Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

19 November 2024

SEC-OGC Opinion No. 24-37
Re: Number of Directors in a Financing Company

GAMMAD LAW OFFICE
3B Basic Petroleum Bldg., 104 C
Palanca St., Legazpi Village
Makati City
support@gammadlaw.com

Attention: Atty. Joel C. Gammad

Dear Sir:

This refers to your letter[1] requesting for clarification from the Commission on the minimum number of directors allowed in a financing company.

You cited the previous rules under the Corporation Code[2] on the matter, to wit:

> "Section 10. *Number and qualifications of incorporators.* – Any number of natural persons **not less than five (5) but not more than fifteen (15)**, all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. xxx
>
> Section 14. *Contents of articles of incorporation.* – All corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages, duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
>
> xxx xxx xxx
>
> **6. The number of directors or trustees, which shall not be less than five (5) nor more than fifteen (15);** xxx" (Emphasis and underscoring supplied)

On the other hand, you cited relevant provisions of the Revised Corporation Code (RCC)[3] as follows:

> "Section 10. *Number and Qualifications of Incorporators.* – **Any person, partnership, association or corporation, singly with others but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes**; xxx
>
> Section 13. *Contents of the Articles of Incorporation.* – All corporations shall file with the Commission articles of incorporation in any of the official languages, duly signed and acknowledged or authenticated, in such form and manner as may be allowed by the Commission, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

---

[1] Dated 03 June 2020
[2] The Corporation Code of the Philippines, Batas Pambansa Blg. 68, 01 May 1980.
[3] Revised Corporation Code of the Philippines, Republic Act (R.A.) No. 11232, 20 February 2019.

xxx xxx xxx

<u>(f) The number of directors, which shall not be more than fifteen (15) or the number of trustees which may be more than fifteen (15); xxx.</u>

Section 116. *One Person Corporation.* – A One Person Corporation is a corporation with a single stockholder: *Provided*, That only a natural person, trust, or an estate may form a One Person Corporation.

<u>Banks and quasi-banks, pre-need, trust, insurance, public and publicly-listed companies, and non-chartered government-owned and -controlled corporations may not incorporate as One Person Corporation;</u> *xxx*

Section 121. *Single Stockholder as Director, President.* – The single stockholder shall be the sole director and president of the One Person Corporation."

Moreover, you cited the provisions of the Financing Company Act (FCA) of 1998 and its Implementing Rules and Regulations (IRR)[4] on the role of the Commission with respect to the registration and operation of financing companies. You noted that the primary considerations of the Commission are that (1) the establishment of such financing company will promote public interest and convenience; and (2) the organization, direction and administration of the applicant, as well as the integrity and responsibility of the organizers and administrators, reasonably assure the protection of the interest of the general public.

It is your opinion that said considerations can be realized and achieved by a financing company that has a Board of Directors composed of members who are less than five (5) in number, without compromising public interest or public's convenience.

Relative thereto, you are requesting for an opinion on:

1) Whether a financing company may have a Board of Directors composed of less than 5 members; and
2) Whether there is a minimum number of directors required in a financing company.

Rules for Stock Corporations

Financing companies are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property.[5]

The FCA and its IRR define financing companies as follows:

"**Financing Companies**" hereinafter called companies, are corporations, except banks, investment houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property; xxx"

The organization and capital requirements of financing companies are as follows:

"Section 6. *Form of Organization and Capital Requirements.* – **<u>Financing companies shall be organized in the form of stock corporations</u>**, may be owned up to one hundred percent (100%) by foreign nationals, and shall have a paid-up capital of not less than ten million (P10,000,000.00) in case the financing company is located in Metro Manila and other first class cities, five million pesos (P5,000,000.00) in other classes of cities and two million five hundred thousand pesos (P2,500,000.00) in municipalities: *Provided*, That the Securities and Exchange Commission may adjust said minimum paid-up levels as it deems warranted by its prudential oversight requirements and consistent with the objectives of this Act: *Provided*, however, that financing companies duly existing and in operation before the effectivity of this Act shall comply with the minimum capital

---

[4] Rules and Regulations to Implement the Provisions of RA No. 8556 (The Financing Company Act of 1998), 20 May 1999.
[5] Section 1(a), Republic Act (R.A.) No. 8556, Financing Company Act of 1998, 26 February 1998, as amended by R.A. No. 10881, 27 July 2015

requirement within one (1) year from the date of the said effectivity; and *Provided, further*, that where land is concerned, the financing company shall comply with the constitutional provision on foreign ownership of land.[6]"

Based on the above cited provision, the incorporation of financing companies shall comply with the provisions of the RCC and the rules thereunder regarding stock corporations.

