

Sec. 175. A contract of suretyship is an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee. 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.

Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. (As amended by Presidential

Decree No. 1455).

Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety: Provided, That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond:

Provided, however, That if the non-acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected.

In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

Sec. 178. Pertinent provisions of the Civil Code of the Philippines shall be applied in a suppletory character whenever necessary in interpreting the provisions of a contract of suretyship.

## **SURETYSHIP**

By suretyship a person known as surety binds himself solidarily to the creditor to fulfill the obligation of the principal debtor.

Sec. 175. A contract of suretyship is an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee. 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.

## **DISTINGUISHED FROM INSURANCE CONTRACTS**

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May be entered into as an isolated transaction. If a person is engaged in the business of acting as surety then that person is engaged in insurance business.

SURETYSRIP	INSURANCE
Three Parties. Principal, Obligee, and surety.	Two parties, Insurer and insured
The surety, in theory expects no loss	Insurer expects loss to occur and in some cases, the loss is a certainty
Surety has right of reimbursement	Does not have the right of reimbursement
Surety Guarantees qualities that are within the control of the insured, that is the insured's Character, honesty and integrity to perform the obligation	Insurance covers losses that are beyond the control of the insured

### THREE C's

Before the issuance of a bond, the surety undertakes investigations, to determine if the principal can and will perform its obligations.

1. **Character** - If the principal indicates that he is of good character and that he will be faithful to the obligation or to the trust reposed on him. Does

the bond applicant possess the traits of integrity, reliability and leadership to drive necessary to accomplish goals in spite of difficulties?

2. **Capacity** - The surety will determine if the principal has the necessary, skill, experience and knowledge essential to the performance of the obligation. Does the bond applicant have the technical or professional ability to meet commitments necessary to perform the obligation to be carried out
3. **Capital** - If the principal is financially capable of performing the obligation. Does the principal have sufficient resources, financial strength, and credit standing to perform the obligation to be secured by the bond?

### DISTINGUISHED FROM GUARANTY

SURETY	GUARANTY
Surety insures the debt	Guarantor insures solvency of debtor
Surety is primarily liable	Guarantor secondary liable
Not entitled to benefit of excussion	Entitled to benefit of excussion.

### PARTIES

1. **Principal** - Is the person whose obligation is secured by the bond or suretyship. Person who agrees to perform certain acts
2. **Obligee** - is the person in whose favor the bond is issued or the undertaking of the surety

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is made. He will be paid or reimbursed if the principal fails to perform his obligation. In relation to the obligation of the principal and the surety, the obligee is the creditor or the active subject

3. **Surety** - is the party who answers for the debt, default or obligation of the principal. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount fixed in the agreement. Undertakes that the debt shall be paid and this undertaking is in the form of a bond most of the time.

## PREMIUM

The surety may be liable even if the bond is already accepted by the obligee. An accepted bond is valid and binding whether or not the premium has been paid by the principal.

Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. **No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety:**

Provided, That if the contract of

suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond: Provided, however, That if the non-acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected.

In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent

jurisdiction, as the case may be.

## INTERPRETATION.

Obligation of surety is strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and obligee. Surety may bind himself for less but not for more than the principal both as regards the amount and the onerous nature of the conditions. The liability of the surety cannot be extended by implication.

- NCC. Suretyship not effective without a valid obligation. But may guarantee a voidable or unenforceable contract.
- Pertinent provisions of the NCC shall be applied suppletorily whenever necessary in

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- interpreting the provisions of a contract of suretyship.
- Also a contract of adhesion. Suretyship agreements or bonds must be construed strictly against surety.
- Cannot be presumed, and must be express and cannot be extended to what is stipulated.
- Strict interpretation must be limited to gratuitous guarantees. "There is no reason for favoring those who make guaranty a profession and who charge premiums for the risk they run, besides demanding a counter guaranty that protects them from all loss.

**KINDS OF BONDS.** Traditional. Fidelity Bonds and Surety Bonds.

**Fidelity Bond-** Bond that answers for the loss of an employer who is the obligee for the dishonesty of the employee.

**Surety Bond** - may further be classified as

1. **Contract bond** - Guarantees contractual obligations
  - a. **Bid bond** - Assurance of owner of project the good faith of the bidder and that the bidder will enter into a contract with the project owner should his proposal be accepted.
  - b. **Performance bond** - Secures, that the contractor will faithfully comply with the requirements of the

contract awarded to the contractor and make good damages sustained by the project owner in case of contractor's failure to do so.

