OFFICE OF THE GENERAL COUNSEL

23 December 2025

SEC OGC Opinion No. 25-14
Re: Lending Company Regulation Act of 2007; Lending Company Activity

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Dear Sir and Mesdames:

This refers to your Letter dated 06 July 2022, requesting the Commission's opinion on whether your client, a private retirement plan company (the "Company"), can extend interest-bearing loans exclusively to the eligible and qualified employee-members for housing, education, and other humanitarian purposes, *without* obtaining a Certificate of Authority to Operate as a Lending Company from the Commission.

As stated in your letter, the relevant facts are as follows:

1. The Company is established by several participating companies for the exclusive benefit of its eligible and qualified plan members. Pursuant to the Company's Articles of Incorporation ("AOI"), its purpose is to manage its funds to provide retirement, death, disability, and severance benefits to the employee-members, in accordance with its **duly registered plan rules:**

    1.1. To establish, administer, and own a retirement plan for the benefit of permanent employees of the several participating companies.

    1.2. To make payments and distributions in cash, stocks, and other assets to the members and beneficiaries of the retirement plan in accordance with the rules and regulations of the retirement plan.

2. The Company intends to have a loan program wherein it will extend interest-bearing loans to its eligible and qualified employee-members for housing, education, and other humanitarian purposes.

3. You submit that Republic Act ("R.A.") No. 9474 or the Lending Company Regulation Act of 2007 ("LCRA"), as amended,[1] applies only to entities that are in the business of granting loans, and not to isolated, irregular, or occasional extension of loans in the form of humanitarian assistance.

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[1] As amended by R.A. No. 10881, Amendments to Investment Restrictions in Specific Laws on Adjustment, Lending, and Financing Companies, and Investment Houses, 17 July 2016.

Correspondingly, you argue that your interpretation of the LCRA finds basis under the following provisions of the Implementing Rules and Regulations ("IRR") of the LCRA:[2]

3.1. Rule 3(a)(iii), which requires that the words "Lending Company" or "Lending Investor" or any other word descriptive of its primary activity of granting loans to the public shall always be included in the corporate name;

3.2. Rule 3(a)(vi), which requires a lending company or lending investor to submit a business plan that shall include the methodology of marketing product, sources of funds, and maturities of credit; and

3.3. Rule 3(f), which requires that the lending company shall use at least 51% of its funds for lending.

4. You posit that the requirements and standards enumerated in Item Nos. 3.1-3.3 hereof find no relevance to the Company's *proposed* loan program for the following reasons:

4.1. The Company retains its primary purpose and activity, which is to manage funds to provide retirement, death, disability, and severance benefits to the employee-members, since the extension of loans shall be irregular and merely for employee-members and for humanitarian purposes;

4.2. There is no "product" and "marketing" to speak of, since the loans will be extended exclusively to the employee-members and not to the public; and

4.3. The 51% threshold is unattainable given the amounts and frequencies of the loans to be extended.

5. Further, you posit that the intent of the legislators in enacting the LCRA is to regulate commercial lending to the public conducted by companies, other than banks, quasi-banks, and other financial institutions, and not non-public extension of loans solely for humanitarian purposes. Finally, the available precedent on the matter, particularly SEC OGC Opinion No. 19-45,[3] wherein the Commission ruled that the financial assistance extended to the corporation's clients constitutes "lending activity" defined under the LCRA, does not apply in this case since the Company will grant loans to employee-members only.

Hence, this query.

I. Definition of Lending Company under the LCRA.

Section 3(a) of the LCRA defines a Lending Company and provides the exclusions therefrom, *viz:*

> (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.

II. R.A. No. 4917 and Bureau of Internal Revenue ("BIR") Revenue Regulation ("RR") No. 15-205.

From the facts you gave, the Company is a private retirement plan company. As such, R.A. No. 4917[4] is relevant.

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[2] 23 August 2007.
[3] Dated 07 May 2019, addressed to Gammad Law Office.
[4] An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax whatsoever.

R.A. No. 4917 which provides for the retirement benefits of employees of private firms states that:

> Section 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizure by or under any legal or equitable process whatsoever except **to pay a debt of the official or employee concerned to the private benefit plan** or that arising from liability imposed in a criminal action: xxx
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> As used in this Act, ***the term "reasonable private benefit plan" means a pension, gratuity, stock bonus or profit sharing plan maintained by an employer for the benefit of some or all of his officials and employees, wherein contributions are made by such employer or officials and employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.***[5]

To implement the foregoing, the BIR issued RR No. 15-2025, otherwise known as the "Revised Private Retirement Benefit Plan Regulations" which sought to revise polices and guidelines on the taxability of retirement benefits received by employees under a reasonable private retirement benefit plan.

