Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 23-08
Re: Lending company activity

9 May 2023

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Attention: **Atty. Marisol Caneja**
Atty. Ronald Allan Ydia

Gentlemen:

This refers to your letter dated 01 September 2022 requesting the Commission's opinion on whether the intended business activity using the online platform called "Earned Wage Access (EWA)" constitutes a lending activity which requires obtaining a Certificate of Authority to Operate as a Lending Company from the Commission.

As stated in your letter, the EWA platform is developed by WageSage Pte. Ltd. (the "WageSage"), a company registered in Singapore. WageSage is in the process of registering a wholly-owned subsidiary in the Philippines under the reserved name "GetPaid Philippines Incorporated" ("GetPaid").

GetPaid intends to provide administrative and operational support on human resources, such as extending support on earned employment benefits and providing technological platforms in relation thereto. It includes providing the online platform EWA for employees to get early access to their earned wages.

The EWA platform works as follows:

1. "[T]he Company or GetPaid will enter into a commercial contract with the corporate employers (the "Employers") on the use and access of the EWA for its employees. An (sic) employer access details will be provided by the Company or GetPaid;

2. "[T]he employees of the Employers who are interested to avail and use EWA will have to register online, agree on the terms on the use of EWA, provide details of their bank accounts where funds can be transferred, and once registration is completed, an (sic) access details will be provided by the Company or GetPaid (the "Registered Employees");

3. "[P]art of the terms that the Registered Employees will be required to agree on to will be on the assignment of the payment of the relevant amount of the earned wage from the Employer to the Company or GetPaid;

4. "[T]he Employers will provide the Company or GetPaid the relevant information on hours/days worked by its Registered Employees and the monetary equivalent of the earned wage;

5. "[W]hen a Registered Employee needs money in between payroll dates, the Registered Employee may access his/her available earned wage reflected in the EWA platform. For each access which results to transferring funds to the Registered Employee's bank account, a transaction fee of up to four percent (4%) is deducted out of the total amount being used;

6. "[O]n [the] specific payroll date, the Employer will release to the Company or GetPaid the equivalent amount that has been transferred by its Registered Employee, and any balances of the total earned wage or salary will be paid directly to the relevant Registered Employee;

7. "[B]y way of example: Registered Employee has Php500.00 per day salary (net of all regulatory contributions and deductions), and has worked for five (5) working days. At the end of the 5th working days (sic), the Registered Employee has Php2,500.00 as earned wage and [this is] reflected in the EWA platform. The Registered Employee needs urgent access to funding for emergency requirement of Php1000.00. The Registered Employee can go online and access EWA to transfer Php1000.00. The Company or GetPaid will transfer to the designated bank account of the Registered Employee the amount of Php960.00 (net of the Php40.00 transaction fee). On the payroll date, the Employer of the Registered Employee will transfer to the Company or GetPaid the amount of Php1000.00 while the rest of the total salary will be paid directly to the Registered Employee; xxx"

You averred in your letter that WageSage has business presence in Singapore and Indonesia, wherein it has not been required to obtain a lending license or similar license because its business activity using the EWA platform has not been classified as a lending or loan activity.

In relation thereto, you posit that the intended business activity, which is the above-described use of the EWA Platform, is not a loan and in carrying out the business activity in the Philippines, GetPaid should not be considered as engaged in a lending activity and therefore should not be required to obtain a license to operate as a lending company.

You are now requesting confirmation of your position.

At the outset, we recognize that WageSage was not required to secure a lending license or similar license in Singapore and Indonesia because its business activity using the EWA platform has not been classified as a lending or loan activity. However, since GetPaid intends to conduct the same business activity in the Philippines, it must comply with Philippine laws.

Loan and lending company as defined under Philippine laws

Article 1933 of the Civil Code of the Philippines[1] defines **loan** as follows:

> Article 1933. **By the contract of loan, one of the parties delivers to another**, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or **money** or other consumable thing, **upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.**
>
> Commodatum is essentially gratuitous.
>
> **Simple loan may be gratuitous or with a stipulation to pay interest.**
>
> In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower. *(Emphasis supplied)*

In the case of ***Santiago vs. Spouses Garcia***[2], the Supreme Court held that "by a contract of simple loan, one of the parties delivers to another money upon the condition that the same amount of the same kind and quality shall be paid. ***A person who receives a loan of money acquires ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.***

Based on the foregoing, the elements of a loan are as follows:

(1) One of the parties (*creditor*) delivers money or another consumable thing to another;
(2) Person who receives the money or consumable thing (*debtor*) acquires ownership thereof; and
(3) *Debtor* is bound to pay to the creditor an equal amount of the same kind and quality.

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[1] Civil Code of the Philippines, Republic Act No. 386, 18 June 1949
[2] G.R. No. 228356, 09 March 2020.

Republic Act (RA) No. 9474 or the Lending Company Regulation Act of 2007 (LCRA), as amended[3], was later on 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.

Section 3 of the LCRA provides that:

> 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.