- c. **Payment bond** - Secures that the payments of bills for the labor and materials used in building a project
- d. **Maintenance bond** - Bond answers for breach of warranties in a building project, the principal agrees to correct poor workmanship and to replace defective materials.
2. **Legal bonds** - Bonds submitted in virtue of a provision of law. Includes license and permit bonds imposed by law to guarantee that the persons concerned will comply with the provisions of the license or permit issued. Bond with POEA.
3. **Judicial Bonds** - Issued by virtue of judicial orders and or pursuant to RoC. Eg.
  - a. **Replevin**
  - b. **Injunction**
  - c. **Attachment bond**
  - d. **Supersedeas in ejection**
  - e. **Administrator's bond**
  - f. **Bail bond**
4. **Classification of the insurance commission**
  - a. **Judicial Civil Bonds**
  - b. **Judicial Criminal Bonds**
  - c. **Firearms bonds**

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- d. Internal Revenue Bonds,**
- e. Customs Bonds**
- f. Guaranty Bonds,**
- g. Fidelity Bonds**
- h. Promissory Notes,**
- i. Immigration bonds.**

## **CONTINUING SURETY**

By executing such agreement, the principal places itself in a position to enter into the projected series of transaction with its creditor with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.

“In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.” Sec. 177.

## **REIMBURSEMENT.**

A surety to who paid the oblige can recover what he paid from the principal. Usually covered by a separate **INDEMNITY AGREEMENT** signed by the principal in favor of the surety whereby the principal expressly agrees to reimburse the surety whatever amount that it will be required to pay the obligee.

**IA** May provide indemnity against payment or indemnity against liability. Parties may recover upon actual payment or the moment the liability to principal attaches.

**IA** includes signature of another person who makes himself solidarily liable with the principal. In corporations. Signed by officers, or the Joint and Solidary Signature of the Officer (JSS) or the signature of the co-indemnitor.

For the protection of insurer, it is more prudent to obtain a security for the performance of the obligation like a mortgage.

**Extinguishment.** Obligation of surety is extinguished at the same time as that of the principal and for some causes as all other obligations.

Suretyship is extinguished if there is material alteration of the principal obligation. For example an extension granted to the debtor by the creditor without the consent of the surety extinguishes the surety.

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## **REGULATION OF INSURANCE BUSINESS**

### **SOURCES OF REGULATION**

1. Law or statute
2. Administrative regulation
3. Court decisions

Primary source- insurance code.

Others in administrative regulations issued by insurance commissioner, with administrative authority who is vested under the insurance code with the power to regulate insurers and the business of insurance.

### **REASONS AND BASES OF REGULATION**

1. It is necessary to maintain the solvency of insurers
2. Consumer information is inadequate
3. It is necessary to insure reasonable rates
4. It is necessary to make insurance available to all persons who need insurance coverage
5. It is necessary to ensure that the practice of insurance is ethical and competent.

### **AREAS OF REGULATION**

1. Formation of insurers
2. Licensing of insurers
3. Financial regulation
4. Rate regulation
5. Policy forms regulation
6. Licensing of other persons involved in insurance business including agents, brokers, underwriters, adjusters, actuaries and the like
7. Regulation of sales practices and consumer protection

### **FORMATION AND LICENSING OF INSURERS.**

Sec. 184. For purposes of this Code, the term "insurer" or "insurance company" shall include all individuals, partnerships, associations, or

corporations, including government-owned or controlled corporations or entities, engaged as principals in the insurance business, excepting mutual benefit associations. Unless the context otherwise requires, the terms shall also include professional reinsurers defined in section two hundred eighty. "Domestic company" shall include companies formed, organized or existing under the laws of the Philippines. "Foreign company" when used without limitation shall include companies formed, organized, or existing under any laws other than those of the Philippines.

Sec. 185. Corporations formed or organized to save any person or persons or other corporations harmless from loss, damage, or liability arising from any unknown or future or contingent event, or to

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indemnify or to compensate any person or persons or other corporations for any such loss, damage, or liability, or to guarantee the performance of or compliance with contractual obligations or the payment of debt of others shall be known as "insurance corporations".

**APPLICABLE LAW.** With respect to corporations. The provisions of the Corporation Code apply unless the provisions of the Insurance Code provides otherwise.

### **BASIC REQUIREMENTS**

1. Insurance corp. must possess the capital and assets required of an insurance corporation doing the same kind of business in the Philippines and invested in the same manner and the Insurance Commissioner had granted a certificate to that effect
2. It must have obtained a certificate of authority to transact business from the insurance commissioner.

