2005

² *Pandiman Philippines, Inc. v Marine Manning Management Corporation and Rosita S. Singhid*, G.R. No. 143313 June 21, 2005

³ *Steamship Mutual Underwriting Association (Bermuda) Limited v Sulpicio Lines, Inc.*, G.R. No. 196072, September 20, 2017

⁴ Section 193, Amended Insurance Code.

No insurance company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner upon application therefor and payment by the company concerned of the fees hereinafter prescribed. xxx

Licensed Insurance Brokers must facilitate brokering activities only with insurance companies duly authorized by the IC

Pursuant to Section 318 of the Amended Insurance Code, **it shall be unlawful for any person, partnership, association or corporation in the Philippines**, for himself or itself, or for some other person, partnership, association or corporation, either **to procure, receive or forward applications of insurance in, or to issue or to deliver or accept policies or contracts of insurance of or for**, any insurance company or companies **not authorized to transact business in the Philippines**, covering risks, life or non-life, situated in the Philippines.

Accordingly, insurance brokers are mandated by law to facilitate brokering activities only with insurance companies duly authorized by the IC to do insurance business in the Philippines.

Referral of client to a foreign P&I Club and/or foreign insurance broker is a brokering activity

Section 310 of the Amended Insurance Code defines an insurance broker as “any person who for any compensation, commission or other thing of value **acts or aids in any manner** in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code.”⁵

Thus, the act of recommending a cost-effective risk transfer solutions which is practically done through intensive canvass and comparison of insurance products available in the market, and referring a client to a foreign P&I Club and/or foreign insurance broker are deemed activities falling under “any manner in soliciting, negotiating or procuring” contemplated under the Amended Insurance Code.

IN VIEW OF ALL THE FOREGOING, BDO Insure is advised to engage **only with P&I Clubs duly authorized by the IC** to do insurance business in the Philippines. **The fact that no P&I Club duly authorized by the IC would mean that BDO Insure cannot facilitate brokering activities to unlicensed foreign P&I Club.** Corollary, no referral in **any manner** shall be allowed. At most, what *may* be allowed is the identification of client’s needs and risks **provided** that such purpose is expressly

⁵ Section 310, Amended Insurance Code.

Any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance broker is subject.

stated in BDO Insure's Articles of Incorporation; **provided further** that no reference shall be made to any unlicensed foreign P&I club and/or insurance broker.

For your guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

