Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

05 March 2025

SEC OGC Opinion No. 25-05
Re: Implementation of New Financing Program; Corporate Powers; Purpose Clause

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Attention: **Atty. Victorio H. Macasaet Jr.**
Atty. Raniel L. Dimayuga
Atty.Paolo Ervin N. Perez

This refers to your letter dated 29 September 2023 requesting for opinion as to whether the Toyota Financial Services Philippines Corporation (TFSPC) can implement its new financing program for the loan or lease of Lexus vehicles to be called "Lexus Financial Services (LFS Program)" without violating the provisions of Republic Act No. 8556, otherwise known as the Financing Company Act (FCA)[1] and its Implementing Rules and Regulations (IRR)[2], particularly:

a. Section 9 of the FCA;
b. Section 14 (1)(a), (b), and (c) of the FCA;
c. Section 12 of the IRR; and
d. Section 14 of the IRR.

According to you, TFSPC is a financing company duly registered with the Commission by virtue of SEC Registration No. CS200251691 and SEC Certificate of Authority No. 256 (2002). The corporation offers accessible and flexible auto financing and leasing services to its customers.

You also disclosed that Toyota Financial Services Corporation (TFSC) is a corporation based in Japan. It is wholly owned by Toyota Motor Corporation (TMC), a Japanese company. TFSC owns sixty percent (60%) of the outstanding capital stock of TFSPC. TMC is the owner of the Lexus brand. TMC has granted permission to TFSC and all of its sales finance companies in many countries (including the Philippines, through TFSPC), to use "Lexus Financial Services" as a service mark.[3]

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 special laws, which are **primarily organized for the purpose of extending credit facilities to consumers and industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivables, or by buying and selling contracts, leases, chattel mortgages, or other evidence of indebtedness, or by financing and leasing of movables as well as immovable property**; xxx" (Emphasis ours)

On the powers of financing companies, Section 9 of the FCA provides:

> " Section 9. Rights and powers- Financing companies shall have the following powers, in addition to those

[1] Republic Act No. 8556, An Act Amending Republic Act No. 5980, as Amended, otherwise known as the Financing Company Act, 26 February 1998.
[2] Rules and Regulations to Implement the Provisions of Republic Act No. 8556 (The Financing Company Act of 1998), 20 May 1999.
[3] Clarificatory Letter dated 24 October 2023.

> granted by this Act and by other laws: xxx
>
> **Nothing in this section 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 (BSP) or the Securities and Exchange Commission (SEC)** or as may be incidental to its activities as a corporation." (Emphasis Supplied)

The Commission opined[4] that being a business vested with public interest, financing companies are highly regulated. Thus, Section 12 (b) of the FCA's IRR provides that **no person, association, partnership, or corporation shall engage in the business of financing company and hold itself out as such unless authorized by the Commission.**[5]

Before a corporation can engage in financing activities, **it must secure a Certificate of Authority to Operate as Financing Company ("Certificate of Authority")** which shall be issued by the Commission if it finds that the requirements under the FCA and its IRR have been complied with and that no valid reason exists for the disapproval of the application.[6] **One of the conditions for the issuance of the Certificate of Authority is that the corporation must have, as its primary purpose, general financing activities**.[7]

In this connection, the Commission opined that a corporation has only such powers as 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 RCC, and those which are sanctioned by the State in the corporation's Articles of Incorporation (AOI).** Implied or incidental powers, on the other hand, are the corporation's "powers, attributes, and properties which are incidental to its existence", which may be essential or necessary to carry out its purpose or purposes as stated in its AOI.[8]

In ***Montelibano v. Bacolod-Murcia Co. Inc.***[9], 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**."

Any power exercised by a corporation that is not within its express or implied power is an ultra vires act which is prohibited by Section 44 of the Revised Corporation Code (RCC).[10]

Based on the latest amended AOI of TFSPC, its primary purpose is to "engage in, carry on, and undertake the general business of **financing and/or leasing of motor vehicles** by extending credit/leasing facilities to: 1. **Customers of Toyota and/or other vehicle dealers in the Philippines** xxx." There is nothing in the AOI of TFSPC which forbids it from entering into a contract of extending credit/leasing facilities to customers of other vehicle dealers, e.g. Lexus. In fact, the primary purpose expressly authorizes TFSPC to do so. Hence, the implementation of the LFS is not ultra vires and does not violate Section 9 of the FCA.

As such, the implementation of the LFS is not violative of Section 14(1) (a)(b) &(c) of the FCA[11]

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[4] SEC OGC Opinion No.19-04 dated 4 March 2019 addressed to Mamaril Law Firm.
[5] Supra note 2, Section 12 (b)
[6] *Ibid*, Section 4c in relation to Section 5a.
[7] *Ibid.*,Section 1a.
[8] SEC OGC Opinion No.21-11 dated 3 November 2021addressed to Fortun, Narvasa & Salazar Law firm
[9] G.R. No. L-15092, 18 May 1962.
[10] Republic Act (RA) No. 11232.
[11] Section 14 of the FCA provides:

> "Sec. 14. Penalty. — A fine of not less than Ten thousand pesos (P10,000.00) and not more than One hundred thousand pesos (P100,000.00) or imprisonment for not more than six (6) months or both, at the discretion of the court, shall be imposed upon: "
>
> **(1) Persons, associations, partnerships or corporations, including the managing officer thereof, that shall:**
>
> (a) **Engage in the business of a financing company without authority from the Securities and Exchange Commission;**

and not punishable by the penalties under Section 14[12] of the IRR by reason thereof.

It must be noted, however, that based on the submitted proposed Business Plan[13] of TFSPC, the LFS Program was not included as one of its products. The LFS Program is a new product that must be incorporated in its "Loan Products and Pricing Parameters". Thus, TFSPC shall submit and secure the approval of its amended Business Plan incorporating the proposed LFS Program before the commencement of the implementation thereof. For this purpose, kindly coordinate with our Financing and Lending Companies Department (FLCD).

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 in other cases or upon the courts whether of similar or dissimilar circumstances.[14] 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

(b) **Hold themselves out to be financing companies, either through advertisement in whatever form, whether in its stationery, commercial paper or other document, or through other representations without authority; and**

(c) Make use of trade or firm name containing the words 'Financing Company' or 'Leasing Company' or 'Finance and Leasing Company or 'Finance and Investment Company' or any other designation that would give the public the impression that it is engaged in the business of a financing company or leasing company as defined in this Act without authority."

12 Section 14 of the IRR provides:

"Section 14. Admirative Sanctions

If the Commission finds that there is a violation of R.A No.8556, of the FCA IRR, of the terms and conditions of the COA to operate as a financing company, of any Commission order, decision or ruling, or the company refuses to have its book of accounts audited or continuously fails to comply with SEC requirements, the Commission shall, in its discretion, impose any or all of the following administrative sanctions:

1) Suspension or revocation of the Certificate of Authority to Operate as a financing company after proper notice and hearing;
2)A basic fine of not less than Ten Thousand Pesos (P10,000) and P100 for each day of continuing violation, but in no case shall the total fine be more than One Hundred Thousand Pesos (P100,000); and
3)Other sanctions within the power of the Commission.

The imposition of the foregoing administrative sanctions shall not preclude the institution of the appropriate action against the officers and directors of the financing company or any person who might have participated therein, directly or indirectly, in violation of R.A No. 8556, and these Rules and Regulations."

13 Dated 14 August 2023.
14 Section 7, SEC Memorandum Circular No. 15 Series of 2003, 16 December 2003.

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