



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



Legal Opinion (LO) No.:	2024-01
Date:	15 April 2024

MR. MARK JEROME T. FERNANDEZ, CPA, RFC, AFA, CWP, CEPP
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Aetos Financial Insurance Agency
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Subject: **REQUEST FOR CLARIFICATION ON POSSIBLE VIOLATION OF INSURANCE COMPANY**

Dear Mr. Fernandez:

This has reference to your electronic mail sent to us on 22 February 2024 pertaining to the above subject.

In said correspondence, you inquired if The Insular Life Assurance Company, Ltd. committed any violation on the company's failure to release any dividends in accordance with the pertinent provisions of Section 408 in relation to Section 403 of Republic Act (R.A.) No. 10607 and cited the alleged accumulation of said company's retained earnings for calendar years 2017-2022. Further, you also mentioned that because of the minimal dividend declaration of the insurance company, some policyholders who rely on the dividends to pay their future premiums are constrained to keep paying their traditional life insurance policies because the dividends are not enough to pay future premiums.

THE LEGAL INQUIRIES

From the foregoing, it appears that there are two (2) inquiries that warrant this Commission's opinion, to wit:

1. Whether The Insular Life Assurance Company, Ltd. can also be considered as a Mutual Benefit Association in accordance with the pertinent provisions of R.A. No. 10607; and
2. Whether The Insular Life Assurance Company, Ltd committed a violation of the third paragraph of Section 408 of R.A. No. 10607.

THE INSURANCE COMMISSION'S OPINION

After a careful and meticulous evaluation of the matters involved, this Commission's opinion is as follows:

The first paragraph of Section 403 of R.A. No. 10607 states that:

"SEC. 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." (emphasis supplied)

Further, the pertinent provisions of Republic Act No. 10607¹ also provides for the minimum legal and operational requirements that must be complied with by a corporation to be classified as a mutual benefit association.

On the other hand, "Mutual Insurance Companies are entities that are 'doing an insurance business' within the contemplation of the Insurance Code. A Mutual Insurance Company is a company owned by policyholders. It is designed to promote the welfare of its members and the money collected from among them is solely for their own protection. In a sense, the member is both the insurer and the insured."²

In the inquiry presented, while it is true that the insurance company concerned share some similar basic feature of a Mutual Benefit Association, our records reflect that the aforementioned insurance company amended its Articles of Incorporation and was approved by the Securities and Exchange Commission on 30 June 1987 which converted said company from being a stock corporation to a non-stock mutual life insurer. With this transformation, The Insular Life Assurance Company, Ltd., became a non-stock mutual life insurance company only. Other than the amendment, there are no indicative factors – legal or otherwise - that warrants this Commission to opine that the insurance company concerned intends

¹ See Sections 403-423, Republic Act No. 10607.

² *"ESSENTIALS OF INSURANCE LAW REPUBLIC ACT NO. 10607 WITH NOTES ON PRE-NEED PLANS"*, Aquino, Timoteo B., p. 7, citing Republic vs. Sunlife Insurance Company of Canada, G.R. No. 158085, 14 October 2005 and White Gold Marine Insurance Services, Inc. vs. Pioneer Insurance Surety Corporation, et. al, G.R. No. 154514, 28 July 2005."

to transform, or otherwise convert itself into a mutual benefit association, which have different net worth and operational requirements, including the type of products that it is offering to its members/clients. As indicated and emphasized in the first paragraph of Section 408 of R.A. No. 10607:

“SEC 408. The constitution or bylaws of a mutual benefit association must distinctly state the purpose for which dues and/or assessments are made and collected and the portion thereof which may be used for expenses. xxx xxx” (emphasis supplied)

Emphasis must also be given to the requirement in the first paragraph of Section 404 of R.A. No. 10607 which states that:

“SEC. 404. A mutual benefit association, before it may transact as such, must first secure a license from the Commissioner. The application for such license shall be filed with the Commissioner together with certified true copies of the articles of incorporation or the constitution and bylaws of the association, and all amendments thereto, and such other documents or testimonies as the Commissioner may require.” (emphasis supplied)

From the foregoing provisions alone, it appears that:

1. The Insular Life Assurance Company, Ltd. is NOT listed as a Mutual Benefit Association but was listed as a Life Insurance Company, with a valid and existing Certificate of Authority.

This being the case, we find that despite The Insular Life Assurance Company, Ltd. being a corporation, without capital stock and having some mutual benefit association features, the company's purpose, as stated in its Amended Articles of Incorporation dated 30 June 1987, is not within the ambit of a Mutual Benefit Association. Moreover, The Insular Life Assurance Company, Ltd. is not performing functions and complying with the minimum legal and operational requirements required of a Mutual Benefit Association by applicable and existing laws and regulations.

2. Considering that The Insular Life Assurance Company, Ltd. is a mutual life insurer and NOT a mutual benefit association, it bears stressing that the relationship of the members to the company is **“limited”** as *“some courts have denied that the members of mutual insurance company are bound to share in the losses and are entitled to share in the profits on the basis of partnership, except insofar as the charter or policy provides otherwise. The policyholder is not a partner of the company, but his relationship with the company is one of contract and is measured by the terms thereof.”*³

³ *“THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED”*, De Leon, Hector S., p. 596, citing *Mutual Guaranty F. Ins. Co. vs Barket*, 77 NW 868 and *Brown vs. Stoerkel*, 41 NW 921.”

Thus, this Commission opines that:

1. The Insular Life Assurance Company, Ltd. is not a Mutual Benefit Association; and
2. The Insular Life Assurance Company, Ltd. did not violate the third paragraph of Section 408 of R.A. No. 10607.

Kindly take note that this 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.


REYNALDO A. REGALADO
Insurance Commissioner