### **WHEN ISSUANCE OF CERTIFICATE CAN BE REFUSED.**

**Sec. 187. No insurance company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner**

**upon application therefor and payment by the company concerned of the fees hereinafter prescribed.**

**The Commissioner may refuse to issue a certificate of authority to any insurance company if, in his judgment, such refusal will best promote the interest of the people of this country. No such certificate of authority shall be granted to any such company until the Commissioner shall have satisfied himself by such examination as he may make and such evidence as he may require that such company is qualified by the laws of the Philippines to transact business therein, that the grant of such authority**

**appears to be justified in the light of economic requirements, and that the direction and administration, as well as the integrity and responsibility of the organizers and administrators, the financial organization and the amount of capital, notwithstanding the provisions of section one hundred eighty-eight, reasonably assure the safety of the interests of the policyholders and the public.**

**In order to maintain the quality of the management of the insurance companies and afford better protection to policyholders and the public in general, any person of good moral character, unquestioned integrity and recognized competence may be elected or appointed director or**

**officer of insurance companies. The Commissioner shall prescribe the qualifications of the executive officers and other key officials of insurance companies for purposes of this section.**

**No person shall concurrently be a director and/or officer of an insurance company and an adjustment company.**

**Incumbent directors and/or officers affected by the above provisions are hereby allowed to hold on to their positions until the end of their terms or two years from the effectivity of this decree, whichever is shorter.**

**Before issuing such certificate of authority, the Commissioner must be satisfied that the name of the company is not that of any other known company transacting a similar business in the Philippines, or a name so similar as to be calculated to mislead the public.**

**Such certificate of authority shall expire on the last day of June of each year and shall be renewed annually if the company is continuing to comply with the provisions of this Code or the circulars, instructions, rulings or decisions of the Commissioner. Every company receiving any such certificates of authority shall be subject to the provisions of this Code and other related laws and to the jurisdiction and supervision of the Commissioner.**

**No insurance company may be authorized to transact in the Philippines the business of life and non-life insurance concurrently unless specifically authorized to do so: Provided, That the terms "life" and "non-life" insurance shall be deemed to include health, accident and disability insurance.**

**No insurance company shall have equity in an adjustment company and neither shall an adjustment company have an equity in an insurance company.**

**Insurance companies and adjustment companies presently affected by the above provision shall have two years from the effectivity of this Decree within which to divest of their stockholdings. (As amended by Presidential Decree No. 1455).**

1. Refusal will best promote the interest of the people
2. Commissioner has not satisfied himself upon examination that such company is qualified by the laws of the Philippines to transact business therein
3. Commissioner is not satisfied that the grant of such authority appears to be justified in the light of economic requirements

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4. If commissioner not satisfied that the direction and administration as well as the integrity and responsibility of organizers and administrators, the financial organization and amount of capital, reasonably assure the safety of the interests of the policy holders and the public
5. If the commissioner not satisfied, that the name of the company is not that of any other known company transacting a similar business in the Philippines, or name may mislead the public

Sec. 188. Except as provided in section two hundred eighty-one, no domestic insurance company shall, in a stock corporation, engage in business in the Philippines unless possessed of a paid-up capital stock equal to at least five million pesos: Provided, That a domestic insurance company already doing business in the Philippines with a paid-up capital stock which is less than five million pesos shall have a paid-up capital stock of at least three million pesos by December thirty-one, nineteen hundred seventy-eight, four million pesos by December thirty-one, nineteen hundred seventy-nine and five million pesos by December thirty-one, nineteen hundred eighty: Provided, further, that the Secretary of Finance may, upon recommendation of the Insurance Commissioner, increase such minimum paid-up capital stock requirement, under such terms and conditions as he may impose, to an amount which, in his

opinion, would reasonably assure the safety of the interests of the policyholders and the public. chanroblles virtual law library

The Commissioner may, as a pre-licensing requirement of a new insurance company, in addition to the paid-up capital stock, require the stockholders to pay in cash to the company in proportion to their subscription interests a contributed surplus fund of not less than one million pesos, in the case of a life insurance company, or not less than five hundred thousand pesos, in the case of an insurance company other than life. He may also require such company to submit to him a business plan showing the company's estimated receipts and disbursements, as well as the basis therefor, for the next succeeding three years.

If organized as a mutual company, in lieu of such capital stock, it must have available cash assets of at least five million pesos above all liabilities for losses reported, expenses, taxes, legal reserve, and reinsurance of all outstanding risks, and the contributed surplus fund equal to the amounts required of stock corporations. A stock insurance company doing business in the Philippines may, subject to the pertinent law and regulations which now are of hereafter may be in force, alter its organization and transform itself into a mutual insurance company.

