

NOTICE

The Commission is soliciting comments from the public on the proposed Implementing Rules and Regulations of Republic Act No. 9474 otherwise known as the Lending Company Act of 2007.

It is suggested that the comments shall refer to specific section/s of the draft Rules and a proposal/s shall be in rule form with justification.

Please submit your written comments to Director Justina F. Callangan, Corporation Finance Department, 6th Floor, SEC Building, EDSA, Greenhills, Mandaluyong City, **not later than August 20, 2007**. You may also submit your comments electronically through this e-mail address: justina.callangan@sec.gov.ph.

We anticipate you shall take full advantage of this opportunity to express your views.

RULE 1. *Title* – These Rules shall be known as the Implementing Rules and Regulations of Republic Act No. 9474, otherwise known as the “Lending Company Regulation Act of 2007” promulgated pursuant to Section 10 thereof.

RULE 2. *Definition of Terms* – As used in these Implementing Rules, the following definitions shall apply:

- (a) Act shall refer to Lending Company Regulation Act of 2007.
- (b) Affiliate shall refer to a corporation, the voting stock of which, to the extent of fifty percent (50%) or less, is owned by a bank or quasi-bank which is related or linked to such institution through common stockholders or such other factors as may be determined by the Monetary Board of the BSP.
- (c) Subsidiary shall refer to a corporation more than fifty percent (50%) of the voting stock of which is owned by a bank or quasi-bank.
- (d) Branch Office – shall include an extension office, unit, satellite office, etc. of a lending company with a Certificate of Authority to operate as such.
- (e) BSP shall refer to the Bangko Sentral ng Pilipinas.

- (f) Certificate of Authority (CA) shall refer to a certificate issued by the SEC in favor of a lending company to engage in the business of lending regulated by R.A. No. 9474 and its Implementing Rules and Regulations.

- (g) Charges on loan shall refer to agreed upon interest rate, service charge, penalty, discount, and such other charges incidental to lending activity.

- (h) Debtor shall refer to a borrower or person granted a loan by a lending company.

- (i) Monetary Assets shall refer to total assets inclusive of valuation reserves and deferred income but shall not include investments in real estate, in shares of stock of real estate development corporations or in real estate based projects, leasehold rights and improvements, fixed assets, foreclosed properties and prepayments.

- (j) Lending company shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses,

savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law. The term lending company shall be synonymous with lending investor.

(k) Networth shall refer to the excess of assets over liabilities, net appraisal surplus, unbooked valuation reserves, capital adjustments, overstatement of assets and unrecorded liabilities.

(l) Quasi-Bank shall refer to a non-bank financial institution authorized by the BSP to engage in quasi-banking functions and to borrow funds from more than nineteen (19) lenders through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act 7653 (the "New Central Bank Act") for purposes of relending or purchasing or sales of receivables and other obligations.

(m) SEC or Commission shall refer to the Securities and Exchange Commission

RULE 3. Requirements for *Organization*

(a) Form of Organization

A lending company shall be established as a stock corporation.

- i. Existing Lending Companies organized as single proprietorships or partnerships shall, within a period of one (1) year from the effectivity of the Act, organize themselves as a stock corporation with the minimum capitalization prescribed under the Act and secure a Certificate of Authority to operate a lending company. Otherwise, they shall be disallowed from engaging in the business of granting loans to the public.

- ii. The words "Lending Company" or "Lending Investor" or any other word descriptive of its primary activity of granting loans to the public except words commonly used to identify financing companies shall always be included in the corporate and trade name.

(b) Requirements for Securing an Authority – A lending company shall file with SEC four (4) copies of a duly accomplished application form to operate as a lending company, signed under

oath by the President, together with the following documents in the prescribed form:

- i. Information Sheet;
- ii. NBI clearance of each director/officer;
- iii. Foreign directors/officers, in addition to the NBI Clearance, shall submit a clearance from the Bureau of Immigration (BI), a photocopy of his passport showing a valid visa or stay in the Philippines, ACR i-card, and a work permit issued by the Department of Labor and Employment;
- iv. President's Sworn Statement and Undertaking that the corporation will not accept or solicit investments, other than loans, from more than 19 persons without SEC approval, and upon presentation of valid claims, it shall immediately indemnify or return the investments of persons from said unauthorized public solicitation of funds; Moreover, the sworn statement shall likewise contain an undertaking that the country or state of the foreign applicant allows Filipino citizens and corporations to do lending business therein.

v. For an existing lending investor applying for a Certificate of Authority, it shall submit an external auditor's sworn statement and undertaking that based on his/her examination of the corporate books of accounts and other related records of the corporation, it has not accepted or solicited investments, other than loans, from more than 19 persons without prior compliance with Sections 8 and 12 of the Securities Regulation Code.

vi. Business plan including method of marketing its product and sources of the funds and maturities of credit; and

vii. Statement of its compliance with Rule 17.1(2)(A)(i) and (ii) of the Amended Implementing Rules and Regulations of the Securities Regulation Code.