Under Section 3 of RR No. 15-2025, a private retirement benefit plan ("Retirement Plan") refers to an agreement whereby an employer provides benefits to its officials and employees upon the latter's retirement. **It may consist of a pension, gratuity, provident fund, stock bonus or profit-sharing plan, or any other similar plan maintained by an employer for the benefit of some or all of its officials and employees,** wherein contributions are **made by such employer or officials and employees, or both.** It may be contributory or non-contributory.

A Retirement Plan which is **duly approved by the BIR**, and was issued a certificate of tax qualification for tax exemption is entitled to certain tax incentives or privileges.[6] Considering that the grant of this tax exemption carries the imprimatur of the BIR, and in some cases, governed by the trust agreement,[7] a corporation that seeks to avail of this tax exemption benefit is subjected to stringent requirements and rules, that is, it shall comply with the BIR **approved and registered plan rules,** the trust agreement, and/or other contracts executed in furtherance of its Retirement Plan.

In this connection, we take note of your representation that you are acting "in accordance with duly registered plan rules."

III. The Company's Proposed Loan Program is not considered as lending company activity under the LCRA.

We answer your query in the ***affirmative*** and provide our discussion below.

To recapitulate, Section 3(a) of the LCRA defines lending company as a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than 19 persons. Section 7 of the LCRA also recognizes that a lending company, as a creditor, may grant loans in such amounts and reasonable interest rates and charges as may be agreed upon between the lending company and the debtor.

From the foregoing, it can be gleaned that a lending company under the LCRA has the following distinct characteristics:

(1) The corporation is engaged in the regular business of granting loans to the public;
(2) The corporation lends from its capital funds or from funds sourced from not more than 19 persons; and
(3) The corporation grants loans primarily for business for profit or interest income.

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[5] Emphasis and italics supplied.
[6] Section 4, RR No. 15-2025.
[7] A "Trusteed Retirement Plan" refers to a retirement plan which assets/funds are being held, managed, and administered by a separate entity or group of individuals that is designated or appointed as trustee by an employer for the benefit of its employees. (Section 6, RR No. 15-2025)

a. The Company is not engaged in the regular business of granting loans.

To recall, the LCRA was enacted ***to regulate the establishment of lending companies and to place their operation on a sound, efficient and stable condition to derive the optimum advantages from them as an additional source of credit***; to prevent and mitigate, as far as practicable, ***practices prejudicial to public interest***; and to lay down the minimum requirements and standards under which they may be established and ***do business.***[8]

As envisioned, the LCRA was enacted by the legislature to regulate entities engaged in commercial and "regular" lending to the public. This Office notes that the word "engaged" under the LCRA entails that lending is at the core of a corporation's business. Further, "regular" connotes steady or uniform in course, practice, or occurrence, as opposed to casual or occasional.[9]

To be sure, a plain reading of R.A. No. 4917 acknowledges that a loan may be contracted by the employee-members against such fund as it advances employee welfare and well-being, *viz:*

> Section 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizure by or under any legal or equitable process whatsoever **except to pay a debt of the official or employee concerned to the private benefit plan** or that arising from liability imposed in a criminal action: xxx[10]

However, lending companies and private retirement plan companies are different entities in the eyes of the law. Unlike a lending company, a private retirement plan company needs to meet the following requirements: (a) maintain a "reasonable private benefit plan" for the benefit of some or all of its officials and employees; (b) make contributions for the purpose of distributing to such officials and employees the benefits of the fund; and (c) ensure that the corpus or income of the fund shall be used for the exclusive benefit of the said officials and employees.

Thus, unlike the practice of lending companies, the lending activities of private retirement plan companies are circumscribed and strictly governed by its duly registered plan rules and/or the trust agreement. As a result, the Company cannot freely lend to the public as lending companies can.

Relative to the foregoing, the Company's lending activity may be characterized as isolated, irregular, or occasional extension of loans in the form of: (1) housing; (2) education; (3) and other humanitarian purposes. This becomes particularly evident since the Company shall: (1) **exclusively confine** its lending to **eligible** and **qualified employee-members;** (2) **not transact business with the general public;** and (3) **extend loans in accordance with its duly registered plan rules.** By confining the eligible borrowers to qualified employee-members, the Company does not indiscriminately offer credit accommodation to the public—which is a vital characteristic of regular business of lending.

