Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

25 September 2024

**SEC-OGC Opinion No. 24-26**
RE: Total Amount of Credit a Financing Company May Extend for Real Estate Transactions

**TIONGCO SIAO BELLO & ASSOCIATES LAW OFFICES**
2104-05 Robinsons Equitable Tower, ADB Avenue
Ortigas Center, 1605, Philippines
Pasig City
Email: tiongcosiaobellolaw.com

Attention: Atty. Greg Joseph S.J. Tiongco
Atty. Lisa Marie A. Garan
Atty. Thomas Miguel A. Martinez

**Dear Attorneys**:

This refers to your letter dated 18 June 2024, requesting a legal opinion on the total amount of credit a financing company may extend to third parties for real estate transactions.

In your letter, you stated that your client, United Financing Company (UFC), is a financing company registered with the Commission seeking to expand its clientele to accommodate borrowers obtaining loans for real estate transactions. But before it proceeds with this course of action, and to ensure its compliance with the laws, rules and regulations to avoid any potential violations, you are asking the following query:

Whether Section 9(d) of the Implementing Rules and Regulations (IRR) of Republic Act No. 8556 or the Financing Company Act (FCA) is the only limitation on the total amount of credit to third parties for real estate transactions that is applicable to financing companies not outlined in Section 7 of the IRR.

The FCA regulates the business of financing companies in the Philippines, which the Commission implements. Section 4 of the FCA states:

> Section 4. Grant of Authority to Securities and Exchange Commission. – The Securities and Exchange Commission is hereby empowered to enforce the provisions implementing regulations except insofar as the Bangko Sentral may have supervisory authority under the provisions of Republic Act No. 7653 with respect to financing companies licensed to perform quasi-banking functions, and insofar as the Monetary Board has authority to prescribe financing company rates and charges under Section 5 hereof.

Pursuant to the above-mentioned provision, the Commission promulgated the IRR of the FCA. Section 9(d) of the IRR provides the rule on allowable total credit that a financing company may extend:

> Section 9. Loans and Investments.
>
> a. xxx
> b. xxx
> c. xxx

d. **The total credit[1] that a financing company may extend to any person, company, corporation or firm shall not exceed thirty (30%) percent of its net worth[2].**

It is a basic principle in statutory construction that where the law does not distinguish, neither should we.[3] Ubi lex non distinguit nec nos distinguere debemus. Section 9(d) of the IRR does not qualify for what kind of transaction a loan can be extended by a financing company. Applying the aforesaid principle, a financing company can extend a credit for any kind of transaction of the borrower, subject to the 30% limit aforementioned.

However, financing companies outlined under Section 7 of the IRR of the FCA shall be subject to the applicable rules of the Bangko Sentral ng Pilipinas, to wit:

Section 7. Applicability of Bangko Sentral ng Pilippinas Regulations

The following financing companies, including their branches, agencies, extension offices or units, shall be subject to applicable rules and regulations of the Bangko Sentral ng Pilipinas (BSP) and must comply with BSP requirements prior to issuance by the Commission of the Certificate of Authority to Operate as a Financing Company:

a) Financing companies with quasi banking license;
b) Financing companies that are subsidiaries/affiliates of banks;
c) Financing companies that are subsidiaries/affiliates of non-bank financial intermediaries with quasi banking license;
d) Financing companies with authority to engage in trust operations.

Hence, we answer your query in the affirmative.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.[4] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Yours most respectfully,

**ROMUALD C. PADILLA**
*General Counsel*

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[1] Section 3(c) 'Credit' shall mean any loan, mortgage, financial lease, deed of trust, advance or discount, any conditional sales contract, contract of sell, or sale or contract of sale of property or service, either for present or future delivery, under which, part of all or the price is payable subsequent to the making of such sale or contract; any contract, any option, demand, lien or pledge, or to the other claims, or for the delivery of, property or money, any purchase, or other acquisition of or any credit upon the security of, any obligation or claim arising out of the foregoing, and any transaction or series of transactions having similar purpose or effect;" (IRR of FCA)

[2] Networth is the excess of assets over liabilities, net of appraisal surplus, unbooked valuation reserves, capital adjustments, overstatement of assets and unbooked liabilities (Sec. 1(l) of the IRR of FCA.)

[3] Spouses RomeoLL. Plopeno and Rosielinda Plopenio represented by Gavino Plopeno vs. Department of Agrarian Reform and Land Bank of the Philippines, G.R. No. 161090, July 4, 2012
Edmundo LL. Plopenio represented by Gavino Plopeno vs. Department of Agrarian Reform and Land Bank of the Philippines, G.R. No. 161092, July 4, 2012

[4] SEC Memorandum Circular No. 15, Series of 2003, 16 December 2003