**CAPITALIZATION REQUIREMENTS>  
As of July 1, 2006 by the dept of  
finance**

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1. No new life or non-life insurance company shall be allowed to do business in the Philippines unless it has a capitalization of ONE BILLION PESOS. Paid in cash, of which at least fifty percent consists of paid up capital and the remaining portion therof as contributed surplus which in no case shall be less than TWO HUNDRED MILLION.
2. No new REINSURANCE Company shall be allowed to do business in the Philippines, unless it has a capitalization of TWO BILLION PESOS, paid in cash, of which at least fifty percent consists of paid up capital, and the remaining portion therof as contributed surplus which in no case shall be less than FOUR HUNDRED MILLION.

**For existing company.** Increased the minimum capitalization because the current requirements are inadequate relative to

1. The needed business infrastructures and quality management team that will ensure better service to all stakeholders
2. Adequate allowance for increased business volatility and for mitigating market imperfection.

**OTHER ASPECT OF CROPORATE ORGANIZATION.** Other areas regulated by IC.

1. Consolidation and merger of insurance companies
2. Suspension and revocation of certificate of authority
3. Mutualization of stock life insurance companies
4. Reinsurance transactions and professional reinsurers
5. Holding companies.

**FOREIGN COMPANIES.** Companies formed under any laws other than those of the Philippines. There must be an appointment of a resident agent of the foreign company, who will receive summons and legal processes in connection with actions and other legal proceedings.

**FINANCIAL REGULATIONS.** Financial regulations are imposed on insurance companies to help maintain the healthy financial status of the companies. They will help government because insurance companies are also financial intermediaries.

**Asymmetric information and adverse selection.**

Asymmetric information arises when one of the parties has insufficient knowledge about the other party in the contract that makes it impossible to make the correct decision before entering into the contract. One of the problems involved in this is that when there is asymmetric information, there is "adverse selection" under which a person who is more likely to be unreliable is the more likely to seek out the transaction.

**MARGIN OF SOLVENCY.** This margin of insolvency of insurance corporations shall be an excess of the value of its admitted assets exclusive of its paid up capital, in the case of a domestic company, or an excess of the value of its admitted assets in the Philippines.

**ADMITTED ASSETS.** Admitted assets are assets that are allowed by the law to be part of assets that will be part of the bases in determining the financial conditions of the insurance company. Non-admitted assets are the assets that will not be allowed to be carried on the balance sheet of the insurance company. They are believed to be of marginal quality or of little liquidity for policy holders if the insurer should get into financial difficulty.

**DIVIDEND POLICY>** The insurance code prohibits the declaration or distribution of dividends if the following are impaired

1. The entire paid up capital stock
2. The margin of solvency
3. In the case of life insurance corporation, the legal reserve fund.
4. In the case of corporations other than life, the legal reserve fund
5. A sum sufficient to pay all net losses reported, or in the course of settlement, and all liabilities for expenses and taxes.

**INVESTMENTS.** The type, nature and amounts of investments of insurance companies are likewise regulated. The Insurance Code provides for limitations on

1. Loans and security therefor
2. Purchase or ownership of assets
3. Purchase or ownership of securities includes bonds.

### **Reportorial requirement.**

**Sec. 209. It shall be the duty of the officers of the insurance company to report within the first fifteen days of every month all such investments as may be made by them during the preceding month, and the Commissioner may, if such investments or any of them seem injudicious to him, require the sale or disposal of the same. The report shall also include a list of investments sold or disposed of by the company during the same period.**

### **RESERVES**

Not equivalent to surplus but is in fact obligations to the insured.

1. In life insurance, reserve is the amount that, together with future premiums, interests and benefit of the survivorship, will be sufficient, according to valuation assumptions, to pay future claims. Under the insurance code, all valuations of policies are made upon net premium basis. The aggregate net value so ascertained of the policies of the company shall be deemed its reserve liability which shall be provided for by holding funds in secure investments equal to such net value.

2. In non life insurance. The insurance code provides that, every non-life insurance company must maintain a reserve for unearned premiums on its policies that are in force which shall be charged as a liability for the determination of its financial condition.

## EXAMINATIONS AND REPORTS

1. Insurance companies are required to have its books records and accounts readily examined by the insurance commissioner to determine solvency. Examination shall be done atleast once a year and when public interest so demands
2. IC also provides that insurance companies are required to submit annual statements

## LIMIT OF SINGLE RISK.

**Sec. 215. No insurance company other than life, whether foreign or domestic, shall retain any risk on any one subject of insurance in an amount exceeding twenty per centum of its net worth.** For purposes of this section, the term "subject of insurance" shall include all properties or risks insured by the same insurer that customarily are considered by non-life company underwriters to be subject to loss or damage from the same occurrence of any hazard insured against.

