



Circular Letter (CL) No.:	2020-112
Date:	9 December 2020
Amendment:	NONE

CIRCULAR LETTER

TO : All Pre-Need Companies under Liquidation and Designated Liquidators

SUBJECT : Guidelines on Formal Closure of Liquidation Proceedings for Pre-Need Companies under Liquidation and Final Disposal and Distribution of Assets Including Unclaimed Benefits

WHEREAS, a number of pre-need companies have been under varying stages of conservatorship, receivership and liquidation proceedings since 2010 when Republic Act No. 9829 (Pre-Need Code of the Philippines) took effect;

WHEREAS, as a result of prudent investment, change of plan conditions, novation, negotiations, agreement, recovery of unbooked assets, appreciation of property values by mere passage of time, sale of assets at a premium, or other unforeseen favorable events, some pre-need companies under liquidation may have excess trust funds or corporate freehold assets, or both still under the custody of the trustee banks, the liquidators, or the Insurance Commission (IC);

WHEREAS, a number of planholders have not, so far, claimed the liquidation value of their benefits despite repeated notices and the lapse of considerable number of years;

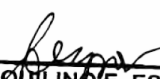
WHEREAS, despite the lapse of a number of years, the funds corresponding to the said unclaimed or abandoned benefits remain with the custody of the trustee banks, the liquidators, or the IC;

WHEREAS, a number of companies have very minimal or no more remaining assets where the continuation of the liquidation proceedings would amount to absurdity;

WHEREAS, there has to be a final and formal closure of liquidation proceedings and final disposal of documents after all the necessary liquidation steps have been fully undertaken and a considerable number of years have already lapsed;

WHEREAS, before a final declaration and publication of a statement of formal closure can be done, issues on the treatment of unclaimed benefits, surplus trust funds, and residual corporate freehold assets must first be addressed;

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WHEREAS, in cases where the law does not provide for prescriptive periods for bringing actions and claims, the claim shall be barred after five (5) years,¹ and that by analogy, this period may be adopted for the purpose of fixing a legal end to pre-need claims for liquidation benefit;

WHEREAS, it is only fair and reasonable to declare the inactive planholders to have waived their right to their shares should they fail to claim within the aforesaid period despite personal knowledge, sufficient notices, or publication of the final call for distribution;

WHEREAS, to contribute to the country's attainment of productive economy, distribution and utilization of both freehold corporate assets and trust fund assets must be ensured;

WHEREAS, it is the primordial responsibility of the Insurance Commission as a regulator to balance the interests of the planholders and the pre-need industry as a whole in distributing the residual assets of companies under liquidation.

THEREFORE, pursuant to Section 6(k)², Section 30 (par. 2)³ and Section 47⁴ of Republic Act (RA) No. 9829, otherwise known as the Pre-Need Code of the Philippines, the Insurance Commission issues this Guidelines on Formal Closure of Liquidation Proceedings for Pre-Need Companies under Liquidation and Final Disposal and Distribution of Assets including Unclaimed Benefits.

Section 1. Applicability

This Guidelines shall cover all pre-need companies currently or prospectively under liquidation.

Companies currently in the process of formal closure may opt to continue with the steps being undertaken or be covered by this Guidelines.

Section 2. Definition of Terms

Whenever used in this Guidelines, the following terms shall have the respective meanings hereafter set forth or indicated, unless the context requires otherwise:

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¹ Prescription, Article 1149 and 1150 of the New Civil Code of the Philippines.

² Section 6 (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.

³ Section 30 (2). Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance – funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission.

⁴ Section 47. The Commission shall have the authority to make, amend and rescind such accounting rules and regulations applicable for pre-need companies. The Commission may prescribe, among other things, the form or forms in which required information shall be set forth, the items or details to be shown in the components of the financial statements, and the recognition and measurement basis to be adopted for each account, after considering the nature of the operation of the pre-need industry. Pre-need companies shall strictly comply with such accounting rules and regulations as prescribed by the Commission.

