



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

Circular Letter (CL) No.:	2014-24
Date:	28 May 2014
Supersedes:	None

CIRCULAR LETTER

TO : ALL INSURANCE AND SURETY COMPANIES CONCERNED

SUBJECT : AUTHORITY OF THE INSURANCE COMMISSIONER TO GRANT AUTHORITY TO PRIVATE INSURANCE COMPANIES TO ACT AS SURETIES IN GOVERNMENT TRANSACTIONS

Act No. 536, as amended by Act No. 2206, is the enabling law of corporate suretyship in the Philippines. It is the legal basis for the authority of the President of the Republic of the Philippines to issue corresponding Administrative Orders for surety companies desiring to write bonds in favor of the government. Section 1 of Act No. 536, as amended, provides:

“Section 1. Wherever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, Insular (now National), provincial, municipal, or otherwise, or of any undertaking, or for doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippine Islands or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States or of any State thereof, or any corporation organized under the laws of the Philippine Islands, having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority: *Provided*, That such recognizance, stipulation, bond, or undertaking be approved by the head of Department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any recognizance, stipulation, bond, or undertaking shall exact that it shall be furnished by a guarantee company, or by any particular guarantee company: *Provided further*, That no head of Department, court, judge, officer, board, or body executive, legislative, or judicial shall approve or

accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippine Islands in the manner provided by the provisions of this Act, nor unless such corporations has by contract with the Government of the Philippine Islands been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings: *And provided further,* That the provisions of the following sections of this Act shall not be applicable to such corporations organized under the laws of the Philippine Island." (Emphasis and underscoring supplied)

Pursuant to the above-referred Act 536, as amended, no surety company can issue bonds in favor of the government or become surety upon official recognizances, stipulations, bonds or undertakings without first securing an Administrative Order from the President of the Republic of the Philippines authorizing it to act as such.

However, in Department of Justice (DOJ) Opinion No. 93, Series of 2013, dated 5 December 2013 (hereto attached as Annex "A"), the Secretary of Justice, citing Sections 177 and 437 of the amended Insurance Code (R.A. 10607), opined that-

"XXX Section 1 of R.A. No. 536, as amended, is not explicit that the power to grant the authority belongs exclusively and explicitly to the President. While the President, by long-standing practice, is the one issuing said authority, **the use of the term "Government of the Philippine Islands" can also be interpreted to mean the government office or officer involved in the execution and/or implementation of the law or laws on suretyship.** Under the earlier-quoted provisions of R.A. No. 10607, the suretyship contracts are considered insurance contracts which are within the jurisdiction of the Insurance Commissioner.

Parenthetically, assuming, argumentatively, that the power to issue the subject authority is a presidential power, **there can be no legal or constitutional constraint on the delegation by the President of such authority to the Insurance Commissioner.**" (Emphasis supplied)

In a Letter dated 7 May 2014 of the Deputy Executive Secretary for Legal Affairs of the Office of the President of the Philippines (hereto attached as Annex "B"), it was stated that-

"XXX That the Insurance Commission may grant the authority xxx has been confirmed by the Department of Justice (DOJ) when it issued Opinion No. 93, series of 2013 on 5 December 2013. The DOJ stated that the phrase "Government of the Philippine Islands" in Act No. 536 as amended by Act No. 2206 (as a reference to who may grant the subject authority) can be construed to include the Insurance Commission."

Hence, by virtue of DOJ Opinion No. 93, Series of 2013, dated 5 December 2013 and the Letter dated 7 May 2014 of the Deputy Executive Secretary for Legal Affairs of the Office of the President of the Philippines, the Insurance Commissioner may now grant authority to private insurance companies to act as sureties in government transactions.

Accordingly, the Deputy Insurance Commissioner for Legal Services, together with the Licensing Division, is hereby directed to formulate the rules and guidelines for processing requests and/or applications for the grant of such authority.

For information and guidance.