Reinsurance ceded as authorized under the succeeding title shall be

deducted in determining the risk retained. As to surety risk, deduction shall also be made of the amount assumed by any other company authorized to transact surety business and the value of any security mortgage, pledged, or held subject to the surety's control and for the

## SECURITY DEPOSIT

Sec. 203. Every domestic insurance company shall, to the extent of an amount equal in value to twenty-five per centum of the minimum paid-up capital required under section one hundred eighty-eight, invest its funds only in securities, satisfactory to the Commissioner, consisting of bonds or other evidences of debt of the

Government of the Philippines or its political subdivisions or instrumentalities, or of government-owned or controlled corporations and entities, including the Central Bank of the Philippines: Provided, That such investments shall at all times be maintained free from any lien or encumbrance; and Provided, further, That such securities shall be deposited with and held by the Commissioner for the faithful performance by the depositing insurer of all its obligations under its insurance contracts. The provisions of section one hundred ninety-two shall, so far as practicable, apply to the securities deposited under this section.

Except as otherwise provided in this Code, no judgment creditor or other claimant shall have the right to levy upon any of the securities of the

insurer held on deposit under this section or held on deposit pursuant to the requirement of the Commissioner. (As amended by Presidential Decree No. 1455).

Security deposit shall be.

1. Answerable for all obligation of the insurer under all insurance contracts
2. At all times free from any liens or encumbrance
3. Exempt from levy by any claimant.

### **Republic V. Delmonte motors.**

Individual policy holder cannot garnish the security deposit to satisfy his claim against the insurer on his policy. To allow the garnishment of that deposit would impair the fund by decreasing it

to less than the percentage of paid-up capital that the law requires to be maintained. Garnishment would also create a preference of credit over the other policy holders and beneficiaries.

**Absent insolvency proceedings, the individual insured's interest on the security deposit is merely inchoate. Being an expectancy, it has not attribute to property.**

### **CORPORATIONS IN DISTRESS.**

Corporations in distress may be placed in conservatorship, receivership, or may be ultimately dissolved and liquidated.

### **CONSERVATORSHIP.**

Conservator, may be appointed if at any time, before, or after, the suspension or revocation of the

certificate of authority of an insurance company, the insurance commissioner finds that such company is in a state of continuing inability or unwillingness to maintain the condition of solvency or liquidity deemed adequate to protect the

interests of policy holders and creditors. Insurance company is facing financial difficulties which requires the appointment of a conservator to take charge of its assets liabilities and management aimed at preserving its assets and restoring its viability as a going business enterprise.

Under Sec 248 of the IC, conservatorship is in the nature of rehabilitation proceedings

### **POWERS OF A CONSERVATOR.**

1. Take charge the assets, liabilities, and the management of the company
2. Collect all moneys and debts due said company
3. Exercise all powers necessary to preserve the assets of said company and restore viability
4. Reorganize the management of the company
5. Overrule or revoke the actions of the previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or by-laws of the company, to the contrary notwithstanding
6. Other powers as the commissioner shall deem necessary.

Retention of personnel is one of the powers of the conservator. Cost-saving device to protect policy holders.

## **Qualifications and Remunerations**

**of Conservator** may be another insurance company doing business in the Philippines, by officer or officers of such company, or other competent and qualified persons, firms or corporations. Remunerations are borne by the insurance company under conservatorship.

### **Free and Harmless Clause.**

Conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith and in the exercise or in connection with the exercise of the powers conferred on the conservator. Does not preclude suit, but applies only with reference to acts done or left undone in good faith by the receiver or conservator in discharge of his functions.

Sec. 248. If at any time before, or after, the suspension or revocation of the certificate of authority of an insurance company as provided in the preceding title, the Commissioner finds that such company is in a state of continuing inability or unwillingness to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policy holders and creditors, he may appoint a conservator to take charge the assets, liabilities, and the management of

such company, collect all moneys and debts due said company and exercise all powers necessary to preserve the assets of said company, reorganize the management thereof, and restore its viability. The said conservator shall have the power to overrule or revoke

~~the actions of the previous~~ management of the ~~previous~~ directors of the said company, any provision of law, or of the articles of incorporation or by-laws of the company, to the contrary notwithstanding, and such other powers as the Commissioner shall deem necessary.

The conservator may be another insurance company doing business in the Philippines, by officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the insurance company concerned.

The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

The conservator appointed shall report and be responsible to the Commissioner until such time as the Commissioner is satisfied that the insurance company can continue to operate on its own and the conservatorship shall likewise be terminated should be Commissioner, on the basis of the report of the

conservator or of his own findings, determine that the continuance in business of the insurance company would be hazardous to policy holders and creditors, in which case the provisions of Title 15 shall apply.

## RECEIVERSHIP

Proceedings on insolvency applies under these cases.