The foregoing is supported by the difference in tax treatment as exemplified in BIR Ruling No. OT-376-2020,[11] where the BIR granted the certificate of tax exemption of the requestor's Retirement Fund's interest income derived from the Multi-Purpose Loan Assistance ("MLAP") for the benefit of its employee-members. Thus:

> It is represented that the Company's Retirement Fund was previously approved by this Office in BIR Ruling No. ERP-091-94 dated November 22, 1994 as a "reasonable retirement benefit plan" under Section 32 (B) (6) (a) of the 1997 Tax Code, and consequently revalidated in an undated letter addressed to the Bank of the Philippine Islands; ***that the Company has planned to set aside a part of the Fund for the MLAP to lend money to the member-employees for their family financial needs; that the loans shall bear an interest rate of three percent (3%) per annum and payable together with the principal amount from two (2) to six (6)-year period depending on the amount of individual loans approved by the Company; that the 3% interest rate was approved by the Board of Trustees of the Fund on October 21, 2011; and that the fund to be set aside for the MLAP is thirty percent (30%) of the total Retirement Fund.***

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[8] Section 2, LCRA.
[9] *Republic v. Asuncion*, G.R. No. 108208, 11 March 1994, citing Black's Law Dictionary 1285 (6th ed., 1990).
[10] Emphasis supplied.
[11] Dated 03 July 2020, addressed to MHI Technical Services Corporation.

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Thus, the following elements/conditions should be present to warrant the income tax exemption of employees' trust under Section 60 (B) of the Tax Code of 1997, as amended, to wit:

1. the contributions are made to the trust by the employer, or employees, or both;

2. such contributions are made for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and

3. under the trust instrument it is impossible at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the employees.

It is noted that the above conditions are present in the Retirement Fund. Thus, it is exempt from income tax on its interest income derived from the MLAP for the benefit of its employee-members. Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust is also exempt from the coverage of the withholding tax regulations.[12]

It is evident from the foregoing that the: (a) the granting of loan was sanctioned as part of the Retirement Plan; and (b) the interest income derived from granting such loan is exempt from income tax and withholding tax. This leads to the logical conclusion that there is intent to accord preferential treatment in cases of registered retirement plans in view of its employee welfare purpose. Thus, to subject the Company to payment of taxes by reason of its incidental lending activities would defeat the legislative intent behind its tax exemption.

Further, as aforementioned, Section 3(a) of the LCRA[13] excludes from its coverage other credit institutions already regulated by law, as in the case of Retirement Plans under R.A. No. 4917.

b. The Company does not lend from its capital funds or from funds sourced from not more than 19 persons.

Under the LCRA, a lending corporation lends from its capital funds or from funds sourced from not more than 19 persons. This entails that the lending activity must involve the corporation's own funds—money that forms part of its capital and/or limited borrowings from not more than 19 persons. These funds partake the nature of a **loanable capital specifically earmarked to operate the lending business.** Inevitably, lending from its "own funds" denotes that the lending corporation has ownership and control over the same.

In stark contrast, a Retirement Plan, being a reasonable retirement trust, is maintained **by an employer or its trustee for the benefit of some or all of its officials and employees, wherein contributions are made by such employer or officials and employees, or both**, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated. These funds are **internally** generated from the employer and/or employees.

The incidental granting of loans by a private retirement plan company is considered as **part** of the employee benefit and/or retirement program to promote and advance employee welfare, morale, stability, and retention—fully consistent with the Company's implied powers as will be elaborated elsewhere herein. Where the Company has constituted a Retirement Plan, the funds therefrom are held in trust for the exclusive benefit of the employees as these funds do not belong to the Company.

Considering that the contributions are made by the employer and/or employees for the benefit of the latter, the incidental lending from such fund is, to some extent, a form of advancing these contributions which are earmarked for employee benefits, such that the employee-members are permitted to borrow against, and limited by, their accrued benefits.

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[12] Emphasis and italics supplied.

[13] a. xxx 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. xxx

*c. **The Company does not grant loans primarily for profit or interest income.***

Anent the Company's purpose for the *proposed* loan program, such partake the nature of an economic assistance and an integral component of the Company's retirement or provident fund, where the Retirement Plan enables the employee-members to borrow a portion of their accrued benefits under well-defined terms and conditions. For emphasis, ***employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability.*** It provides security against certain hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.[14]

Apropos to the foregoing, a corporation, as a general rule, has only such powers as are ***expressly granted*** in its charter or in the statutes under which it is created or such powers as are ***necessary*** for the purpose of carrying out its express power. The ***express powers*** of a corporation are the general powers enumerated under Section 35 of the Revised Corporation Code ("RCC")[15] and those which are sanctioned by the State in the corporation's AOI. Meanwhile, ***implied powers*** refer to those essential and necessary to carry out its purposes as stated in the AOI. Lastly, ***incidental powers,*** are powers that are deemed conferred on the corporation because they are incidental to its existence.[16]

In *Montelibano v. Bacolod-Murcia Co., Inc.,*[17] the Supreme Court ruled that "[if] that act is one which is lawful in itself, and not otherwise prohibited, is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends, in a substantial, and not in a remote and fanciful sense, it may fairly be considered within charter powers."

