



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



Legal Opinion (L.O.) No.	2024-02
Date:	12 July 2024

PUYAT JACINTO & SANTOS LAW FIRM

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ATTN.: **Atty. Shirley G. Velasquez-Viray**
 Atty. Jeric Angelo B. Galon
 Puyat Jacinto & Santos Law Firm

SUBJECT: **Clarification on Applicability of Requirement of Prior Approval of the Insurance Commission Circular Letter (“CL”) No. 2017-58 on Change of Control**

Dear Sirs and Mesdames:

This refers to your letter dated 6 May 2024 where you requested confirmation that prior approval from this Commission, pursuant to Circular Letter No. 2017-58 on the “*Guidelines on the Approval of Acquisition of Control of Health Maintenance Organizations*” (“Circular Letter”), is not applicable to the offshore acquisition of a foreign company which has indirect control over two (2) domestic Health Maintenance Organizations (“HMOs”).

This Commission understands from said letter and the discussions during the 20 June 2024 virtual meeting that:

1. Your client, a foreign corporation (the “Acquirer”) intends to acquire approximately 51% of the capital of a private Singaporean company (the “Target Company”) by purchasing existing shares held by a Cayman Island company (the “Seller”) in the Target Company (the “Proposed Transaction”);
2. The Target Company is a parent company of an intermediate Singaporean holding company, which, in turn, holds 100% of the shares of a Philippine holding company; and
3. The Philippine holding company owns 60% equity of two (2) Philippine HMOs.

4. As a consequence of the Proposed Transaction, the effective interest of the Acquirer in the Philippine HMOs is only 30.6%, or 51% of the 60% interest of the Philippine holding company, as held through the Target Company and the intermediate Singaporean holding company.

Section 1 of the subject Circular Letter, which defined “control”, reads:

“These Guidelines provide for the procedure and documentary requirements for the approval of acquisition of control of any Health Maintenance Organization (HMO).

*For purposes of these Guidelines, the term ‘control’ shall mean the possession directly or **indirectly** of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial contract for goods or non-management services or otherwise, as defined, by pertinent decisions of the Supreme Court.” [Emphasis supplied.]*

At the onset, it bears to emphasize from said definition that the application of the subject Circular Letter does not depend on whether the proposed transaction occurs locally or offshore but whether the same results in the acquisition of control, directly or indirectly, of an HMO organized under Philippine laws.

In the absence of legislation directly pertaining to the regulation of HMOs, this Commission, at this juncture, hereby applies by analogy and in a suppletory character Section 290 (b) of the Insurance Code of the Philippines, as amended by Republic Act No. 10607 (“Amended Insurance Code”), on the matter of the presumption on the existence of control. This is considering that HMOs and insurance companies “*function under a common concept of receiving compensation, either through premiums or contributions, and in turn, promise certain contractual benefits in the future*¹”.

Section 290 (b) of the Amended Insurance Code provides, viz:

*“(b) Control, including the terms controlling, controlled by and under common control with, means the possession directly or **indirectly** of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by a contract other than a commercial contract for goods or non-management services or otherwise. Subject to Section 292, **control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote forty percent (40%) or more of the voting securities of any other person: Provided, That no person shall be deemed to control another person solely by reason of his being an officer or director of such other person.**” [Emphasis supplied.]*

It is important to distinguish between ownership and control in this context. Ownership refers to holding a specific percentage of shares or equity in a company, while control pertains to the ability to influence or direct the management and policies of that company. Even if the Acquirer owns only 30.6% of the Philippine HMOs, the

¹ Fifth (5th) Whereas Clause of Executive Order No. 192, Series of 2015.

control aspect is determined by their ability to direct or cause the direction of the management and policies through their majority ownership in the holding company.

The acquiring company will have control over the HMOs because, by owning 51% of the Philippine holding company, it gains the majority interest and the corresponding power to influence or dictate decisions at the holding company level. This control cascades down to the HMOs since the holding company owns 60% of each HMO. Therefore, the Acquirer's ability to direct the management and policies of the holding company extends to the HMOs, resulting in effective control, albeit **indirect**, over them despite not owning a majority percentage directly in the HMOs.

In view of the foregoing considerations, this Commission opines that the proposed transaction effectively results in indirect control over the two (2) domestic HMOs. Consequently, pursuant to Circular Letter No. 2017-58, which mandates prior approval for any acquisition of control over HMOs, this transaction necessitates this Commission's prior approval.

For your information and guidance.

Thank you very much.

Very truly yours,


REYNALDO A. REGALADO
Insurance Commissioner

