



Legal Opinion	2023-10
Date:	27 March 2023

MR. GORDON ALAN P. JOSEPH
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Attention: **Atty. Rizza Marie G. Mangubat-Gariando**
Corporate Secretary

Subject: **Request for Legal Opinion on a Potential
Collaboration between a Licensed Insurance Broker
and Tech Co/TelCo**

Dear **Mr. Joseph:**

This refers to Philinsure's letter dated 08 February 2023 requesting for legal opinion of and guidance from the Insurance Commission (the "IC"/Commission) on the viability of a potential collaboration of Philinsure and a Technology Company ("Tech Co/Tel Co") with certain arrangements with the latter to act as the master policy holder and as a collection and payment facility administrator for the corporate/enterprise customers and individual subscribers of the Tech Co/Tel Co.

As stated in your letter, Philinsure particularly seeks the IC's opinion on the following:

1. For insurance policies for corporate/enterprise customers, can Tech Co/Tel Co act as group master policyholder over an affinity group of insured enterprise customers in order to be allowed to facilitate the collection of premiums?
2. As an option to the Tech Co/Tel Co, is it allowed to facilitate the collection of premiums using its self-service portals and billing system without being a master policy holder?

3. In relation to the Tech Co/Tel Co being a Group Master Policy in an affinity group based on IC Circular Letter (CL) No. 2017-57, can a group policy include juridical entities as members?
4. In case the Tech Co/Tel Co can validly act as a group policyholder for both corporate and individual clients, can they delegate to Philinsure obligations stated in Section 3.1 (h) and (i) of IC CL No. 2017-57?
5. Given that IC CL No. 2017-57 is a relatively new issuance, what liabilities, if any, may the Tech Co/Tel Co face in administering the group policy?
6. Can the Tech Co/Tel Co impose as a condition, that: An Enterprise Customer must continue to be a Tech Co/Tel Co's client for the duration of the obligation to collect and transmit premiums, to enable Tech Co/Tel Co to continue with the billing in its billing system and disclaim liability for inability to collect and pay with its agreement with Philinsure and its customers?
7. Can the Tech Co/Tel Co/group policy holder be considered as simply disseminating information its corporation and retail subscribers, facilitating payment and collection for cyber-insurance products, and not "offering, soliciting, or selling" cyber-insurance products?
8. For facilitating collection of the premium and payment thereof, is Tech Co/Tel Co allowed to charge a "service fee" or "collection fee" from Philinsure for its services?

For ease of discussion, the IC deems it appropriate to group the related queries into three groups covering (i) question numbers 1 to 6 and 8, and (ii) question number 7. Hence, simplifying the issues as follows:

- i. **Whether or not Tech Co/Tel Co can act as a group master policy holder for both corporate and individual clients. Related thereto, (a) what can be validly done, and (b) what are the liabilities of Tech Co/Tel Co, if any, for facilitating group policy?**
- ii. **Whether or not Tech Co is considered "offering, soliciting, or selling" cyber-insurance products in view of the proposed products/services.**

Upon review, this Commission finds that:

- I. **The Tech Co/Tel Co can act as a group master policy for both corporate and individual clients.**

Under IC CL No. 2017-57, a Group subject to a Group Insurance (referred hereafter as "insurable group" for brevity) should consist of **persons** with a commonality of

purpose, interest or circumstances or engaging in a common economic and/or social activity similar but not limited to employees of a corporation or member of a professional association.

At this point, it is worthy to note that consistent with the Civil Law, “persons” may be either (i) natural or (ii) juridical persons. In line with this concept, the IC CL No. 2017-57 further classified insurable groups into two main groups, namely: (a) employee group, where all members work for the employer proposing to cover them; and (b) **affinity group**, whose **members have a commonality** other than employment and whose insured members are not its employees. Further, in affinity group, the **policyholder** is the association, trustee, union, and **other organization** to which an **individual insured** must belong or **be associated with** to be insured, including **any entity** in which two or more employers or two or more associations, trustees, and organizations of the affinity groups belong.