1. The condition of any insurance company doing business in the Phil is one of insolvency. Insolvency shall mean the inability of an insurance company to pay its lawful obligations as they fall due in the usual and ordinary course of business as may be shown by its failure to maintain the margin of solvency.
2. The continuance in business of the insurance company would be hazardous to its policy holders and creditors.

### **Actions of the Commissioner.**

1. Order the company to cease and desist from transacting business in the Philippines and designate a receiver
2. Within 30 days from appointment of a receiver, to determine whether the insurance company may be reorganized or otherwise placed in such condition so that it may be permitted to resume business with safety of its policy holders and creditors.

3. If the insurance company is determined to be insolvent or cannot resume business with safety of policy holders, have the company liquidated.
4. Appoint a liquidator.

### **Powers of receiver**

1. Take charge of assets and liabilities
2. Collect and gather all the assets and administer the same for the benefit of its policy holders and creditors.
3. Exercise all powers necessary for the preceding purposes including but not limited to bringing suits and foreclosing mortgages in the name of the insurance company.

### **Functions of the Liquidator**

1. Take over the functions of receiver previously designated.
2. Reinsure all the outstanding policies of the company
3. Convert the assets of the insurance company to cash, or sell, assign or otherwise dispose of the same to the policyholders, creditors and other parties for the purpose of settling the liabilities or paying the debts of such company
4. Institute actions in the name of the company as may be necessary in the appropriate Court to collect and recover accounts and assets of the insurance company
5. To do such other acts as may be necessary to complete the

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liquidation as ordered by the commissioner.

### **Binding effects of the actions of the commissioner.**

Actions of the commissioner shall be final and executor and can be set aside by the court upon petition of the

**COMPANY ONLY IF THERE IS THE ACTION IS PLAINLY ARBITRARY AND MADE IN BAD FAITH.**

### **CAPITALIZATION**

1. Non-life insurance companies, may not be rehab. Unless net worth is One BILLION. Atleast fifty percent consists of paid up capital and remaining portion shall be contributed surplus which shall not be less than 200 million
2. Reinsurance – 2 Billion, 400 Million

### **RATE REGULATION**

Sec. 339. Every organization which now exists or which may hereafter be formed for the purpose of making rates to be used by more than one insurance company authorized to do business in the Philippines shall be known as a "rating organization." **The term "rate" as used in this title shall generally mean the ratio of the premium to the amount insured and shall include, as the context may require, either the consideration to be paid or charged for insurance contracts, including surety bonds, or the elements and factors forming the basis for the determination or application of the same, or both.**

\*\* On part of insurer, it is required that amount of premium is fixed in such a way that the amount paid by an individual combined with payments by other customers must provide for the losses sustained, the expenses of operation, profit, and accumulation of reserve for catastrophies.

**PURPOSE.** Ensures that the rates imposed by insurers are adequate, reasonable and not unfairly discriminatory.

### **Basic standards.**

1. Rates must be adequate for the class of business to which they apply
2. Not be unfairly discriminatory
3. Not unreasonably excessive.

Sec. 349. Every rating organization and every insurance company which makes and files its own rates, shall make rates for all risks rated by such organization or insurance company in accordance with the following provisions:

(a) Basic classification, manual, minimum, class, or schedule rates or rating plans, shall be made and adopted for all such risks. Any departure from such rates shall be in accordance with schedules, rating

plans and rules filed with the Commissioner;

(b) Rates shall be reasonable and adequate for the class of risks to which they apply;

(c) No rate shall discriminate unfairly between risks involving essentially the same hazards and expense elements or between risks in the application of like charges and credits;

(d) Consideration shall be given to the past and prospective loss experience, including the conflagration and catastrophe hazards, if any, to all factors reasonably attributable to the class of risks, to a reasonable profit, to commissions paid during the most recent annual period and to past and prospective other expenses. In case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than five years next preceding the year in which the review is made;

(e) Risk may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

## **POWER OF COMMISSIONER.**

Sec. 355. If the Commissioner finds that any rate filings theretofore filed with him do not comply with the provisions of this title or that they

provide rates or rules which are inadequate, excessive, unfair, discriminatory or otherwise unreasonable, he may order the same withdrawn and at the expiration of sixty days thereafter the same shall be deemed no longer on file. Before making any such finding and order, the Commissioner shall give notice, not less than ten days in advance, and a hearing, to the rating organization, or to the insurer, which filed the same. Such order shall not affect any contract or policy made or issued prior to the expiration of such sixty day period.