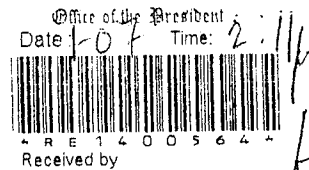
EMMANUEL F. DOOC
Insurance Commissioner

Encl.: A/S



OPINION NO. 92 S, 2012

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila



LML-L-05L13-1439

05 December 2013

Hon. Michael G. Aguinaldo
Deputy Executive Secretary for Legal Affairs
Office of the President
Malacanang, Manila

Dear **DES Aguinaldo**:

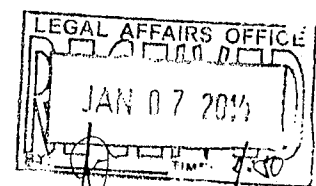
This refers to your follow-up query relative to the interpretation of the provisions of Act No. 536¹, as amended, which was the subject of our opinion/comments dated July 22, 2013 in reply to your Office's queries concerning the grant of authority to private companies to act as sureties in transactions involving government and its agencies.

Specifically, you want to be advised on "whether, apart from an Administrative Order from the President, an authorization from the Insurance Commissioner may xxx satisfy the requirement under Act No. 536, as amended by Act No. 2206, which (pertinently) reads:

'Section 1 x xx **Provided further, That no head of Department xxx shall approve or accept any corporation as surety xxx unless such corporation has, by contract with the Government of the Philippine Islands, been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings.** x xx (Emphasis and underscoring supplied)'

Stated differently, you inquire whether "the phrase 'Government of the Philippine Islands' in the above provision (can) be construed to include the Insurance Commission, such that the authorization may come from the Insurance Commission instead of the Office of the President?"

We resolve the issue in the affirmative.



¹Entitled, "An Act Relative to Recognizances, Stipulations, Bonds, and Undertakings, and to

It is settled that an administrative agency has such powers as are expressly granted to it by law and those necessarily implied in the exercise of its express powers.² Equally settled is the rule that while administrative bodies derive their power from the laws of their creation and that any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds, it has been held that when authority is given by statute to accomplish a stated governmental purpose, there is also given, by implication, authority to do everything necessary to accomplish the purpose that is not a violation of the law or of public policy.³

The provisions of Presidential Decree No. 6124, as further amended by Republic Act No. 10607⁵, pertinently provides, thus:

“SEC. 2. Whenever used in this Code, the following terms shall have their respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

“(a) A *contract of insurance* is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.

“A **contract of suretyship shall be deemed to be an insurance contract, within the meaning of this Code, only if made by a surety who or which, as such, is doing an insurance business as hereinafter provided.**

“(b) The term *doing an insurance business or transacting an insurance business*, within the meaning of this Code, shall include:

XX XX

“(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;**

XXX XXX

“SEC. 177. A **contract of suretyship is an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor**

² See, Laguna Lake Development Authority vs. Court of Appeals, 231 SCRA 292, 306; also, Sec. of Justice Op. No. 106, 66 & 22, s. 2012; No. 46 & 22, s. 2011

³ Sec. of Justice Op. No. 106, s. 2012; No. 59, s. 2011; No. 12, s. 2009; No. 6, s. 2008

⁴ “The Insurance Code”

⁵ Entitled, “An Act Strengthening the Insurance Industry, Further Amending Presidential Decree No. 612, Otherwise Known as ‘The Insurance Code’, as Amended by Presidential Decree Nos. 1141, 1280, 1455, 1460, 1814 and 1981, and Batas Pambansa Blg. 874, and for Other Purposes”

of an obligation or undertaking in favor of a third party called the oblige. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206.

xxx

xxx

"SEC. 437.xxx

"The Insurance Commissioner shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters, xxx are faithfully executed and to perform the duties imposed upon him by this Code, xxx.

xx

xx

"In addition to the foregoing, the Commissioner shall have the following powers and functions:

xx

xx

"(p) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the express powers granted to the Commission to achieve the objectives and purposes of this Code.