- a) **Abandoned Benefits** refers to benefits which remain unclaimed for a period of at least five (5) years from the date of first distribution day despite previous notices and after the process stated in Section 6 hereof had been completed. These constructively waived benefits may also be considered as presumed waiver of right (under Sec. 2 (f) hereof) or presumed error in the books of the concerned Pre-need company (under Sec. 2 (e)) and may be rebooked as other income of the trust fund available for redistribution to the remaining planholders pursuant to Section 7 hereof.
- b) **Distribution Officer** refers to a person designated by the Commissioner as in-charge of the distribution of the unreleased benefits.
- c) **Inactive Planholders** refers to planholders who have not claimed their benefit checks for the past five (5) years from the date of the first distribution day despite notices.
- d) **Net Abandoned Benefits** refers to Abandoned Benefits remaining after redistribution under Section 7 hereof.
- e) **Presumed Error** refers to an error or mistake in the preparation of the master list conclusively presumed as a result of the completion of the process under Section 6 hereof.
- f) **Presumed Waiver of Right** refers to the waiver of right presumed as a result of the completion of the process under Section 6 hereof.
- g) **Repurposed Operations** refers to the continued operations of a company under an amended objective other than pre-need or insurance-like purposes.
- h) **Residual Corporate Freehold Assets** refers to the remaining assets of the company after setting aside the amount corresponding to the liquidation benefits of the planholders as determined in the liquidation plan or a directive of the Commissioner available for settling corporate liabilities, if any, or for its continued repurposed operations. This also includes assets declared as corporate freehold assets by laws, rules, regulations, circulars, as well as directives, orders, and decisions which have become final and executory.
- i) **Statement of Completion of Liquidation Proceedings** refers to a formal certification by the Insurance Commissioner declaring the liquidation proceedings as officially closed.
- j) **Suspended Benefits** refers to benefits with remaining unresolved issues or pending cases as of the date of formal closure, a conservative fund for which has been earmarked.
- k) **Trust Fund Surplus** refers to the remaining trust fund assets after payment of or setting aside the corresponding plan benefits. This also includes Net Abandoned Benefits.
- l) **Unclaimed Benefits** refers to benefits not yet claimed as of date of formal closure.

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- m) **Unreleased Benefits** includes abandoned benefits, unclaimed benefits, and suspended benefits.

Section 3. Conditions for Formal Closure

The company or liquidator or both jointly may apply for final formal closure if the following conditions are met:

- a) Directive for liquidation has become final;
- b) Funds for distribution have been separately earmarked exclusively for the planholders;
- c) Distribution should have already been completed except that there are a number of checks still remaining unclaimed or distribution has been ongoing for at least five (5) years solely because of the remaining unclaimed, unreleased, suspended, or abandoned benefits, or at least fifty percent (50%) of the distribution checks have already been claimed/released;
- d) Contingent fund has been earmarked for contingent liabilities or suspended benefits, if any;
- e) Distribution plan for unclaimed, unreleased, or suspended benefits, if any, or abandoned benefits or net abandoned benefits if any and, if the circumstances under Section 7 (a) are present, has been submitted and approved; and
- f) The appropriate mode for final business closure or dissolution under Section 4 has been determined and approved.

Section 4. Modes of Final Formal Closure

The following are the allowed modes of final formal closure:

4.1. If the remaining corporate assets are not sufficient to satisfy the company's corporate liabilities and the company has no intention to continue its corporate life:

Court proceedings under Section 52 (a) and (b) of the Pre-Need Code and the provisions of the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

The IC shall completely cease to regulate the said company only upon the award by the court to the planholders of their shares in the corporate assets if any and the distribution of which had been completed or the fund for which had been earmarked.

4.2. If the remaining corporate assets are sufficient to satisfy the company's corporate liabilities or if there are no remaining corporate liabilities and the company has no intention to continue its corporate life:

- a) Shortening of corporation term under Section 36, Title IV of R.A. 11232 otherwise known as the Revised Corporation Code of the Philippines.
- b) Dissolution proceedings under Title XIV of R.A. 11232 otherwise known as the Revised Corporation Code of the Philippines.

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4.3. If the remaining corporate assets are sufficient to satisfy the company's corporate liabilities or if there are no remaining corporate liabilities and the company has an intention to continue its corporate life under a different purpose and name:

Amendment of corporate primary purpose and name under Section 15 of the Revised Corporation Code of the Philippines.

Under this mode, the company shall formally cease to operate as a pre-need company but shall continue its corporate life operating a business other than pre-need or insurance-related endeavors. Hence, it shall continue to acknowledge its corporate liabilities, if any. If this mode is approved by the Insurance Commissioner the company shall submit to the former a sworn undertaking to file with the Securities and Exchange Commission (SEC) its attached Board-approved and stockholder-ratified amended Articles of Incorporation (AOI). Upon the approval by the Insurance Commissioner of the application for formal closure, the IC shall completely cease to regulate the said company that will be repurposed and renamed. Under this mode, the Statement of Completion of Liquidation Proceedings may only be issued upon the approval by the Commissioner of the application for formal closure.

Upon the issuance of the Statement of Completion of Liquidation Proceedings, the Commissioner may, if the circumstances so warrant, likewise issue an Endorsement to the SEC and the Board of Directors of the company shall issue a quitclaim in favor of the Insurance Commission officers and the designated liquidator.

4.4. Other special modes approved by the Commission taking into consideration the special circumstances of the company.

Section 5. Closure Process

Liquidation proceedings shall be declared officially closed after completing the following steps:

- 1) Filing of a Sworn Application specifying the presence of the conditions under Section 3 hereof.
- 2) Evaluation of the Application and supporting documents.
- 3) Issuance of Formal Statement of Completion of Liquidation Proceedings.

The Formal Statement of Completion of Liquidation Proceedings shall be published in a newspaper of general circulation once a week for two consecutive weeks together with an announcement of the continuation of distribution if applicable.

