



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

March 19, 2010

RULING LETTER NO.: 2010-109-AV

TO ALL INSURERS OF LIFE ANNUITIES

Dear Sirs and Madams:

The Certain investment requirements imposed by the Puerto Rico Internal Revenue Code of 1994, ("PRIRC") with respect to funds held in the separate accounts of a variable annuity contract qualifies as individual retirement annuities under PRIRC Section 1169. The pertinent part of said contracts Section reads as follows:

"Section 1169 -- Individual retirement account.

(a) ...

(b) For purposes of this section, the term "individual retirement account" shall also mean an "individual retirement annuity". "Individual retirement annuity" means an annuity contract or an endowment contract as described by regulation prescribed by the Secretary, issued by a life insurance company or life insurance cooperative duly authorized by the Insurance Commissioner of the Commonwealth of Puerto Rico to do business in Puerto Rico and which meets the following requirements:

(1) ...

(6) That one-hundred (100%) percent of the premiums received as contributions described in paragraph (1) of subsection (a), paragraph (4) of subsection (d) of this section, and paragraph (2) of subsection (b) of section 1165, shall be invested in accordance with the provisions of Act No. 77 of June 19, 1977, as amended, known as the "Insurance Code of Puerto Rico". If the investment requirements provided by the "Insurance Code of Puerto Rico" are not met, it shall be necessary that the investment requirements described below be met.

That thirty-four (34%) percent or more of the premiums received as contributions described in paragraph (1) of subsection (a), paragraph (4) of subsection (d) of this section, and paragraph (2) of subsection (b) of section 1165, shall be invested in bonds of the Commonwealth of Puerto Rico or any of its instrumentalities or political subdivisions,It shall be the responsibility of the Commissioner of Financial Institutions, as well as of the Insurance Commissioner of the Commonwealth of Puerto Rico, to watch over the faithful compliance of the provisions of this paragraph." Emphasis Supplied.

Pursuant to the preceding statutory provision our Office has jurisdiction on the matter if an insurer is in compliance with the investment requirement applicable to an individual retirement annuity.

The investment requirement imposed to the individual retirement annuity is defined by PRIRC Section 1169(b)(6) as an exception to the general investment requirements imposed by such section to individual retirement accounts ("IRA's") issued by financial institutions. This exception was enacted by Act No. 288 of December 2006, originally House Bill 2985.

In the Statement of Motives of Act No. 288 our legislators expressed that the amendment was enacted to promote and preserve diversification of the investment portfolio of insurers, as required by the Insurance Code of Puerto Rico ("Insurance Code"). This view is also shared by the Secretary of the Treasury, as expressed in its report of October 13, 2006 on House Bill 2985, and also by the Finance Committee of the Puerto Rico House of Representatives, whose report reads in part as follows:

"In conformity with the provisions of Chapter 6B of the Insurance Code, the insurance companies are required to invest their funds in certain eligible investments, specifically authorized with the purpose of promoting financial health of said companies in a way that they would secure complying with their obligations with their insured. Along these lines, said Chapter of the Insurance PRIRC aims, among other things, to promote diversification of the insurance companies' investment portfolios. Notwithstanding the preceding, the investment requirement imposed by Section 1169(b)(6) of the Internal Revenue PRIRC of 1994 to the insurance company underwritings individual retirement annuities do not promotes the diversification of the investment portfolio as contemplated by Chapter 6B of the Insurance Code. Consequently, this Legislative Assembly consider necessary that insurance companies should comply with Section 1169(b)(6) of the Internal PRIRC upon compliance with the provisions of the Insurance Code. In this way, the required investment portfolio diversification is accomplished." (Our translation. Emphasis supplied.)

Thus, the legislative record of Act No. 288 recognizes that: (i) the investment portfolios of insurers are regulated by the Insurance Code; (ii) that investment portfolios of insurers should be adequately diversified; and, (iii) that the investment requirements imposed to regular IRA's issued by financial institutions would prevent insurers from achieving the desired diversification level.

Chapter 6B of the Insurance Code provides the investment criteria and practices applicable to insurers. However, pursuant to Section 13.360 of the Insurance Code, assets held in a separate account and its accretions may be invested and reinvested independently of the requirements and limitations provided by the Insurance Code, and that separate accounts investment portfolio will be disregarded when testing an insurer investment requirement.

In addition, Section 13.440 of the Insurance Code, provides that a separate account of an insurer may be used for life and annuity fixed or variable products, or both, and that it shall be treated as an investment company for purposes of the Investment Company Act of Puerto Rico. It also provides that a separate account is not subject to the provisions of the Investment Company Act of Puerto Rico requiring an investment company to invest 33% or 20% of its assets in local securities.

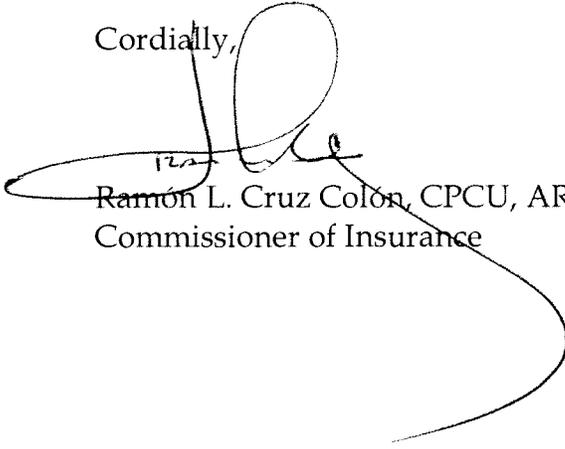
In summary, the Insurance Code imposes certain investment restrictions that aim to guarantee a reasonable degree of diversification and quality of the insurer investment portfolio. However, the Insurance Code recognizes the unique nature of a separate account by adopting special rules to the effect that neither its investment restrictions nor the one imposed by the Investment Act of Puerto Rico shall apply to funds held in separate accounts of an insurer.

PRIRC Section 1169(b)(6), as amended by Act No. 288, requires the insurers to invest the funds in accordance with the Insurance Code. The Insurance Code provides that funds invested in a separate account are not required to be invested pursuant to the rules otherwise applicable to insurers. Therefore, the insurer may not be deemed not to be in compliance with the Insurance Code upon investing its funds otherwise, since that is precisely what said Code provides.

The second sentence of PRIRC Section 1169(b)(6) applies (i.e. the regular investment requirements imposed to financial institutions IRA's) if the insurers fails to meet the investment requirement provided by the Insurance Code. It is not possible for an insurer to fail meeting the investment requirement of the Insurance Code, because the Insurance Code does not impose an investment requirement to premiums contributed to an individual retirement annuity deposited in a separate account. Thus, in such an instance an insurer should be deemed to have met the investment criteria of the Insurance Code.

In synthesis, it is our position that, funds held in a separate account of an individual retirement annuity are not required to be invested according to the investment requirements prescribed by PRIRC Section 1169(b)(6) for IRA's issued by financial institutions.

Cordially,

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by 'L. Cruz Colón'. The signature is written over the printed name and title.

Ramón L. Cruz Colón, CPCU, ARe, AU
Commissioner of Insurance