

THE PHILIPPINE INSURANCE CODE

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The Philippine Insurance Code is our complete law on insurance today. Basically, it is the same as the former Insurance Law, and the purpose of this article is to point out in what way the Code has affected the Insurance Law as we previously knew it.

Life Insurance

In life insurance, the designation of beneficiary as limited by Article 2012¹ of the Civil Code read together with Article 739,² remains the same. There is an additional disqualification added by Article 12 of the Code, which provides that a beneficiary designated who is subsequently convicted of being a principal, accomplice or accessory in wilfully bringing about the death of the insured, forfeits his rights as such and the proceeds of the policy will go to the nearest relative of the insured. In the irrevocable designation of beneficiary under Article 180 of the Code, where an insured irrevocably designated his minor child as beneficiary and the face value of the policy is ₱20,000.00 or less, the insured, once the policy has a cash surrender value, may borrow on the same, may even

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¹ Article 2012 provides that any person who is forbidden from receiving any donation under Art. 739 cannot be named beneficiary of Life Insurance policy by the person who cannot make any donation to him.

² Article 739 provides that the following donations shall be void:

- (1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
- (2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
- (3) Those made to the public officer or his wife, descendants and ascendants, by reason of his Office.

In case referred to in No. 1 the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and the donee may be proved by preponderance of evidence in the same action.

surrender the policy and exercise whatever rights that the policy may grant him, without need of any guardianship proceedings or the filing of a surety bond. On the other hand, where the face value of the policy exceeds ₱20,000.00 and the policy has a cash surrender value, guardianship proceedings must be filed should the insured desire to borrow on the policy or surrender the same.

Life annuity remains the same and is covered by Articles 2021 to 2027³ of the Civil Code of the Philippines.

With regard to the incontestible clause in life insurance, the law now covers not only the original issuance of the policy, but also its reinstatement.⁴

Non-Life Insurance

In non-life insurance, the changes refer to the inclusion of riders in the policy. Riders may be included but express reference to them must be made in the policy before the same may be binding. Should a subsequent rider be inserted after the perfection of the contract of insurance, the inserted rider will not be binding on the insured unless he countersigns the same.⁵ Cover notes are expressly permitted, but these cover notes shall only be good for 60 days after which the insurer must issue a regular policy. An exception to this is when the 60-day period has been extended upon written approval of the Office of the Insurance Commissioner.

³ Article 2021. The aleatory contract of life annuity binds the debtor to pay an annual pension or income during the life of one or more determinate persons in consideration of a capital consisting of money or other property, whose ownership is transferred to him at once with the burden of the income.

Article 2022. The annuity may be constituted upon the life of the person who gives the capital, upon that of 3rd person, or upon the lives of various persons, all of whom must be living at the time the annuity is established.

It may also be constituted in favor of the person or persons upon whose life or lives the contract is entered into, or in favor of another or other persons.

Article 2023. Life annuity shall be void if constituted upon the life of a person who was already dead at the time the contract was entered into or who was at that time suffering from an illness which caused his death within 20 days following said date.

Article 2024. The lack of payment of the income due does not authorize the recipient of the annuity to demand the reimbursement of the capital or to retake possession of the property alienated, unless there is stipulation to the contrary; he shall have the right judicially to claim the payment of the income in arrears and to require a security for the future income, unless there is stipulation to the contrary.

Article 2025. The income corresponding to the year in which the person enjoying it dies shall be paid in proportion to the days during which he lived; if the income should be paid by installments in advance, the whole amount of the installment which began to run during his life shall be paid.

Article 2026. He who constitutes an annuity by gratuitous title upon his property, may provide at the time the annuity is established that the same shall not be subject to execution or attachment on account of the obligation of the recipient of the annuity. If the annuity was constituted in fraud of the creditors, the latter may ask for the execution or attachment of the property.

Article 2027. No annuity shall be claimed without first proving the existence of the person upon whose life the annuity is constituted.

⁴ Sec. 48, Insurance Code.

⁵ Sec. 50, Insurance Code.

The right to unilaterally cancel the policy in non-life insurance, either by the insurer or the insured, before the expiration of the term as previously upheld by the Supreme Court,⁶ has suffered a change. Under the Insurance Code, Section 79 grants this right to the insured, but if the insurer desires to cancel the policy, Sections 64 and 65 lay down the grounds and the procedure. The grounds are:

1. Non-payment of premiums;
2. Conviction of a crime arising out of acts that increase the hazard;
3. Fraud or misrepresentation;
4. Wilful or reckless acts of the insured increasing the hazard;
5. Changes in the property that make the same uninsurable;
6. When the office of the Insurance Commissioner decides that the continuation of the policy would operate to violate the Code.

If any of these grounds exist, the insurer must give written notice to the insured of the cancellation. This notice must give the ground for cancellation and must contain an offer to the insured to prove the ground relied upon should the insured desire.