Similar to the Civil Code of the Philippines, Section 7 of the LCRA 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*.[4]

Thus, while the LCRA does not specifically define "loan" as used in the definition of a lending company, it can be inferred from the rest of the provisions that **this involves a contract between a *creditor*, the lending company, and the *borrower or person granted a loan* by such lending company**,[5] subject to interest or charges as authorized under the said law.

Proposed business model of GetPaid through the EWA Platform

Applying the foregoing to the facts provided, it must be *first* determined whether GetPaid will be engaged in granting "loans" as its primary business activity.

Based on your letter, it appears that there are three contractual relationships that will exist in your proposed business model:

1. *Between GetPaid and the corporate employers* – GetPaid will enter into a commercial contract with the corporate employers *on the use and access of the EWA for its employees*. The employers will provide the Company or GetPaid the relevant information on hours/days worked by their employees and the monetary equivalent of the earned wage.

2. *Between GetPaid and the employees* - The employees of the employers who are interested to avail and use EWA will have to register online, agree on the terms on the use of EWA, provide details of their bank accounts where funds can be transferred, and once registration is completed, access details will be provided by GetPaid. When a registered employee needs money in between payroll dates, the registered employee may access his/her available earned wage reflected in the EWA platform. For each access which results to transferring funds to the registered employee's bank account, a transaction fee of up to four percent (4%) is deducted out of the total amount being used.

3. *Between the employees and the employer as regards the amount advanced by GetPaid* - Part of the terms that the registered employee will be required to agree on to will be on the *assignment of the payment* of the relevant amount of the earned wage from the employer to the GetPaid. On a specific payroll date, the employer will release to GetPaid the equivalent

[3] RA No. 9474, Lending Company Regulation Act of 2007, 22 May 2007, as amended by RA No. 10881, Amendments to Investment Restrictions in Specific Laws on Adjustment, Lending, and Financing Companies, and Investment Houses, 17 July 2016
[4] *Ibid.*, Section 7
[5] *Ibid.*, Section 3(b)

amount that has been transferred by its registered employee, and any balances of the total earned wage or salary will be paid directly to the relevant registered employee.

Based on the foregoing business model, the main business activity of GetPaid is *advancing* an amount of money to registered employees with the latter's earned wage as the maximum amount of money that can be advanced less transaction fee up to four percent (4%), as the limit.

The *elements* of this business activity fall within the definition of a loan under the Civil Code of the Philippines, to wit:

1. GetPaid *delivers to another*, the registered employees;
2. *A sum of money* using the EWA Platform;
3. Upon the *condition that the same amount shall be paid in return*, subject to interest or charges incidental to such transaction, if any.

It must be emphasized that what is transferred by GetPaid to the registered employees is an amount *advanced* by GetPaid using its own funds. While the amount transferred is based on the wage earned by the registered employees as the limit, the said amount is not yet owned by the registered employees, as the same is to be received at a later date as agreed with the employer (e.g. bi-monthly, monthly etc.). This is precisely the reason why the amount is being extended by GetPaid to the said registered employees in the first place.

Article 103 of the Labor Code on the time of payment of wages provides:

> "Article 103. **Time of Payment.** – **Wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days.** If on account of *force majeure* or circumstances beyond the employer's control, payment of wages on or within the time herein provided cannot be made, the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased. No employer shall make payment with less frequency than once a month.
>
> The payment of wages of employees engaged to perform a task which cannot be completed in two (2) weeks shall be subject to the following conditions, in the absence of a collective bargaining agreement or arbitration award:
> 1. That payments are made at intervals not exceeding sixteen (16) days, in proportion to the amount of work completed;
> 2. That the final settlement is made upon completion of the work." (Emphasis and underscoring supplied)

In ***De La Victoria vs. Burgos***[6], the Supreme Court held that the salary check of a government officer or employee does not belong to him before it is physically delivered to him. Until that time, the check belongs to the government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the government.

Applying the foregoing, although the wages of the employee are already *earned* by them since the services were already rendered, the ownership over said amount has not yet been transferred to the employees until the same is remitted to their personal accounts according to the specified time of payment as agreed with the employer. Prior to such time, ownership over the said amount remains with the employer and the employee cannot appropriate the same until it becomes due and demandable.

Since the proposed business activity of GetPaid under the EWA platform involves extension of loans from its own capital funds to the registered employees which falls within the concept of *lending* activity, GetPaid is considered as a lending company as defined under the LCRA.

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[6] G.R. No. 111190, 27 June 1995.

That the financial service is limited to only those employees registered with GetPaid does not exempt or remove the activity from the ambit of the term "lending" or "granting of loans". The LCRA does not distinguish as to whom or for what purpose the lending companies should offer their services.[7]

With GetPaid's usage of the EWA Platform falling within the act of extending a loan under the LCRA, it should secure a secondary license to operate as a lending company in the Philippines. A secondary license to operate as a lending company, is a mere privilege, and the issuance thereof is conditioned on the grantee's full compliance with applicable laws and regulations. Section 4 of the LRCA explicitly states that the Commission should grant a prior authority to operate as a lending company before such company can conduct its business in the Philippines.

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.[8] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[7] SEC-OGC Opinion No. 19-45, Re: Lending Company Activity, 7 May 2019.
[8] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.