

[REPUBLIC ACT NO. 9829, December 03, 2009]

AN ACT ESTABLISHING THE PRE-NEED CODE OF THE PHILIPPINES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

GENERAL PROVISIONS

SECTION 1. *Title.* — This Act shall be known as the "Pre-need Code of the Philippines".

SEC. 2. *Declaration of Policy.* — It is the policy of the State to regulate the establishment of pre-need companies and to place their operation on sound, efficient and stable basis to derive the optimum advantage from them in the mobilization of savings and to prevent and mitigate, as far as practicable, practices prejudicial to public interest and the protection of planholders.

The State shall hereby regulate, through an empowered agency, pre-need companies based on prudential principles to promote soundness, stability and sustainable growth of the pre-need industry.

SEC. 3. *Construction.* — Any doubt in the interpretation and implementation of any provision in this Code shall be interpreted in favor of the rights and interests of the planholder.

SEC. 4. *Definition of Terms.* — Whenever used in this Code, the following terms shall have their respective meanings:

- a. "Commission" refers to the Insurance Commission.
- b. "Pre-need plans" are contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments contracts or deeds as may in the future be determined by the Commission.
- c. "Pre-need company" refers to any corporation registered with the Commission and authorized/licensed to sell or offer to sell pre-need plans. The term "pre-

need company" also refers to schools, memorial chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.

- d. "Planholder" refers to any natural or juridical person who purchases pre-need plans from a pre-need company for whom or for whose beneficiaries' benefits are to be delivered, as stipulated and guaranteed by the pre-need company. The term includes the assignee, transferee and any successor-in-interest of the planholder.
- e. "Beneficiary" refers to the person designated by the planholder as the recipient of the benefits in the pre-need plan.
- f. "Contract price" refers to the stipulated price in the pre-need plan.
- g. "Benefits" refers to the payment of monetary considerations and/or performance of future services which the pre-need company undertakes to deliver either to the planholder or his beneficiary at the time of actual need or agreed maturity date, as specified in the pre-need plan.
- h. "Sales counselors" refers to natural persons who are engaged in the sale of, or offer to sell, or counsel of prospective planholders for the purpose of selling, whether or not on commission basis, pre-need plans upon the authority of the pre-need company.
- i. "Affiliate of, or affiliated with, a specified person" refers to a person that directly or indirectly, through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Exercising control over a legal entity shall mean any one of the following; (1) owning either solely or together with affiliated persons more than twenty — five percent (25%) of the outstanding capital stock of a legal entity; and (2) being an officer or director of such legal entity.
- j. "Trust fund" refers to a fund set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to planholders and other costs necessary to ensure the delivery of benefits or services to planholders as provided for in the contracts.
- k. "Pre-need reserve liabilities" refers to the measure of the liabilities of the pre-need company for its in-force plans or lapsed plans as of valuation date.
- l. "Liquidity reserve" refers to a portion of the trust fund set aside by the trustee to cover benefits due to planholders for the ensuing year.
- m. "Fixed value plans" refers to pre-need plans whose benefits and costs are fixed and predetermined at the inception or purchase of the plan.
- n. "In-force plan" refers to a plan for which the pre-need company has an outstanding obligation for the delivery of benefits or services or payment of termination value.
- o. "Lapsed plan" refers to a plan that is delinquent in payment of installments provided for in the contract, the delinquency, of which extends beyond the grace period provided for in the plan or contract.
- p. "Cancelled plan" refers to a plan that can no longer be reinstated by reason of delinquency in the payment of installments for more than two (2) years or a longer period as provided in the contract, counted from the expiry of the grace period provided for in the plan or contract.
- q. "Scheduled benefit plans" refers to plans the date of availment of the benefits of which is set at the inception or purchase of the plan.
- r. "Contingent benefit plans" refers to plans the timing of the provision of the benefits of which is conditional on the occurrence of the contingency.

- s. "Risk-based capital" refers to a method to measure the minimum amount of capital that a pre-need company needs to support its overall business operation. It is used to set capital requirements, considering the size and degree of risk taken by the pre-need company.
- t. "BSP" refers to "Bangko Sentral ng Pilipinas".

The terms not otherwise defined under this Code shall be construed in their usual and commonly understood trade, business, commercial or investment meaning.

CHAPTER II

AUTHORITY OF THE COMMISSION

SEC. 5. *Supervision.* — All pre-need companies, as defined under this Act, shall be under the primary and exclusive supervision and regulation of the Insurance Commission. The Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component to enable it to effectively and efficiently perform its functions and exercise its powers under this Code.

