



Legal Opinion	2023-08
Date:	03 March 2023

**MS. OLIVIA LIMPE-AW**

President

**DESTILLERIA LIMTUACO & CO., INC.**

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**Subject: Request for Legal Opinion of Destilleria concerning its Surety Bond with Milestone Guaranty Assurance vis-à-vis Bureau of Customs issuances**

Dear **Ms. Limpe-aw:**

This refers to Destilleria Limtuaco & Co., Inc. (DESTILLERIA)'s letter dated 07 February 2023 requesting the Insurance Commission (IC/Commission)'s clarifications and explanations on the validity and legality of the actions by the Bureau of Customs (BOC) and the surety/insurance companies implementing the BOC's Customs Memorandum Order (CMO) Nos. 30-2020 and 17-2021.

As stated in your letter, DESTILLERIA has an existing surety bond policy with Milestone Guaranty and Assurance Corp. (MILESTONE) stating the following:

*"...conditions of this obligation are such that if any time within nine (9) months, from the date of the arrival of the importing vessel, or within one (1) year if said time is extended by the Commissioner of Customs, the articles of raw materials stored in Bonded Manufacturing Warehouse No. M-88 or the products manufactured therein as well as the wastes and by products, shall be regularly and lawfully withdrawn and exported beyond the limits of the Philippines or if the Customs Duty, Special Import Tax, Compensating tax and other charges are duly paid on all articles, raw materials and products withdrawn from the aforesaid Bonded Manufacturing Warehouse for local consumption, then and only then shall this obligation be null and void, otherwise to remain in full force and effect."*

In view of BOC Memorandum 30-2020 and CMO No. 17-2021 however, the above surety bond was considered automatically expired/cancelled effective 31 December 2022, to implement the change of coverage period from fiscal to calendar year. As a result, DESTILLERIA is now required to post a new surety bond

without cancelling the existing bond with MILESTONE. Per DESTILLERIA, MILESTONE did not cancel or revise the policy accordingly, nor inform DESTILLERIA of the significant change to the policy cover in view of the BOC's rules and regulations. Thus, the DESTILLERIA'S herein request for IC's clarifications, to wit:

1. *Does the Bureau of Customs have the right to cancel our (DESTILLERIA's) still valid general warehousing bond contracts?*
2. *If the Surety/ Bonding Company did not follow CMO No. 17-2021 in its surety coverage of our (DESTILLERIA's) Bond, are they (MILESTONE) not compelled to revise the surety coverage our (DESTILLERIA's) existing Bond to calendar year, cancel the said Bond policy and refund us (DESTILLERIA) the premiums paid on the unused portion of the Bond? If they (MILESTONE) refuse to do so, is this a violation of the Insurance Act since requiring us to post another round of general warehousing bonds means double-coverage and thus means double charging of premiums?*

Upon evaluation, the IC deems it appropriate to defer providing comments on questions involving BOC's rules and regulations in accordance with IC Circular Letter No. 2017-13 dated 07 March 2017 which states that "[T]he Commission, in its discretion, may refrain from rendering opinion on xxx questions which will involve review or interpretation of x x x orders, administrative rules and issuances of other government agencies". The IC finds it meritorious however, rendering its opinion on matters concerning the surety/insurance company, MILESTONE in this case, as the IC's regulated entity.

First, this Commission rules out the issue on "Double Insurance". Section 95 of Republic Act (R.A.) No. 10607 otherwise known as the Amended Insurance Code provides that "[D]ouble insurance exists where the same person insured by several insurers separately in respect to the same subject and interest". However, based on the facts, the existing Bond is already cancelled by the BOC. Hence, there is supposedly no double insurance.

In view thereof, this Commission is left with one issue which is whether or not DESTILLERIA is entitled to a refund from MILESTONE for the unused portion of the Bond as a result of BOC's cancellation of Bonds, which leads the Commission to take into consideration the provisions of the law relevant to the issue at hand.

Specifically, this Commission finds it worthy to evaluate the facts vis-a-vis Section 80 of the Amended Insurance Code which provides:

"Section 80. A person insured is entitled to a return of premium, as follows:

- a. To the whole premium if no part of his interest in the thing insured be exposed to any of the perils insured against;

- b. **Where the insurance is made for a definite period of time and the insured surrenders his policy, to such portion of the premium as corresponds with the unexpired time, at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy,** after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued: *Provided*, That no holder of a life insurance policy may avail himself of the privileges of this paragraph without sufficient cause as otherwise provided by law.” (Emphasis supplied.)

It can be culled that the law grants the insured an entitlement to a pro rata return of premiums paid **(1) where an insurance is made for a definite time** and **(2) the insured surrenders the policy**, unless short period rate has been agreed upon and appears on the face of the policy.

Upon review, the IC finds that the case falls squarely with the sound situation of the aforementioned Section.

The Bond of DESTILLERIA with MILESTONE stating that “x x x *conditions of this obligation are such that if **within nine (9) months, from the date of the arrival** of the importing vessel, or **within one (1) year if said time is extended** by the Commissioner of Customs x x x*” is **made for a definite time**.

With respect to the surrender of policy/Bond, the IC deems it moot and academic considering the circumstances surrounding this case where the BOC already cancelled the Bond, and all existing Bonds by the end of calendar year 2022 are automatically cancelled by virtue of the BOC’s issuances. That being said, the IC considers **the fact of surrendering the Bond unnecessary**.

**These considered, the IC is led to conclude that DESTILLERIA is entitled to a pro rata return of premiums pursuant to Section 80 (b) of the Amended Insurance Code.**

Moreover, the IC recognizes no fault from DESTILLERIA and MILESTONE that resulted to the early cancellation/expiration of the Bond. There being no fault from both parties, equity dictates that **a corresponding return of the premiums should be made otherwise, it would result to unjust enrichment.**

**IN VIEW OF ALL THE FOREGOING, this Commission finds it proper that MILESTONE proportionately return the premiums for the unused portion of the Bond to DESTILLERIA.**

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



cc: **MR. DAVID P. MERCADO, JR.**  
Chairman  
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