Section 6. Procedures for Declaration of Abandonment of Benefits

Benefits may be declared abandoned after completing the following steps:

- 1) Determination by the Liquidator of the amount and schedule of Abandoned Assets.
- 2) Sending of Letter notices to the last known address of each planholder.
- 3) Publication of Notice to the Public to finally claim the benefit check within ninety (90) days.

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- 4) Payment of the benefit liquidation value to those who came forward.
- 5) Publication of Formal declaration of presumed error or presumed waiver of right and the list of abandoned benefits.
- 6) Re-computation of liquidation value.
- 7) Redistribution of additional liquidation value as a result of publication of formal declaration of the list of abandoned benefits in accordance with Section 7 hereof.

Application for Declaration of Abandonment of Benefits may be filed before or after the formal closure is approved. However submission of Distribution plan for unclaimed, unreleased, suspended, or abandoned benefits under Section 3 (f) is an indispensable requirement for the application for formal closure.

Section 7. Redistribution of Abandoned Benefits

Abandoned benefits as defined under Section 2 (b) hereof and as declared under Section 6 hereof shall be redistributed as follows:

- a) If the liquidation value as computed is less than the maturity value for matured plans or the contract price for fully paid but not yet matured plans or the amount paid for plans not yet fully paid the abandoned benefits shall be applied to fill the difference fully or proportionately as the case may be.
- b) The excess or net abandoned benefits, if any, shall be held in trust by the IC and shall be disposed of in accordance with law or regulation.

Section 8. Treatment of Residual Corporate Freehold Assets

For renamed companies with repurposed operations that continue their corporate personality the Residual Corporate Freehold Assets shall remain with the said company available for continued operations. The said assets shall be distributed to the stockholders of companies in dissolution, or with expired term or as may be allowed by law.

Section 9. Booking of Assets

Residual Corporate Freehold Assets shall be booked and invested/deposited separately from the distributable trust fund.

The liquidator and the IC representative shall be the exclusive signatory for the distributable trust fund. For the corporate assets, the signatories shall be the Liquidator, IC representative, and the Company representative.

Section 10. Release of IC Officers as Signatories

Upon the issuance of the Statement of Completion of Liquidation Proceedings, the liquidator and IC signatories for corporate freehold assets, including bank accounts, shall as a matter of course, cease to be as such.

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Section 11. Treatment of Trust Fund Surplus

Trust Fund Surplus as defined under Section 2 (k) shall remain under the custody of the IC and shall be disposed of pursuant to law or regulation.

Section 12. Post-Closure Distribution

In the event the distribution has not yet been completed at the time of formal closure, the IC shall continue the distribution. In this case, the Commissioner may designate a Distribution Officer (DO). To ensure the continuous flow of distribution works, the Division Manager of this Commission's Conservatorship, Receivership and Liquidation Division (CRLD) shall act as the ex-officio Distribution Officer in the meantime that a DO has not yet been designated or, in case of resignation of the designated DO, during the period between the effectivity of the current DO's resignation/removal and the appointment of a new DO.

The said designation of the ex officio DO is automatically effective upon the issuance of the Formal Statement of Completion of Liquidation Proceedings or resignation of the outgoing DO, as the case may be, and shall automatically cease upon the appointment of the incoming DO.

Section 13. Management of Funds

In investing and managing the funds subject of this Guidelines, the paramount considerations shall be the safety and liquidity of the fund.

Liquidity reserves should at all times match the release schedules (e.g., releases for the following month should be matched with time deposits or treasury bills maturing the following month, and so forth.)

The interests earned by the funds shall be booked as expense fund to be used exclusively for the necessary expenses of distribution and fund management.

The expense fund shall remain under the name of the company. However, the signatories shall be the IC officers designated by the Commissioner.

Section 14. Fees

The IC shall charge the following fees:

- 1) Application for final formal closure – P100,000.00
- 2) Application for approval of distribution plan (see Sec. 4(f)). – P100,000.00
- 3) Issuance of Statement of Final Closure – P50,000.00

The Fees may be deferred, adjusted, or waived taking into account the financial circumstances of the company, the availability of its assisting manpower resources, and other relevant circumstances during the formal closure proceedings. These circumstances must be stated in the application for formal closure.

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Section 15. Disposal of Documents

Documents pertaining to the conservatorship, receivership and liquidation and final formal closure may be disposed of after the lapse of five (5) years from the issuance of the Statement of Completion of Liquidation Proceedings.

The Disposal process shall be in accordance with Republic Act 9470 otherwise known as the National Archives of the Philippines Act of 2007 and National Archives of the Philippines (NAP) General Circular No. 2 otherwise known as the Guidelines on the Disposal of Valueless Records in the Government Agencies.

Section 16. Repealing Clause

All circulars, rules, and regulations or parts thereof that are inconsistent with the provisions of these Guidelines are deemed repealed, superseded or modified accordingly.

Section 17. Separability Clause

If any provision of this Circular Letter shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

For the information and guidance of all concerned parties.

DENNIS B. FUNA
Insurance Commissioner



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