## **POLICY FORMS.**

Sec. 226. No policy, certificate or contract of insurance shall be issued or delivered within the Philippines unless in the form previously approved by the Commissioner, and no application form shall be used with, and no rider, clause, warranty or endorsement shall be attached to, printed or stamped upon such policy, certificate or contract unless the form of such application, rider, clause, warranty or endorsement has been approved by the Commissioner.

## **SALES PRACTICES AND CONSUMER PROTECTION.** Regulations designed to protect consumers

1. A reinsurance broker is one who, for compensation, not being a duly authorized agent, employee or officer of an insurer in which any reinsurance is effected, act or aids in any manner in negotiating contracts of reinsurance, or placing risks of effecting reinsurance, for any insurance company authorized to do business in the Philippines.
2. Sec. 318. No person shall act, and no company shall employ any person, as **non-life company underwriter**, whose duty and responsibility it shall be to select, evaluate and accept risks for, and to determine the terms and conditions, including those pertaining to amounts of retentions, under which such risks are to be accepted by the company, unless such underwriter is registered as such with the Commissioner.
3. The term "independent adjuster" means any person, partnership, association or corporation which, for money, commission or any other thing of value, acts for or on behalf of an insurer in the adjusting of claims arising under insurance contracts or policies **issued by such insurer**.  
The term "public adjuster" means any person, partnership, association or corporation which, for money, commission or any other thing of value, acts on behalf of an insured in negotiating for, or effecting, the settlement of a claim or claims of the **said insured** arising under insurance contracts or policies, or which advertises for or solicits employment as an adjuster of such claims.
4. Actuary - a person who makes financial calculations for the life insurance company and who will certify the documents such as reserved and net due and deferred premium, valuation of annuity funds or retirement plans.
5. Rate organization. Every organization which now exists or which may hereafter be formed for the purpose of making rates to be used by more than one insurance company authorized to do business in the Philippines.

**PROHIBITIONS.**

1. Twisting – inducing an insured to drop an existing policy in one company for another policy in another company due to misrepresentation.
2. Rebate- designed to ensure fair and equitable treatment of all policymakers by preventing one insured from obtaining unfair practice ove another.

Sec. 361. No insurance company doing business in the Philippines or any agent thereof, no insurance broker, and no employee or other representative of any such insurance company, agent, or broker, shall make, procure or negotiate any contract of insurance or agreement as to policy contract, other than is plainly

expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or to any employee of such insured, either as an inducement to the making of such insurance or after such insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in such policy or contract of insurance; nor shall any such company, or any agent thereof, as to any policy or contract of insurance issued, make any discrimination against any Filipino in the sense that he is given less advantageous rates, dividends or other policy conditions or privileges than are accorded to other nationals because of his race.

### 3. Misrepresentation.

Sec. 362. No insurance company doing business in the Philippines, and no officer, director, or agent thereof, and no insurance broker or any other person, partnership or corporation shall issue or circulate or cause or permit to be issued or circulated any literature, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by any insurance company of the benefits or advantages promised thereby, or any misleading estimate of the dividends

or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof; nor shall any such company or agent thereof, or any other person, partnership or corporation make any

misleading representation or incomplete comparison of policies to any person insured in such company for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said insurance.

### 4. Unfair claims settlement

#### **CORPORATE GOVERNANCE**

Means the system by which companies are directed and managed. It influences how objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimized.

#### **ANTI-Money Laundering.**

**LAYERING.** Separation of the criminal proceeds from their source by the creation of layers of transactions designed to disguise the audit trail and provide the appearance of legitimacy.

#### **INSURANCE COMMISSION.**

The insurance commissioner shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters, mutual benefit associations and trusts for charitable uses are faithfully executed and to perform the duties imposed upon him by the insurance code.

1. Issue CoA
2. Revoke CoA
3. Impose penalties

ec. 414. The Insurance Commissioner shall have the duty to see that all laws relating to insurance, insurance

companies and other insurance matters, mutual benefit associations, and trusts for charitable uses are faithfully executed and to perform the duties imposed upon him by this Code, and shall, notwithstanding any existing laws to the contrary, have sole and exclusive authority to regulate the issuance and sale of variable contracts as defined in section two hundred thirty-two and to provide for the licensing of persons selling such contracts, and to issue such reasonable rules and regulations governing the same.

The Commissioner may issue such rulings, instructions, circulars, orders and decision as he may deem necessary to secure the enforcement of the provisions of this Code, subject to the approval of the Secretary of Finance. Except as otherwise specified, decisions made by the Commissioner shall be appealable to the Secretary of Finance.