To implement the provisions of the RCC on One Person Corporations (OPCs), the Commission issued ***SEC Memorandum Circular (MC) No. 7, Series of 2019***[7] to provide guidelines on the establishment of an OPC. Section 14 of SEC MC No. 7 states the following:

> "Section 14. *Who are Not Allowed to Form OPCs.* –
> Banks, **non-bank financial institutions**, pre-need, trust, insurance, public and publicly listed companies, non-chartered government-owned and -controlled corporations (GOCCs) **cannot incorporate as OPC.**
>
> A natural person who is licensed to exercise a profession may not organize as an OPC for the purpose of exercising such profession except as otherwise provided under special laws." (Emphasis and underscoring supplied)

A financing company being a non-bank financial institution, and hence not allowed to be an OPC, it cannot have just one (1) regular director.

Meanwhile, to implement Section 13(f) of the RCC, *i.e. not more than fifteen (15) directors,* the Commission issued ***SEC MC No. 16, Series of 2019***[8], which provides:

> "Section 1. Number of Incorporators
>
> For the purpose of forming a new domestic corporation under the Revised Corporation Code, two (2) or more persons, but not more than fifteen (15), may organize themselves and form a corporation.
>
> **Only a One Person Corporation (OPC) may have** a single stockholder, as well **as a sole director**. Accordingly, its registration must comply with the corresponding separate guidelines on the establishment of an OPC."

Thus, an ordinary corporation (not an OPC) must have at least two (2) regular directors.

Corporate Governance Rules

However, the Commission also promulgated the ***SEC MC No. 6, Series of 2009, or the Revised Code of Corporate Governance (RCCG)***[9], which applies to the following registered corporations and to branches or subsidiaries of foreign corporations operating in the Philippines that:

(a) sell equity and/or debt securities to the public that are required to be registered with the Commission, or
(b) have assets in excess of Fifty Million Pesos and at least two hundred (200) stockholders who own at least one hundred (100) shares each of equity securities, or
(c) whose equity securities are listed on an Exchange, or
(d) **are grantees of secondary licenses from the Commission**.

The RCCG considers secondary licensees of the Commission, such as financing companies, to be imbued with public interest, and hence, should adhere to more than ordinary corporate governance best practices.

Accordingly, under the RCGG, the Board of Directors of corporations covered by the Code "**shall be composed of at least [5] but not more than [15], members who are elected by the stockholders.**[10]"

---

[6] *Supra,* note 5,
[7] SEC Memorandum Circular No. 7, 25 April 2019.
[8] SEC Memorandum Circular No. 16, Guidelines on the Number and Qualifications of Incorporators under the Revised Corporation Code, 30 July 2019.
[9] SEC Memorandum Circular No. 6, Revised Code of Corporate Governance, 22 June 2009.
[10] *Ibid,* Article 3(A).

The RCCG likewise requires that all companies covered **"shall have at least two (2) independent directors or such number of independent directors that constitutes twenty percent (20%) of the members of the Board, whichever is lesser, but in no case less than 2.[11]"**

Slightly over a year from its issuance, the RCCG was amended by SEC MC No. 5, Series of 2010[12] (SEC MC No. 5) which limited the RCCG's coverage to financing companies that possess any of the following qualifications:

1. Have total assets of PhP50 million or more;
2. Have more than 40% foreign participation in their voting stock;
3. Have issued exempt or registered commercial papers.

Please note, however, that the Commission subsequently issued ***SEC MC No. 14, Series of 2014***[13] **(SEC MC No. 14)** which, by way of exception to SEC MC No. 5, exempts financing companies that are registered as close corporations from the requirement of electing at least 2 independent directors in their board, subject to the following conditions:

1. They amend their [AOI] to state the provisions of the [RCC] for close corporations;
2. All commercial papers shall be issued ONLY to Directors, Officers, Stockholders, and Related Interests (DOSRI) not exceeding nineteen (19) persons and to institutional lenders as provided under SRC Rule 9.2, as amended; and
3. Restrictions on the right to transfer shares shall be provided in the [AOI], By-Laws and Stock Certificates.

Conclusion

Considering the foregoing, to answer your queries, if a financing company possesses any of the qualifications under SEC MC No. 5 and is not a close corporation that satisfies the conditions under SEC MC No. 14, then it cannot have less than 5 board members **as it is required under the RCCG to have at least 5 such members, at least 2 of which must be independent directors**. Otherwise, if a financing company is a close corporation that satisfies the conditions under SEC MC No. 14 or is not a close corporation but does not possess any of the qualifications under SEC MC No. 5, then it may have at least 2 regular directors only.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[14] 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.

ROMUALD C. PADILLA
General Counsel

[11] *Supra, note 9.*
[12] SEC Memorandum Circular No. 5, Coverage of Financing Companies by the Revised Code of Corporate Governance, 6 August 2010
[13] SEC Memorandum Circular No. 14, Amendment to the Revised Code of Corporate Governance (RCCG) – Exemption from Independent Director Requirement for Close Financing Companies, 27 June 2014.
[14] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.