(c) Branches, Extension or Satellites Offices or Units.

- i. Loan transactions shall be booked in the authorized offices of the lending company;
- ii. No lending company shall establish or operate a branch, extension office or unit or satellite office without prior

approval by the SEC. The following documents shall be submitted for the opening of a branch office:

1) Information Sheet on the proposed branch;

2) NBI clearance of the manager, cashier and administrative officer of the proposed branch, cashier, and administrative officer;

iii. The Certificate of Authority to operate a branch, extension office, unit or satellite office shall be coterminous with that of the Head Office.

(d) Licensing Fees:

i. Initial Application Fees shall be paid to SEC at the time of filing of application

1) Head Office –

A fee of 1/10 of 1% of the paid-up capital of the lending company shall be paid for the issuance of a Certificate of Authority to Operate as a Lending Company.

2) Branch, extension office, unit or satellite office

A fee of 1/10 of 1% of the assigned capital of the branch, extension office, unit or satellite office shall likewise be paid for the issuance of an original Certificate of Authority.

ii. Annual fee -

An annual fee shall be paid not later than forty five (45) days before the anniversary date of the CA.

1) Head Office - 1/8 of 1% of the required paid-up capital

2) Branch Office - 1/8 of 1% of the required paid-up capital

(e) Commencement of Operations

A corporation/company that has been duly registered and granted a Certificate of Authority to Operate as a Lending Company shall commence operations within one hundred twenty (120) days from date of grant of such authority.

Failure to commence operations within said period shall be a ground for the suspension of its CA.

(f) Lending Companies shall use at least 51% of their funds for direct lending purposes.

(g) The total investment of a lending company in real estate and in shares of stock in a real estate development corporation and other real estate based projects shall not at any time exceed twenty-five (25%) percent of its networth.

RULE 4. *Capital*

(a) A Lending Company shall have a minimum paid-up capital of One Million Pesos (PhP1,000,000.00), unless the SEC prescribes a higher minimum capitalization, if warranted by the circumstances.

i. Lending companies established and in operation with a lower paid-up capital prior to the effectivity of the Act shall comply with the capital requirement within three (3) years from the date of effectivity of the Act. For this purpose, said lending companies shall, within sixty (60) days from effectivity of these Rules, provide the SEC a sworn

statement by the President, indicating the schedule of their capital build-up within the three (3) year period.

- ii. Should a branch, extension, satellite office or unit be established, the excess of the required minimum paid-up capital may be applied to the additional capital requirement for the proposed branch, extension, satellite office or unit, as follows:

PhP300,000.00 : Metro Manila and other first class cities;

PhP150,000.00 : Second class and other cities; and

PhP 75,000.00 : Municipalities

- (b) In case of failure to comply with the aforementioned capital requirement, the authority of a lending company to operate as such shall be suspended, after due notice and hearing, for a period of thirty (30) days.

RULE 5. *Citizenship Requirements*

- (a) A majority of the voting stock of the lending company shall be owned by citizens of the Philippines.

- (b) The percentage of foreign-owned voting stocks in any lending company shall be determined by the citizenship of the individual stockholders. In the case of corporations owning shares in a lending company, the citizenship of the individual owners of voting stock in such corporations shall be the basis in the computation of the percentage.

- (c) If the percentage of foreign owned voting stock in any Lending Company existing prior to the effectivity of the Act is in excess of forty-nine (49%), it shall not be increased but may be reduced and once reduced, shall not be increased thereafter beyond 49% of the voting stock.

- (d) No foreign national may be allowed to own stock unless the country of which he is a national accords reciprocal rights to Filipinos.

RULE 6. Amount and Charges on Loans

- (a) A lending company may grant loans in such amounts and interest rates and charges as may be agreed upon between the lending company and the debtor:

- (b) In accordance with the Truth in Lending Act and prior to the consummation of the transaction, a lending company shall furnish each debtor a disclosure statement, setting forth, to the extent applicable, the following information:
 - i. The principal amount of loan;
 - ii. Rate of interest of the loan;
 - iii. Service or processing fee, if any;
 - iv. Amortization schedule;
 - v. Any penalty charge for late amortization payment;
 - vi. Collection fee, if any;
 - vii. Notarial fee;
 - viii. All other fees in connection with the loan transaction;
 - ix. Description of the collection and lien enforcement procedures; and
 - x. Method of calculating the total amount of obligation in case of default.

