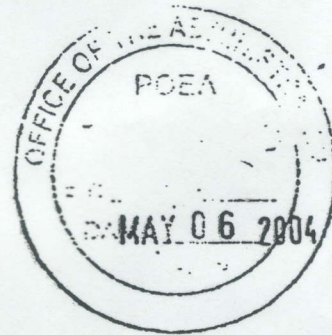


REPUBLIC OF THE PHILIPPINES
OFFICE OF THE SOLICITOR GENERAL
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Makati City, Philippines
Tel. No. 818-63-01 to 09
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May 4, 2004

HON. ROSALINDA DIMAPILIS-BALDOZ
Administrator
**PHILIPPINE OVERSEAS
EMPLOYMENT ADMINISTRATION**
POEA Building, Ortigas Ave.,
Mandaluyong City



Madame:

This is in response to your letter dated March 30, 2004 requesting the legal opinion of the Office of the Solicitor General on whether it is within the authority of the POEA to issue a board resolution making it mandatory for all landbased recruitment agencies to insure every migrant worker with the GSIS under the so called Welfare Enhancement Program.

A number of considerations must be carefully looked into vis-avis the proposed program:

First. As mentioned in your letter, majority of the proposed benefits are already provided under existing laws and programs. On this point, therefore, we agree with your position that there is no need to make the proposed additional insurance coverage involving the same benefits. mandatory, instead, the same may be done on a voluntary basis.

Second. It is true that the proposed program provides for two (2) additional benefits that are not covered by any existing laws or programs, viz: the subsistence benefit allowance and legitimate monetary claim assurance benefit allowance. But a careful study thereof would show that it may not exactly be advantageous to the migrant worker. Consider:

A. The proposed subsistence benefit allowance can only be enjoyed by the migrant worker subject to the following conditions: 1. he should file his claim before the proper authorities in the country of his employer; 2. he must continually reside in such foreign country; and 3. the maximum amount that he could claim is only up to \$600 or \$100 per month within a six-month period.

A.1. The prosecution of every migrant worker's money claim is subject to the municipal laws of the country where it will be filed. There is, therefore, no guarantee that the laws in the foreign country will allow the filing of the same. Assuming it is allowed, there is still no assurance that the laws of the foreign country would give more protection to the migrant worker than the Philippine laws. As it is, under our laws, the migrant worker is amply protected because the local recruitment agency is held solidarily liable with the foreign employer whenever a breach of contract or negligence is committed by the latter. The worker does not have to proceed against his foreign employer abroad to be able to satisfy the judgment in his favor.

A.2. On the proposed allowance of \$100 per month or up to \$600 for six (6) months, the same is grossly inadequate to cover the expenses of prosecuting a money claim abroad. The proposed program also assumes that such money claim could be terminated in six (6) months, which may not always be the case.

B. The legitimate monetary claim assurance benefit, on the other hand, seeks to cover the liability of local recruitment agencies to the workers in cases decided by the NLRC in favor of the latter. The protection actually pertains to recruitment agencies and not to the migrant workers.

Third. On the proposed engagement of the GSIS as exclusive insurer of the program, some serious concerns have to be addressed. In the first place, there is no showing that the GSIS is willing to accept the proposed engagement

as exclusive insurer of the program. Also, it is a matter of public knowledge that the GSIS is now encountering financial difficulties that may render it unable to effectively and efficiently implement the program here and abroad. At any rate, we are of the view that the interest of the workers will be better served if a number of insurers, not just the GSIS, will undertake the project, in keeping with the insurance principle of "risk-distribution."

The matter at hand is undoubtedly important to the Filipino migrant workers who are considered the modern day heroes of the country. But it is equally important that policies and projects intended for their protection must truly be responsive to their needs.

We hope that we have fully and satisfactorily responded to your query.

Best regards.

Very truly yours,



ALFREDO L. BENIPAYO
Solicitor General



AMY C. LAZARO-JAVIER
Assistant Solicitor General



GENIE G. GAPAS-AGBADA
Solicitor