The Code has further granted an insured a right of renewal in non-life insurance. Should the insurer decide not to renew the policy, the insurer must give the insured written notice at least 45 days before the expiration of the period, of its intention not to renew. Failure to give this written notice within the 45-day period will entitle the insured, as a matter of right, to renew the policy by paying the same rate of premium.⁷

Beginning with Section 373 of the Insurance Code, there are now provisions on compulsory motor car insurance. No motor vehicle may be operated on the highways nor may the registration of vehicles be permitted unless accompanied by either insurance, cash deposit, or surety bond. The amount of insurance in common carriers differs from those privately owned. In common carriers, the amount of insurance depends on the weight of the vehicle and the number of passengers carried, and this policy must cover injury or death to passenger plus third party liability. In privately-owned vehicles, the insurance is only for third party liability. If the owner of the vehicle cannot obtain insurance, then a cash deposit or a surety bond in the same amount as the insurance must be made with the Office of the Insurance Commissioner.⁸ Claims arising from accident must be made within 6 months, otherwise they are deemed waived. Prescriptive period is one year from the date of the accident.⁹ In addition, the Insurance Code has introduced

the so-called "no-fault" insurance in Motor Car Insurance, but it is limited to injury or death to a person, provided the claim does not exceed ₱5,000.00. The only proof then required would be the medical report or the death certificate, as the case may be, and the Motor Vehicle Report of the accident by the Police. No defense is available to the insurer who must then make immediate payment.¹⁰

Marine Insurance

Marine insurance, which formerly covered only loss due to marine peril, has been broadened. Under the Code, it now covers 'any loss, damage, or expense incident to ownership, operation, charter, maintenance, use, repair or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including personal injury, illness or death, or for the loss or damage to property of a third person.'¹¹

Perfection of the Contract

As for the perfection of the contract of insurance, the Code, for both life and non-life insurance, has retained the requisite that payment of the premium as agreed upon is part of validity so that even though a policy may have been issued, the same is void unless payment has been made.¹² There are two exceptions to this rule: first, if the policy expressly acknowledges receipt of the premium, even though such a payment has not been made, this express acknowledgment shall make the policy binding on the insurer;¹³ and second, if the insurer gives the applicant time within which to pay the premium, then the consensual nature of the insurance prevails, and payment of the premium will not be a condition precedent to validity.

Insurance Companies

Apart from the required paid-in capital of ₱2,000,000.00 plus contributed surplus, every insurance company must provide for the minimum sum of ₱500,000.00 as *margin of insolvency* and also contribute proportionately to a *security fund* not exceeding ₱5,000,000.00 which will be administered in trust by the Office of the Insurance Commissioner for insolvency of insurance companies and to pay for claims that are excepted perils where such losses take place during national calamity or emergency.

Revocation of Certificate of Authority

The Insurance Code has introduced new grounds for suspension or revocation of the Certificate of Authority granted insurers, but this may only be done after proper hearing. The grounds that

⁶ *Paulino v. Capital Insurance*, 105 Phil. 1315; *Saura Import v. Phil. International Co.*, 62 OG 3951.

⁷ Sec. 66, Insurance Code.

⁸ Sec. 379, Insurance Code.

⁹ Sec. 384, Insurance Code.

¹⁰ Sec. 378, Insurance Code.

¹¹ Sec. 99, Insurance Code.

¹² Sec. 77, Insurance Code.

¹³ Sec. 78, Insurance Code.

the Office of the Insurance Commissioner may use for such suspension or revocation are enumerated under what are known as *Unfair Claims Settlement Practices*¹⁴ and are as follows:

1. Knowingly misrepresenting to claimants facts on the provisions of the policy relating to the coverage at issue
2. Unreasonable delay in acknowledging letters of claims
3. Failure to adopt reasonable measures for prompt investigation of claims
4. No attempt in good faith to settle liability that is reasonably clear
5. To compel the insured to file a case as the offer made by the insurer is unjustifiably substantially less than the claim

Payment of Claims

In life insurance, payment must be made within 60 days from the filing of the claim, and if the refusal to pay is not well founded, the insurer shall be liable for interest double than provided for by the Monetary Board (which presently amounts to 24%); if litigation follows, the insurer shall pay attorney's fees as fixed by the court and reimburse the insured for such expenses as may have been incurred due to the litigation.¹⁵

Payment in non-life must be made within 30 days from proof of loss unless the insurer needs time to complete its investigation and must make payment within 90 days from proof of loss. In the event of unjustified refusal, the insurer shall pay interest double the rate fixed by the Monetary Board (24%) and in the event of litigation, pay attorney's fees and expenses of the insured.¹⁶

In the event of litigation, the courts and the Office of the Insurance Commissioner shall have concurrent jurisdiction if a single claim does not exceed ₱100,000.00. Appeal from the Office of the Insurance Commissioner shall be taken within 30 days to the Court of Appeals. Once final, the Office of the Insurance Commissioner may exercise the judicial power to issue a writ of execution. If a single claim exceeds ₱100,000.00, the Court of First Instance shall have original and exclusive jurisdiction.¹⁷

Other Changes

1. In an attempt to professionalize the work of insurance agents, no license of an insurance agent shall be renewed unless 75% of his income that year was derived from commissions and must not be less than ₱3,600.00.¹⁸

¹⁴ Sec. 241, Insurance Code.

¹⁵ Sec. 242, Insurance Code.

¹⁶ Sec. 243, Insurance Code.

¹⁷ Sec. 416, Insurance Code.

¹⁸ Sec. 305, Insurance Code.

2. The Code now requires licenses of adjusters, reinsurance brokers and actuaries, and lays down conditions for their grant of license.

3. Reinsurance is mandatory where the risk in any one subject exceed 20% of the net worth.¹⁹

4. Rating organizations are now under the Office of the Insurance Commissioner.

5. Variable contracts whose value reflects the investment results of portfolio of investments are allowed to a limited extent.²⁰

6. The merger or consolidation of insurance companies is provided for and the procedure laid down.

7. Finally, the Code authorizes the Office of the Insurance Commissioner to control holding companies which may even cover natural persons.²¹

¹⁹ Sec. 215, Insurance Code.

²⁰ Sec. 352, Insurance Code.

²¹ Secs. 282-298, Insurance Code