RULE 7. *Maintenance of Books of Accounts and Records*

- (a) Every lending company shall maintain books of accounts and records as may be required by the SEC and prescribed by the Bureau of Internal Revenue and other government agencies. In case a lending company engages in other businesses, it shall maintain separate books of accounts for these businesses.

- (b) The Manual of Accounts prescribed by the BSP for lending investors shall continue to be adopted by lending companies for uniform recording and reporting of their operations, until a new Manual of Accounts shall have been prescribed by the SEC.

RULE 8. *Authority of the SEC*

Lending Companies shall be under the supervision and regulation of the SEC.

- (a) Reports – Lending companies shall file with the SEC the following reports / manuals in accordance with the following schedules:

Kind of report / manual	Due Date
General Information Sheet (GIS)	Within thirty (30) days from annual meeting, as stated in its SEC approved by-laws
Audited Financial Statements prepared by an external auditor accredited by the SEC	Within One Hundred Twenty (120) days from end of fiscal year, as stated in its SEC approved by-laws
Special Forms for Financial Statements in Electronic Format	Within thirty (30) days from the last day of submission of the annual Audited Financial Statements
Interim semi-annual financial statements (using Special Form) including the following: <ul style="list-style-type: none"> • Balance Sheet; • Income and Expense statement; 	Every July 15 and January 15

<ul style="list-style-type: none">• Cash flow• Statement of Changes in Equity• Schedule of Liabilities• List of Directors and Officers• Aging of Receivables	
--	--

(b) The SEC may examine the Books of Accounts and other records of the lending company.

(c) *Administrative Sanctions* - The SEC shall, at its discretion, impose upon any lending company a basic fine of P10,000.00 and P100.00 for each day of continuing violation but such daily fine shall not exceed P50,000.00 for the following:

- i. Violation of the Act and its Implementing Rules and Regulations;
- ii. Violation of the terms and conditions of the Certificate of Authority;
- iii. Violation of any lawful order, decision, or ruling of the Commission;
- iv. Unjustified refusal to have its bank of accounts audited; and
- v. Continuous failure to comply with SEC requirements.

The penalty of suspension shall be imposed in case of three (3) violations and revocation in case of four (4) violations.

RULE 9. *Delineation of Authority between SEC and the BSP* – Lending companies shall be under the supervision and regulation of the SEC, Provided, those lending companies which are subsidiaries and affiliates of banks and quasi-banks shall be subject to BSP supervision and examination in accordance with Republic Act No.7653.

RULE 10. *Acts Punishable and Persons Liable* – A fine of not less than Ten Thousand Pesos (PhP10,000.00) and not more than Fifty Thousand Pesos (PhP50,000.00) or imprisonment of not less than six months but not more than ten (10) years or both, at the discretion of the court, shall be imposed upon:

- (a) Any person who shall engage in the business of a lending company without a validly subsisting authority to operate from the SEC;
- (b) The president, treasurer and other officers of a corporation, including the managing officer thereof, who shall knowingly and willingly

- i. Engage in the business of a lending company without a validly subsisting authority from the SEC;
 - ii. Hold themselves out to be a lending company, either through advertisement on whatever form, whether in its stationery, commercial paper, or other document, or through other representations;
 - iii. Make use of a trade or firm name containing the words lending company or "lending investor" or any other designation that would give the public the impression that it is engaged in the business of a lending company as defined in the Act without the appropriate SEC authority;
and
- (c) Violators or violations of the provisions of the Act;
- (d) Any officer, employee or agent of a lending company who shall:
- i. Knowingly and willingly make any statement in any application, report, or document required to be filled under the Act, which statement is false or misleading with respect to any material fact;

- ii. Overvalue or aid in overvaluing any security for the purpose of influencing in any way the action of the company in any loan;

- (e) Any officer, employee or examiner of the SEC directly charged with the implementation of the Act or of other government agencies who shall commit, connive, aid, or assist in the commission of acts enumerated under Subsection 1 and 2 of this Rule.

RULE 11. Applicability of Other Laws – The provisions of Republic Act No. 3765, otherwise known as the *“Truth in Lending Act of the Philippines,”* Republic Act No. 7394 or the *“Consumer Act of the Philippines”* and other existing laws, insofar as they are not in conflict with any provisions of this Act, shall have a suppletory applicability to Lending Companies.

RULE 12. Effectivity of Implementing Rules and Regulations – These Implementing Rules and Regulations shall take effect fifteen (15) days from publication in two (2) newspapers of general circulation.