



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



Legal Opinion No.:	LO-2017-01
Date:	MAY 18, 2017

MR. AUGUSTO P. HIDALGO
President & Chief Executive Officer (CEO)
NATIONAL REINSURANCE CORPORATION
OF THE PHILIPPINES
31st Floor, Ayala Life-FGU Center,
6811 Ayala Avenue, Makati City.

SUBJECT: Amendment of Articles of Incorporation of a Reinsurance Company to add a Secondary Purpose.

Dear Mr. Hidalgo,

This pertains to NRCP's letter dated April 17, 2017 requesting for a legal opinion as to whether NRCP may amend its articles of incorporation in order to add the following activity among its secondary purposes, to wit:

To provide consulting, technical, advisory, and other related services to persons, associations, corporation, and other entities in furtherance of the business of insurance and reinsurance.

Based on the aforementioned letter, you further stated that the particular services that NRCP seeks to provide are:

- a. Rendering assistance in the determination of gross premium valuation on reserves in relation to the compliance with the reserving and RBC2 regulatory requirements;
- b. Consultancy services in relation to disaster or catastrophe insurance;
- c. Rendering advice on Philippine insurance market trends and regulation; and
- d. Provide market portfolios and claims data for use in validation of modeled loss outputs.

You also pointed out that foreign reinsurance companies are already engaged in providing value-added consultancy, technical, and advisory services to its clients alongside reinsurance capacity support, which also includes, actuarial services for reinsurance support, claims services, dynamic reinsurance analysis, client training programs, and accounting services.

Please be advised that the Amended Insurance Code is silent as to whether or not an insurance company or reinsurance company is allowed to undertake an additional line of business under its secondary purpose. Thus, there is a

need to review and apply the provisions of the general law governing corporations which is the Corporation Code of the Philippines and existing jurisprudence.

Section 36 of the Corporation Code of the Philippines, enumerates the express powers of a corporation, to wit:

"Section 36. Corporate powers and capacity. - Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;
3. To adopt and use a corporate seal;
4. To amend its articles of incorporation in accordance with the provisions of this Code;
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code;
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;
7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
8. To enter into merger or consolidation with other corporations as provided in this Code;
9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;
10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees; and
11. **To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.** (*emphasis supplied*)

Aside from express powers, the law has recognized implied and incidental powers of a corporation. Implied powers include all powers that are reasonably necessary or proper for the execution of the powers expressly granted and are not expressly implied or excluded.⁵ The implied power of a corporation is recognized under par.11 of the above-quoted provision. On the other hand, incidental powers are powers that are deemed conferred on the corporation because they are incidental to the existence of the corporation.⁶

⁵ Timoteo B. Aquino, Philippine Corporate Law Compendium, 2006 Edition, p. 206.

⁶ Timoteo B. Aquino, Philippine Corporate Law Compendium, 2006 Edition, p. 207.

These are deemed given by the very reason of a corporation's existence as a juridical person.

To illustrate, in a case decided by the Supreme Court of the Philippines, it was held that a corporation that is engaged in mining has power to establish a local post office. The Court further held that, "the establishment of a post office is a reasonable and proper adjunct to the conduct of the business of the company. Indeed, such post office is a vital improvement in the living condition of its employees and laborers who came to settle in its mining camp which is far removed from the postal facilities or means of communication accorded to people living in a city or municipality."⁷

In the present case, a review of NRCP's primary purposes would show that aside from being authorized to engage in and carry on the business of reinsurance, the NRCP is also authorized to perform any and all acts necessary to carry out the objectives of Presidential Decree No. 1720 (P.D. No. 1720).⁸ As pointed out in your letter, one of the objectives of P.D. No. 1720 is to provide a well-coordinated and efficient machinery in reinsurance.

Thus, NRCP's proposed additional activity under its secondary purpose of providing consulting, technical, advisory, and other related services in furtherance of the business of insurance and reinsurance can be recognized as a valid exercise of its implied power that is reasonably necessary to carry out its purpose of achieving the objectives of P.D. No. 1720 one of which is providing a well-coordinated and efficient machinery in reinsurance.

However, it must be pointed out that any amendment of the articles of incorporation of an insurance company must be accompanied by a favorable recommendation of the Insurance Commission as provided under Section 17 of the Corporation Code of the Philippines.

Thus, as long as NRCP complies with the requirements under Section 17 of the Corporation Code of the Philippines, there is no legal reason to prohibit the amendment of NRCP's articles of incorporation.

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

For your information and guidance.



DENNIS B. FUNA
Insurance Commissioner

⁷ Republic of the Philippines vs. Acoje Mining Company, Inc., G.R. No. L-18062, February 28, 1963.

⁸ Authorizing the Organization and Licensing of Professional Reinsurer to Be Known As The National Reinsurance Corporation of the Philippines and Designating The Said Corporation As the National Institution That Will Subscribe to The Capital Stock of the Asian Reinsurance Corporation.