



FREQUENTLY ASKED QUESTIONS ON LENDING COMPANIES

Question 1: Who may engage in the business of lending activities?

Answer: The Lending Company Regulation Act (R.A. No. 9474) mandates that the business of lending activities can only be engaged/entered into by a stock corporation duly registered and licensed by the Securities and Exchange Commission ("SEC" or "Commission");

Question 2: What is the process of incorporation/registration of lending companies?

Answer:

- 1) Compliance with the requirements in forming an ordinary stock corporation, such as reservation of corporate name, filing of incorporation documents, submission of downloadable forms and payment of corresponding fees.
- 2) A minimum paid-up capital of P1,000,000.00.
- 3) Obtaining a Certificate of Authority to engage in lending business activities, as issued by the SEC, after compliance with the requirements in forming an ordinary stock corporation.

Question 3: What if the operation of a lending company violates laws implemented by the SEC?

Answer: It is advised that a formal complaint be filed against the lending company before the SEC for further study/investigation.

Question 4: What if the operation of a lending company is not within the SEC's power to implement?

Answer: The SEC has no authority over a lending company when it does not violate any provision of the Corporate Code, the Lending Company Regulation Act or any other laws regulating lending companies.

If the allegations of the complaint pertain to acts which may give rise to criminal/civil liabilities, the same should be filed before the regular courts which has jurisdiction over the subject matter. The complainant is advised to secure the assistance of a lawyer to fully protect his/her rights and interests.

The Commission may give assistance to the complainant by calling for a conference with the respondent lending company, subject to the consent and willingness of both parties to participate.

Question 5: If the lender required an ATM card as collateral, should the ATM card owner relinquish its possession?

Answer: The ATM card owner should not relinquish possession of the ATM card, either as a collateral or for any other purpose. Likewise, if necessary, he/she must secure the assistance of a lawyer to fully protect his/her rights and interests.

Question 6: If the lender is harassing me during the collection of payment, can the SEC assist me?

Answer: It depends on the issues raised in the complaint. If the allegations of harassment pertain to acts which may give rise to criminal/civil liabilities, the complaint should be filed before the regular courts which has jurisdiction over the same.

Question 7: What is the rate of interest that should be imposed by a lending company?

Answer: Section 7 of R.A. No. 9474 on 'Amounts and Charges on Loans' states that "a lending company may grant loans in such amounts and reasonable interest rates and charges as may be agreed upon between the lending company and the debtor: Provided, That the agreement shall be in compliance with the provisions of R.A. No. 3765, otherwise known as the "Truth in Lending Act" and R.A. No. 7394, otherwise known as the "Consumer Act of the Philippines"; Provided, further, That the Monetary Board, in consultation with the SEC and the industry, may prescribe such interest rates as may be warranted by prevailing economic and social conditions.

Before transacting with a lender, the individual should check the rates provided by the SEC in order for him/her to compare the available rates being charged.

Question 8: What is the interest rate that should be imposed by a lending company?

Answer: There are currently no ceilings set for the imposition of interest rates in view of Central Bank Circular No. 905, series of 1982, which suspended the effectivity of the Usury Law. As such, the borrower and lender are free to agree on the interest rates, fees and other charges that will apply to the loan in their agreement.

Question 9: What is the legal requirement in the imposition of an interest rate in a loan contract?

Answer: Payment of monetary interest shall be due only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for such payment was reduced in writing. Thus, collection of interest on a principal amount without any stipulation thereof in writing is prohibited by law.

Question 10: What is the rule in the imposition of compounded interest?

Answer: The law requires that the imposition of the interest, its rate and the fact of its compounding should be reduced in writing. Failure to specify the manner of earning interest, however, shall not automatically render the stipulation imposing the interest rate void, since it is readily apparent from the contract itself that the parties therein agreed for the loan to bear interest. Instead, in default of any stipulation on the manner of earning interest, simple interest shall accrue.¹

Question 11: Are “5-6” transactions legal?

Answer: The Supreme Court already ruled that imposition of usurious interest rates such as “5-6 money lending” is illegal. The legality or illegality of the contract stipulation entered into by the parties is subject to the court’s determination.

Stipulations authorizing the imposition of iniquitous or unconscionable interest rates are contrary to morals, if not against the law. Under Article 1409 of the Civil Code, these contracts are inexistent and void *ab initio* or void from the beginning. They cannot be ratified nor can the right to set up their illegality as a defense be waived.

The nullity of the stipulation on the usurious interest does not, however, affect the lender’s right to recover the principal of the loan, nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.²

Question 12: How are existing loans to be treated?

Answer: A contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. A duly executed contract carries with it the presumption of validity. The party who impugns its regularity has the burden of proving its simulation.³

The Commission has no authority to rule upon the validity of a contract and the stipulation therein. Thus, existing loans, unless declared null and void, may be considered as receivables upon incorporation of an entity.

Existing loans should be compliant with the requirements of the law, otherwise, it cannot be considered as a receivable upon incorporation.

¹Sec. 7, R.A. No. 9474.

² Asian Cathay Finance and Leasing Corporation vs. Spouses Cesario Gravador, et al., G.R. No. 186550, 5 July 2010.

³ Felipa Delfin vs. Rosario Demonarca, G.R. No. 146550, 17 March 2006.

Question 13: What if the loan contract violates the law on data privacy and/or discloses information therein to third persons?

Answer: On the matter of the alleged invasion of privacy, such cases fall within the jurisdiction of the National Privacy Commission (“NPC”), pursuant to the provisions of the Data Privacy Act. For more information, you may visit the NPC website using this link: <https://privacy.gov.ph/mechanics-for-complaints/>.