Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

May 07, 2019

SEC-OGC Opinion No. 19-45
Re: Lending Company Activity

GAMMAD LAW OFFICE
3B Basic Petroleum Building
104 C Palanca Street, Legaspi Village
Makati City

Attention: Atty. Joel C. Gammad

Gentlemen:

This refers to your letters dated 20 September 2018 and 04 February 2019 requesting for confirmation of your position that the proposed financial assistance to be extended by Global Mobility Service Philippines, Inc. (GMS) to its clients will not constitute lending as defined in relevant laws.

The primary purpose of GMS under its Amended Articles of Incorporation is stated as follows:

> "To enter into the business of providing vehicle services using IT Infrastructure, Mobility-Cloud Connecting System and application platform as a Service; To render vehicle management services using transportation software without operating as a public utility or as an internet service provider; To engage in vehicle data gathering, processing, sharing, storage and exchange; To provide technical support, maintenance, research and development for faster mobility and efficient land transportation; To engage in import, export and wholesale of Vehicles, both conventional and electric, and their spare parts, and; To engage in other activities necessary and incidental to the foregoing business without engaging in mass media and other nationalized activities. (as amended on November 06, 2017)"

You represented that currently, GMS installs Mobility-Cloud Connecting System (MCCS) in tricycles and four-wheeled units that provide real-time vehicle information management system, GPS usage and other software applications to enhance driving convenience and safety. MCCS also assists both drivers and financing companies in their loan transactions by offering security features to the units and a system of remote deactivation in case of non-payment of overdue bills by the drivers.

You further stated that users of the MCCS, particularly tricycle drivers and other low-income drivers, requested or clamored for a form of financial assistance from GMS

to help answer their needs in case of medical emergency or for educational assistance. This request arose from the fact that these drivers could not be accommodated readily by lending institutions or banks for lack of collateral or security. To address such request, GMS has decided, as a part of its Corporate Social Responsibility Project, to establish a form of financial assistance to be extended not to the public in general but only to its clients, who consist mainly of tricycle drivers and other low-income drivers. Said financial assistance, not to exceed Php 50,000.00 per year for each driver in good standing, shall be used solely for the drivers' or their families' medical emergency needs and for educational assistance to their children. An interest of 1.5% per month shall be charged accordingly to defray administrative expenses.

Hence, your query.

Under these premises, we do not confirm your position.

Section 3(a) of the Lending Company Regulation Act (LCRA)[1] provides for the definition of a "lending company", to wit:

xxx

> "Section 3. Definition of Terms. – For purposes of implementing this Act, the following definitions shall apply.
>
> (a) **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 shall be synonymous with lending investors**. (Emphasis ours)

xxx

Based on the aforementioned definition, **the proposed financial assistance program of GMS are in fact loans subject to 1.5% interest per month which falls within the concept of a lending activity.** This is apparent when you disclosed that the financial assistance was conceived in answer to the clamor from GMS' clients-low-income drivers, who could not be readily accommodated by lending institutions or banks. In short, GMS, intends to provide an alternative source of credit. Coupled with the fact that GMS will impose an interest rate of 1.5% per month to defray its administrative expenses, confirms the view that this proposed activity constitutes lending business[2].

---

[1] Republic Act (R.A.) No. 9474, otherwise known as An Act Governing the Establishment, Operation and Regulation of Lending Companies.

[2] Section 7 of R.A. No. 9474 states: *"Sec. 7. Amount and Charges on Loans. – 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 accordance with the provisions of Republic Act No. 3765, otherwise known as the "Truth in Lending Act" and Republic Act 7394, otherwise known as the "Consumer Act of the Philippines".*

Limiting the financial assistance to only those who availed of GMS' services for the medical emergencies and educational needs of their families, does not exempt or remove the activity from the ambit of the term "lending" or "granting of loans". LCRA does not distinguish as to whom or for what purpose the lending companies should offer their services.

Hence, the proposed financial assistance to be extended by GMS constitutes lending activity as defined under the LCRA. Under its current registration, GMS cannot undertake such activity. Also, there are other requirements to be complied with in order for a lending company to validly operate as such.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[3] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

Provided, further, That the Monetary Board, in consultation with the SEC and the industry, may prescribe such interest rate as may be warranted by prevailing economic and social conditions."

[3] SEC Memorandum Circular 2003-15, No.7