



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



Legal Opinion (LO) No.:	2021-08
Date:	13 April 2021

ATTY. JASMINE CUIZON, CPA

Chief Compliance Officer

RAFI Micro-Finance, Inc. (RMF)

rosemarie.cris.flores@rafi.com

Subject: **LEGAL OPINION ON MICRO-FINANCE NON-
GOVERNMENT ORGANIZATIONS (MFNGO)
OFFERING MICROINSURANCE TO POOR AND
LOW-INCOME INDIVIDUALS WHO ARE NOT ITS
EXISTING CLIENTS/BORROWERS**

This pertains to the above subject contained in the letter dated 11 March 2021 requesting this Commission for a legal opinion and confirmation if an MFNGO, such as RAFI Micro-finance, Inc. (RMF), can offer microinsurance products to poor and low-income individuals who are not its existing clients or borrowers.

As further stated in the aforementioned correspondence, RMF is a non-stock, non-profit organization that provides financial services to the poor and low-income individuals engaged in microenterprise business. It was also averred that RMF provide its clients or borrowers with microinsurance products in partnership with authorized entities licensed by this Commission to engage in insurance business and that these entities offers microinsurance products and with a duly licensed third-party insurance broker.

It was also stated that in order to expand RMF's impact and assistance to more poor and low-income individuals, RMF would like to give access to these microinsurance products to those who are not currently its clients or borrowers. These microinsurance products would still be offered in partnership with authorized microinsurance agents and/or entities.

RMF also stressed, among others, that Rule 5, Section 6 of the Implementing Rules and Regulations (IRR) of Republic Act No. 10693 also provides that an MFNGO "*shall not directly engage in the insurance business. It may only establish partnerships with authorized microinsurance agents and/or entities in the furtherance of its social protection objectives*" and that RMF finds no other limitation in the text of Republic Act No. 10693

and its IRR on the provision by an MFNGO of microinsurance service which consequently makes it appear that the only limitation as regards microinsurance is that this must be offered in partnership with entities authorized by the Insurance Commission to offer microinsurance and that there is no limitation that microinsurance can only be offered to existing clients or borrowers of the MFNGO.

THE LEGAL INQUIRIES

From the foregoing, it appears that RMF adduced two (2) legal inquiries, to wit:

1. Whether or not an MFNGO, like RMF, can partner with a licensed entity by this Commission to offer microinsurance products to other people who are not its members/clients; and
2. Whether or not an MFNGO, like RMF, can offer microinsurance products to the public who are not its members/clients.

THE INSURANCE COMMISSION'S OPINION

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

A. RMF CANNOT OFFER MICROINSURANCE SINCE IT IS NOT AUTHORIZED TO DO SO

At the onset, it bears to stress that microinsurance is, essentially, another kind of insurance product. Being an insurance product, any transaction pertaining thereto is regulated and supervised by this Commission including those who are willing or able to offer it. This is clear and apparent in Section 309 in relation to 2nd paragraph of Section 307 of Republic Act No. 10607 which state that:

*"SEC. 309. Any person who for compensation solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company **or offers** or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance agent is subject."*
(emphasis supplied)

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"SEC. 307. No insurance company doing business in the Philippines, nor any agent thereof, xxx

*No person shall act as an insurance agent or as an insurance broker in the solicitation or procurement of applications for insurance, or receive for services in obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines, **or any agent thereof, without first procuring a license so to act from the Commissioner** xxx (emphasis supplied)*

It is settled that the word "or" in legal hermeneutics is "*disjunctive that expresses an alternative or gives a choice of one among two or more things. The word signifies disassociation and independence of one thing from another thing in an enumeration.*"¹

As gleaned in Section 309, there are different and independent acts that the law included within the purview of the term insurance agent in view of the word "or". It is worthy of emphasis that the word "offer" is explicitly one of them. In applying both Sections 307 and 309, it means that to offer any insurance products is one of the separate acts of an insurance agent and must be licensed first by this Commission before performing any of the aforementioned acts.

This Commission also opines that the aforementioned provision of the law is also applicable and compliments the functions of a microinsurance agent since essentially, a microinsurance agent offers, sells or solicits microinsurance products – a different insurance product – despite the prohibition on not selling regular or traditional insurance products.²

In this situation, there is an inevitable scenario that RMF will do most of the offering of microinsurance products and relay the matter to entities licensed by this Commission if any prospective customers are willing to buy the offered microinsurance product, or perform any acts which substantially equivalent thereto. This scenario is more pressing to consider since this legal inquiry involves a situation with other people who are not RMF's members/clients. Whether it is hypothetical or otherwise, this Commission is of the opinion that it cannot be allowed in view of the aforementioned provision of the law. This Commission also opines that **this scenario will not only violate the law, it will also circumvent this Commission's applicable regulations on licensing of agents and/or brokers for the primary reason that RMF is not a licensed entity authorized to do so.** It will be more legally sound if RMF will leave the act of offering microinsurance policies to other persons who are not its members/clients to the licensed entities since it is one of the primary reasons which they are legally obligated and authorized to perform.

¹ *ROBERT P. GUZMAN vs. COMMISSION ON ELECTIONS, et al.*, G.R. No. 182380, 28 August 2009.

² Paragraph No. 6.2, Insurance Memorandum Circular No. 1-2010 in relation to Paragraph No. 21, a., Circular Letter No. 2015-54

B. RMF CANNOT OFFER MICROINSURANCE TO PERSONS WHO ARE NOT ITS MEMBERS/CLIENTS EVEN IF LICENSED TO BE A MICROINSURANCE AGENT

Since RMF is not a licensed microinsurance agent, it is not indicative that any microfinance institutions or any legitimate entity authorized to engage in microfinance operations is barred from applying before this Commission to be a microinsurance agent for that matter.

Section 6 of Insurance Memorandum Circular (IMC) No. 1-2010 entitled "**REGULATIONS FOR THE PROVISIONS OF MICROINSURANCE PRODUCTS AND SERVICES**" states that:

"6. To facilitate the distribution of microinsurance products, a microinsurance agent/broker shall be licensed by the Insurance Commission.

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6.4. Microfinance institutions or institutions engaged in microfinance operations may apply and be licensed as microinsurance agent, provided that:

6.4.1. A soliciting agent is identified by the institutions; and

6.4.2. **The institution sells microinsurance products only to its microfinance clients.**³ (emphasis supplied)

In applying the above provisions, Microfinance institutions or institutions engaged in microfinance operations, such as RMF, may apply and be licensed as microinsurance agent, provided that:

- a. a soliciting agent is identified, and
- b. **it shall only sell to its microfinance clients.**

On the assumption that RMF applied and was granted a license as a microinsurance agent, **it cannot** offer microinsurance products to other persons who are not its members/clients in view of the clear wordings of IMC No. 1-2010, which thereby addresses the second legal inquiry that calls for this Commission's opinion.

³ Paragraph No. 6.4, IMC No. 1-2010

IN VIEW OF THE FOREGOING, this Commission's opinion is that:

1. RMF cannot partner with a licensed entity by this Commission to offer microinsurance products to other people who are not its members/clients; and
2. RMF cannot offer microinsurance products to other people who are not its members/clients.

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.



DENNIS B. FUNA
Insurance Commissioner