xxx

xxx." (Emphasis supplied)

A reading of the above-quoted provisions of the Insurance Code, as further amended by R.A. No. 10607, will evidently show that the Insurance Commissioner, who is mandated to see to it that "all laws relating to insurance, insurance companies and other insurance matters," which necessarily include the laws relating to surety, can issue or grant authority to private companies intending to act as sureties in transactions involving government and its agencies. Such power is clear and categorical enough that there is no room for interpretation. There is only room for application.⁶

This conclusion is strengthened by the fact that Section 1 of R.A. No. 536, as amended, is not explicit that the power to grant the authority belongs exclusively and explicitly to the President. While the President, by long-standing practice, is the one issuing said authority, the use of the term "Government of the Philippine Islands" can also be interpreted to


⁶See, PNB vs. Garcia, 388 SCRA 485, 491; Globe-Mackay Cable and Radio Corp. vs. NLRC, 206 SCRA 701, 711; also, Sec. of Justice Op. No. 105, 94 & 92, s. 2012

mean the government office or officer involved in the execution and/or implementation of the law or laws on suretyship. Under the earlier-quoted provisions of R.A. No. 10607, the suretyship contracts are considered insurance contracts which are within the jurisdiction of the Insurance Commissioner.

Parenthetically, assuming, argumentatively, that the power to issue the subject authority is a presidential power, there can be no legal or constitutional constraint on the delegation by the President of such authority to the Insurance Commissioner.

Please be advised accordingly.

Very truly yours,

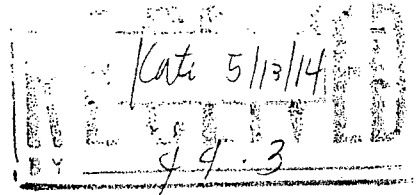

LEILA M. DE LIMA
Secretary

Department of Justice
CN : 0201312464





Office of the President
of the Philippines
Malacañang



7 May 2014

HON. EMMANUEL F. DOOC
Insurance Commissioner
1071 United Nations Ave.
Ermita, Manila

**SUBJECT: AUTHORIZATION OF PRIVATE COMPANIES TO ACT
AS SURETIES IN GOVERNMENT TRANSACTIONS**

Dear Commissioner Dooc,

This pertains to your letter dated 25 March 2014 through which you returned the applications of Milestone Guaranty and Assurance Corporation (Milestone) and Asia United Insurance, Inc. (Asia United) to be sureties in transactions involving the government.

This Office's indorsement of the applications of Milestone and Asia to the Insurance Commissioner was an implementation of the new policy set forth by the Executive Secretary in a letter to your office dated 3 March 2014. We note that on 24 March 2014, you replied to that letter and accepted his instruction with appreciation and full responsibility.

That the Insurance Commission may grant the authority requested by Milestone and Asia United has been confirmed by the Department of Justice (DOJ) when it issued Opinion No. 93, series of 2013 on 5 December 2013. The DOJ stated that the phrase "Government of the Philippine Islands" in Act No. 536¹ as amended by Act No. 2206 (as a reference to who may grant the subject authority) can be construed to include the Insurance Commission. A copy of the aforementioned Opinion is attached for your reference.

We are therefore referring the applications of Milestone and Asia United back to the Insurance Commissioner for his consideration and appropriate action.

Sincerely,

MICHAEL G. AGUINALDO
Deputy Executive Secretary
for Legal Affairs

Copy for:

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Milestone Guaranty & Assurance Corp.
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MR. HERMINIO P. VILLAMAYOR, JR.
Senior Vice-President
Asia United Insurance, Inc.
Room 777, 7th Floor BPI Condominium
Plaza Cervantes
Binondo, Manila

¹ AN ACT RELATIVE TO RECOGNIZANCES, STIPULATIONS, BONDS, AND UNDERTAKINGS, AND TO ALLOW CERTAIN CORPORATIONS TO BE ACCEPTED AS SURETY THEREON