Here, it can be gleaned that the Company's *proposed* loan program is fundamentally an exercise of its implied powers to carry out its primary purpose "to manage its funds to provide retirement, death, disability, and severance benefits to the member[s]-employees, in accordance with its duly registered plan rules." The lending is a complementary assistance within the fund framework by giving the employee-members advance access to their accrued benefits, over which they have beneficial interest, to tide them over until their retirement.

IV. Interpretation by Administrative Agencies.

To recapitulate, in SEC-OGC Opinion No. 19-45, the Commission made the following discussion:

> 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

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[14] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 95022, 23 March 1992.

[15] Section 35. *Corporate Powers and Capacity.* – Every corporation incorporated under this Code has the power and capacity:

(a) To sue and be sued in its corporate name;
(b) To have perpetual existence unless the certificate of incorporation provides otherwise;
(c) To adopt and use a corporate seal;
(d) To amend its articles of incorporation in accordance with the provisions of this Code;
(e) To adopt bylaws, not contrary to law, morals or public policy, and to amend or repeal the same in accordance with this Code;
(f) In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a nonstock corporation;
(g) To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
(h) To enter into a partnership, joint venture, merger, consolidation, or any other commercial agreement with natural and juridical persons;
(i) To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: *Provided*, That no foreign corporation shall give donations in aid of any political party or candidate or for purposes of partisan political activity;
(j) To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees; and
(k) To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

[16] SEC-OGC Opinion No. 24-05 dated 02 April 2024, addressed to LG Electronics Philippines, Inc.

[17] *Montelibano v. Bacolod-Murcia Milling Co., Inc.,* G.R. No. L-15092, 18 May 1962. Citations omitted.

> 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.
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> *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.*[18]

In the above-cited opinion, the vital facts are as follows: (a) the company's financial assistance shall be extended to its **clients**, who consist mainly of tricycle drivers and other low-income drivers; and (b) the proposed financial assistance to be extended is not reasonably necessary or implied from its profit-making business of providing vehicle services using IT Infrastructure, Mobility-Cloud Connecting System and application platform as a Service, and such related services.

In your client's case, it shall: (a) exclusively confine its lending to eligible and qualified employee-members; (b) not transact business with the general public; and (c) extend loans in accordance with its duly registered plan rules and reasonably implied from its purposes.

In the light of the foregoing considerations, SEC-OGC Opinion No. 19-45 finds no application to the Company.

Corollary thereto, it is worth stressing that the opinions issued by the Commission cannot be considered precedents under the *stare decisis* principle. Opinions are not doctrinal decisions that command following. Rather, these are determinations on questions which are not yet subject of actual controversy, but which the Commission is competent to answer, as they involve the laws which are being implemented by, and circumstances which are under the jurisdiction of the Commission. These opinions reflect the tenor of the Commission's interpretation of the laws that it is tasked to enforce. It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in sharp conflict with the governing statute or the Constitution and other laws. It is persuasive and accorded with much respect, but not finality. While not binding upon the Commission, the reasoning invoked or used therein may be adopted by the Commission in its future decisions or opinions. ***Of course, the facts and circumstances of the cases or queries in the future must fall squarely and be similarly situated in order that the same ruling and reasoning of the previous opinion may be applicable.*** Moreover, the Commission warns that, if, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, the opinion shall be rendered void.[19]

V. Conclusion.

Given that the Company's *proposed* loan program is not considered as extending a loan under the LCRA, it is not imperative for the Company to obtain a secondary license for it to implement its *proposed* loan program.

In light of the foregoing, this Office will no longer individually belabor on the reasoning advanced in Item Nos. 4.1-4.3 hereof considering that the items laid down in Item Nos. 3.1-3.3 hereof and echoed in the IRR of the LCRA are all **Requirements for Organization** as the nomenclature of Rule 3 itself denotes. These requirements serve to ensure that a company engaging in lending operates under these specified set of standards that reflect public accountability in order to protect borrowers. To stress, the LCRA was enacted "to lay down the minimum requirements and standards under which they [lending companies] may be established and do business,"[20] among others. Notwithstanding the absence of these items, a corporation may still be deemed covered by the LCRA where its activities constitute lending— **the determinative factor being the lending activity itself.**

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted 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 or upon the courts whether of similar

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[18] Emphasis and italics supplied.
[19] SEC-OGC Opinion No. 16-14 dated 07 July 2014, addressed to Atty. Ritchel B. Caparal-Llena. Emphasis and italics supplied.
[20] *Supra* at Note 8.

or dissimilar circumstances.[21] 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.

Very truly yours,

Romuald C Padilla
General Counsel

[21] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.