In view of the above definition and classification of insurable groups particularly with regard to the members comprising an affinity group, it may be concluded that **a juridical entity can be a member of a group policy provided that such juridical entity shares a commonality among other members of the group.**

Here, the **insured persons have a clear commonality of purpose and interest**, that is, to protect their technological products through cyber-insurance offered by accredited insurance companies and brokered by Philinsure, who are **associated with Tech Co/Tel Co** being the latter’s clients. This scenario fits with what was laid under IC CL No. 2017-57 where Tech Co/Tel Co qualifies as the policy holder. **For this consideration, the IC finds the Tech Co/Tel Co can be a master policy holder of a group insurance for its corporate/enterprise and individual subscribers.**

Consequently, as a master policy holder in this case, the Tech Co/ Tel Co **can act as payment facility administrator that facilitates payment and collection of the premium** in accordance with Section 3 of IC CL No. 2017-57.

In view of the said commonality and Tech Co/Tel Co being the master policy holder, the IC deems it proper that it is **valid to require continuing customer-provider relationships between Tech Co/Tel Co and its clients for the duration of the obligation to collect and transmit premiums** as a condition to collect relative insurance premium from its clients. Such fact, however, must be clearly communicated to the Tech Co/Tel Co clients.

With regard to the delegation of certain acts of the policy holder to his/her insurance broker, the IC finds **no express provision under existing laws and IC rules and regulations that prohibit delegation of the policyholder to the insurance broker** in “assisting the insured person or beneficiary in the processing of claims and submission of documents to the insurer” and “supporting individual insured or beneficiary in the filing of cases relevant to the non-payment of claims” (Section 3.1 (h) and (i) of IC CL 2017-57). Moreover, this Commission finds it congruent with a well-

established principle that an insurance broker primarily represents the interest of the policyholders.

In consideration of the services rendered by the insurance broker relative to the delegation of the policyholder, fairness dictates that it is but proper to charge/collect a reasonable amount of “service fee” or “collection fee”.

With respect to the liability for administering group policy, Tech Co/Tel Co, as a master policyholder, has the obligation, among others: (a) to collect from the insured person an amount not higher than the amount of premiums indicated in the policy; (b) to faithfully remit to the insurer the amount collected as premium; (c) to inform the active members of the impending cancellation of the group policy by the insurer upon its receipt of notice; and (d) to inform the covered members of the fact of issuance and important contents of any endorsement or rider issued after the issuance of the group policy, pursuant to Section 3 of IC CL No. 2017-57. Any non-fulfillment of these items will necessarily expose the master policy holder to potential liability to the covered members and/or insurance provider.

II. Tech Co/Tel Co acts are considered not offering, soliciting, or selling cyber-insurance products.

With reference to IC Legal Opinion No. 2021-11 dated 29 October 2021 clarifying the concept of “offering” vs. “information dissemination”, this Commission finds the following acts as information dissemination only, to wit:

- a) Bundling existing Tech Co/Tel Co products and services with the cyber-insurance products being offered by accredited insurance companies and brokered by Philinsure; and
- b) Displaying, providing, and highlighting on its website or other online platforms information about the cyber-insurance products being offered by accredited insurance companies and brokered by Philinsure.

Tech Co/Tel Co products and services being bundled with cyber-insurance products, **it dispenses the need to systematically attempt to persuade a would-be-buyer** since the cyber-insurance products are already included/imbedded in the sale of Tech Co/Tel Co products and services.

It must be emphasized however, that a **clear delineation the functions that can be done by the parties must be established**. As such, Philinsure, as the entity duly licensed by the IC, must act or aid in procuring a cyber-insurance policy including explaining the features, terms and conditions of the insurance policy and clarifications related thereto pursuant to Section 311 of Republic Act (R.A.) No. 10607 otherwise known as the Amended Insurance Code, while Tech Co/ Tel Co can only provide information on cyber-insurance for purposes of information dissemination only.

For this instance, the acts of displaying, providing, and highlighting information about cyber-insurance is considered a form of information dissemination to improve awareness and knowledge of Tech Co/Tel Co's subscribers about the cyber-insurance products that will be bundled to the latter's products and services.

Thus, it must be noted that, while Tech Co/Tel Co's product may be bundled with cyber-insurance, Philinsure remains as the entity that performs the brokering activities on the insurance products being offered by accredited insurance companies.

With respect to "facilitating payment and collection for cyber-insurance products to the subscribers of the Tech Co/Tel Co", Tech Co/Tel Co, as the master policy holder, may be allowed to facilitate payment and collection for premiums relative thereto, as previously discussed.

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