Sec. 415. In addition to the administrative sanctions provided elsewhere in this Code, the Insurance Commissioner is hereby authorized, at his discretion, to impose upon the insurance companies, their directors and/or officers and/or agents, for any willful failure or refusal to comply with, or violation of any provision of this Code, or any order, instruction,

regulation, or ruling of the Insurance Commissioner, or any commission or irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Insurance Commissioner, the following:

- (a) fines not in excess of five hundred pesos a day; and
- (b) suspension, or after due hearing, removal of directors and/or officers and/or agents.

Sec. 416. The Commissioner shall have the power to adjudicate claims and complaints involving any loss, damage or liability for which an insurer may be answerable under any kind of policy or contract of insurance, or for which such insurer may be liable under a contract of suretyship, or for which a reinsurer may be sued under any contract of reinsurance it may have entered into; or for which a mutual benefit association may be held liable under the membership certificates it has issued to its members, where the amount of any such loss, damage or liability, excluding interest, cost and attorney's fees, being claimed or sued upon any kind of insurance, bond, reinsurance contract, or membership certificate does not exceed in any single claim one hundred thousand pesos.

The insurer or surety may, in the same action file a counterclaim against the insured or the obligee. The insurer or surety may also file a cross-claim against a party for any claim arising out of the transaction or

occurrence that is the subject matter of the original action or of a counterclaim therein.

With leave of the Commissioner, an insurer or surety may file a third-party complaint against its reinsurers for

indemnification, contribution, ~~subrogation or any other relief~~, in respect of the transaction that is the subject matter of the original action filed with the Commissioner.

The party filing an action pursuant to the provisions of this section thereby submits his person to the jurisdiction of the Commissioner. The Commissioner shall acquire jurisdiction over the person of the impleaded party or parties in accordance with and pursuant to the provisions of the Rules of Court.

The authority to adjudicate granted to the Commissioner under this section shall be concurrent with that of the civil courts, but the filing of a complaint with the Commissioner shall preclude the civil courts from taking cognizance of a suit involving the same subject matter.

Any decision, order or ruling rendered by the Commissioner after a hearing shall have the force and effect of a judgment. Any party may appeal from a final order, ruling or decision of the Commissioner by filing with the Commissioner within thirty days from receipt of copy of such order, ruling or decision a notice of appeal to the Intermediate Appellate Court in the manner provided for in the Rules of Court for appeals from the Regional Trial Court to the Intermediate

Appellate Court. (As amended by Batas Pambansa Blg. 874).

As soon as a decision, order or ruling has become final and executory, the Commissioner shall motu proprio or on motion of the interested party, issue a

writ of execution requiring the sheriff ~~or the proper officer to whom it is~~ directed to execute said decision, order or award, pursuant to Rule thirty-nine of the Rules of Court.

For the purpose of any proceeding under this section, the Commissioner, or any officer thereof designated by him, empowered to administer oaths and affirmation, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, documents, or contracts or other records which are

relevant or material to the inquiry. In case of contumacy by, or refusal to obey a subpoena issued to any person, the Commissioner may invoke the aid of any court of first instance within the jurisdiction of which such proceeding is carried on, where such person resides or carries on his own business, in requiring the attendance and testimony of witnesses and the production of books, papers, documents, contracts or other records. And such court may issue an order requiring such person to appear before the Commissioner, or officer designated by the Commissioner, there to produce records, if so ordered or to give testimony touching the matter in question. Any failure to obey such order of the court may be published by such court as a contempt thereof.

A full and complete record shall be kept of all proceedings had before the commissioner, or the officers thereof designated by him, and all testimony shall be taken down and transcribed by a stenographer appointed by the Commissioner.

A transcribed copy of the evidence and proceeding, or any specific part thereof, of any hearing taken by a stenographer appointed by the Commissioner, being certified by such stenographer to be a true and correct transcript of the testimony on this hearing of a particular witness, or of a specific proof thereof, carefully compared by him from his original notes, and to be a correct statement of evidence and proceeding had in such hearing so purporting to be taken and subscribed, may be received as evidence by the Commissioner and by any court with the same effect as if such stenographer were present and testified to the facts so certified. (As amended by Presidential Decree No. 1455).

**Quasijudicial function of the Insurance commissioner.** Limited to claims not exceeding 100,000 php. Hence it does not cover the relationship affecting the insurance company, its agents, but is limited to claims filed by the insured against the insurance company.

**Phil American Life Insurance Company v. Ansaldo.**

**Procedure.** The rules that apply in administrative proceedings before the insurance commission are. Shall be summary in nature, not necessarily

adhering to technical rules of evidence obtaining in the courts of law. Rules of Court suppletorily when applicable.

Rules of civil procedure. Decisions of the insurance commission, appealable to CA within 15 days from receipt of decision.

Decision or interpretation of the Insurance Commissioner, are entitled great respect (Admin Law). Since he is the head of specialized body. Multifarious ekek.