Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

3 November 2021

**SEC-OGC Opinion No. 21-11**
Re:Primary and Secondary Purposes

**FORTUN, NARVASA & SALAZAR**
23F, Multinational Bancorporation Centre
6805 Ayala Avenue, Makati City

**Attention: Atty. Ma. Carmen D. Babista-Lazaro**
**Atty. Robert Francis C. Fernandez**
**Atty. John Beau B. Masiglat**

**Gentlemen:**

This refers to your letter dated 06 March 2020 requesting for confirmation that Toyota Financial Services Philippines Corporation (TFSPC), a domestic corporation primarily engaged in the business of financing by extending credit facilities to customers of Toyota vehicle dealers in the Philippines, may provide assistance to its clients in the transfer of ownership of the vehicle and/or cancellation of mortgages thereon before the Land Transportation Office (LTO) upon settlement of the latter's loan/rental obligations.

You disclosed that TFSPC intends to give the abovementioned service **to its clients who have availed of its financial services,** i.e. those who have entered into a Mortgage or Loan Agreement and/or Financial Lease facility with TFPSC in connection with the vehicles bought from Toyota and/or other Motor Vehicle Dealers. This assistance would include processing/facilitating the transfer of the title to the vehicle, which was purchased through financial leasing, from TFSPC to its clients upon full settlement of the latter's obligations. In the case of the mortgagor, TFSPC would also assist in the cancellation of the mortgage. As a result, TFSPC will be deriving income from the said services.

It is your opinion that the assistance in transferring the ownership of and/or the cancellation of mortgage over the motor vehicle of TFSPC clients is necessary, useful, incidental, and conducive to the accomplishment of the purposes of the corporation.

We answer in the affirmative.

TFSPC, a financing company, is governed by the provisions of Republic Act No. 5980[1], as amended by R.A. No. 8556[2], or the Financing Company Act of 1998 (FCA). Section 3(a) of the FCA defines financing companies as corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives,

[1] Financing Company Act, Republic Act No. 5980, August 4, 1969
[2] Financing Company Act of 1998, Republic Act No. 8556, February 26, 1998

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 evidence of indebtedness, or by financial leasing of movable as well as immovable property.

As to the powers of financing companies, Section 9 of the FCA, as amended, provides:

> "Section 9. Rights and powers. – Financing companies shall have the following powers, in addition to those granted by this Act and by other laws*: x x x*
>
> ***Nothing in this Sec. shall be construed as precluding a financing company from performing such services or exercising such powers as may be granted by the Bangko Sentral ng Pilipinas or the Securities and Exchange Commission <u>or as may be incidental to its activities as a corporation</u>.*** (Emphasis supplied)

Based on the aforequoted provision, financing companies such as TFSPC, are allowed to engage in and/or perform such other services or activities as may be granted by the Commission, or which may be incidental to its activities as a corporation.

TFSPC's **primary purpose** clause, based on its latest Articles of Incorporation (AOI)[3], states:

> ***"To engage in, carry on and undertake the general business of financing and/or leasing of motor vehicles by extending credit/leasing facilities to (i) customers of Toyota and/or other vehicles dealers in the Philippines*** *and/or (ii) commercial or industrial enterprises, including distributors and dealers, who are engaged in the distribution and sale of Toyota and/or other vehicles in the Philippines, through (a) purchasing, discounting, rediscounting or factoring commercial papers, account receivables or negotiable instruments, (b) inventory financing,* ***(c) leasing,*** *(d) sale-back arrangements, (e) hire purchase agreements,* ***(f) direct lending*** *with or without security, as well as to engage in quasi-banking operations with prior approval by the Bangko Sentral ng Pilipinas* ***and any other business of financing and/or leasing company that may be directly or indirectly necessary, or useful for the accomplishment and furtherance or (sic) its primary purpose.*** (Emphasis supplied).

In this connection, item no. 10 of TFSPC's secondary purposes provides:

> ***"To (i) make, perform and carry out contracts of every sort with (a) any individual person, (b) corporate entities, or (c) public authorities of the Philippines,*** *and have one or more branch offices, and conduct its business in any part of the Philippines,* ***and do all and everything necessary, or useful for the accomplishment of any of its purposes as (a) herein enumerated, (b) incidental to the powers herein specified, or (c) which shall at anytime***

[3] As stated in your Letter dated March 6, 2020

> ***appear conducive to or expedient for the accomplishment of any such purposes or objects.*** (Emphasis supplied).

A corporation 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. A corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 35 of the Revised Corporation Code (RCC), and those which are sanctioned by the State in the corporation's AOI. **Implied or incidental powers, on the other hand, are the corporation's "powers, attributes and properties which are incidental to its existence"[4], which may be "essential or necessary to carry out its purpose or purposes as stated in its AOI."[5]**

Acts beyond those conferred by the RCC or by the TFSPC's AOI, except those which are necessary or incidental to the exercise of the powers conferred, are *ultra vires* acts.[6]

As aptly cited in your letter, the Supreme Court, in the case of ***Montelibano v. Bacolod-Murcia Co. Inc.***[7] provided for the test in determining *ultra vires* acts, thus:

> *It is a question, therefore, in each case, of the logical relation of the act to corporate purpose expressed in the charter. If that act is one of 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 power.* ***The test to be applied is whether the act in question is in direct and immediate furtherance of the corporation's business, fairly incident to the express powers and reasonably necessary to their exercise. If so, the corporation has the power to do it; otherwise, not.*** (Emphasis supplied)

Considering that TFSPC's primary purpose, as laid down in its latest AOI, mainly involves **financing of motor vehicles**, the intended service of transferring ownership of and/or the cancellation of mortgage over the motor vehicles **of its clients who have availed of its financial services,** is incidental to its primary purpose as the same is reasonably necessary for it to comply with its obligations under its financial service contracts i.e. ensure the proper and expeditious transfer of title of the vehicle from TFSPC to its clients once the latter's financial obligations have been fully settled.

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[4] Section 2, RCC. "Section 2. Corporation Defined. – A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence."
[5] SEC-OGC Opinion No. 22-19, 14 June 2019, citing SEC Letter dated 20 June 1989 addressed to Mr. Philipps C. Comadante, R.A. 11232, SEC OGC Opinion No. 20-09, and paragraphs (g) and (k) of Section 35 of the Revised Corporation Code
[6] Section 44, Revised Corporation Code
[7] G.R. No. L-15092, 18 May 1962

It shall be understood, however, that the foregoing opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue raised therein. This opinion shall not be considered and 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.[8] 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.

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

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