All positions of the Commission shall be governed by compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas (BSP) and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

The salary and allowances or personal services expense of the employees of the Insurance Commission shall be sourced from the retained amount of the fees, charges and other income derived from the regulation of pre-need companies and from the Insurance Fund under Section 418 of the Insurance Code of the Philippines (Presidential Decree No. 612, as amended) and Section 286 of the National Internal Revenue Code. If the personal services expense cannot be covered by the retained amount and the Insurance Fund, it shall be appropriated in the General Appropriations Fund.

SEC. 6. *Powers and Functions of the Commission.* — The Commission shall, at all times, act with transparency and dispatch and shall have, among others, the following powers and functions;

- a. Approve, amend, renew or deny any license, registration or certificate issued under this Code;

- b. Fix and assess fees and/or charges as it may find reasonable in the exercise of regulation;
- c. Regulate, supervise and monitor the operations and management of pre-need companies to ensure compliance with the provisions of this Code, existing laws, rules and regulations including, but not limited to:
 - 1. Revoking or nullifying investments made and/or entered into by a pre-need company or a trustee which are contrary to existing laws, rules and regulations;
 - 2. Demanding for the conversion of the investments made by the trustee to cash or other liquid assets to protect the interest of the planholders; and
 - 3. Regulating, investigating or supervising activities of pre-need companies, their officers, employees, sales counselors, consultants or agents;
- d. Issue cease and desist orders to prevent fraud and injury to the investing public;
- e. Issue *subpoena duces tecum* and *ad testificandum*, order the examination, search and seizure of documents, papers, files, tax returns, books of accounts and other records, in whatever form, of any entity or person under investigation;
- f. Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;
- g. Impose sanctions, institute cases and/or prosecute offenders for violation of this Code, related laws, rules, regulations and orders issued pursuant thereto;
- h. Suspend or revoke licenses
- i. Enlist the aid and support of and/or deputize any and all enforcement agencies of the government in the implementation of its powers and in the exercise of its functions under this Code;
- j. Take over pre-need companies which fail to comply with this Code, related laws, rules, regulations and orders issued pursuant thereto, either through the appointment of a conservator, receiver or liquidator;
- k. Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;
- l. Formulate policies and recommendations on issues concerning the pre-need industry, including proposed legislations;
- m. Retain and utilize, in addition to its annual budget, an amount up to One hundred million pesos (P100,000,000.00) of the fees, charges and other income derived from the regulation of the pre-need companies; and
- n. 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 carry out the express powers granted the Commission to achieve the objectives and purposes of the law.

CHAPTER III

ORGANIZATION, LICENSING AND MANAGEMENT OF PRE-NEED COMPANIES

SEC. 7. *Prerequisites to Incorporation.* — Except upon favorable recommendation of

the Commission, the Securities and Exchange Commission (SEC) shall not accept or approve the articles of incorporation and bylaws of any pre-need company.

A foreign corporation may be allowed to engage in a pre-need business in the Philippines: *Provided*, That it shall comply with the pertinent laws, rules and regulations.

SEC. 8. Amendment of the Articles of Incorporation and Bylaws. — Amendments to the articles of incorporation and bylaws of a pre-need company, including merger, consolidation and dissolution, shall not be approved by the SEC without the favorable recommendation from the Commission.

SEC. 9. Paid-up Capital. — A pre-need company incorporated after the effectivity of this Code shall have a minimum paid-up capital of One hundred million pesos (P100,000,000.00). Existing pre-need companies shall comply with the following minimum unimpaired paid-up capital:

- a. One Hundred million pesos (P100,000,000.00) for companies selling at least three(3) types of plan;
- b. Seventy-five million pesos (P75,000,000.00) for companies selling two (2) types of plan; and
- c. Fifty million pesos (P50,000,000.00) for companies selling a single type of plan.

Existing pre-need companies with traditional education plans shall have a minimum unimpaired paid-up capital of One hundred million pesos (P100,000,000.00)

The Commission may adopt risk-based principles on capital adequacy based on internationally accepted standards. In the exercise of its authority under this paragraph, the Commission may prescribe a higher minimum unimpaired paid-up capital for pre-need companies.

SEC. 10. Licensing of Pre-need Companies. — No person shall operate as a pre-need company or engage in the business of a pre-need company unless licensed by the Commission in accordance with this Code.

The license under this section shall expire one (1) year from the time of the registration. It may be renewed upon compliance with the prescribed requirements of the Commission. Such renewal shall be deemed approved if not acted upon within thirty (30) days from the time of filing of the application for renewal.

SEC. 11. Qualification and Disqualification of Directors and Officers. — To maintain the quality of management of pre-need companies and afford better protection to planholders and beneficiaries, the Commission shall prescribe, pass upon and review the qualifications and disqualifications of individuals elected or appointed directors or officers of pre-need companies, including its actuaries, and disqualify those found unfit. The Commission may disqualify, suspend or remove any director or officer who commits or omits an act which renders him unfit for the position.

In determining whether an individual is fit and proper to hold the position of a