Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

FINANCING AND LENDING COMPANIES DEPARTMENT

IN THE MATTER OF:

GOLDEN KOI LENDING TECH CORP. DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RUSHYKEY, MAGIC PURSE, MECHA POCKET, STALOAN, GOPERA AND LENDA,

Respondent.

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FinLenD Order No. 2025- 07

For: VIOLATION OF MEMORANDUM CIRCULAR NO. 19, SERIES OF 2019, MEMORANDUM CIRCULAR NO. 10, SERIES OF 2021, AND THE IMPLEMENTING RULES AND REGULATIONS OF THE LENDING COMPANY REGULATION ACT OF 2007.

ORDER

This resolves the administrative proceedings against Golden Koi Lending Tech Corp. (the Respondent or Golden Koi), a registered lending company with Company Reg. No. 2022070058482-26 and Certificate of Authority (CA) No. L-22-0219-15, with registered address at 4th Floor Centrum II Bldg., 150 Valero Street, Salcedo Village, Brgy. Bel-Air, Makati City 1227, Philippines, and email addresses at goldenkoi.lendingtech@gmail.com; and goldenkoijeanny@gmail.com; arising from the Show Cause Letter (SCL) dated 26 October 2023 issued by the Financing and Lending Companies Division (FinLenD) for various violations of regulations implemented by Securities and Exchange Commission (SEC). The Respondent's primary purpose is:

> "to engage in the business of direct lending including the provision of services through fintech-enabled platforms, without however engaging in pawnbroking under Presidential Decree No. 114, financing under Republic Act No. 8556, and online lending platforms (OLPs) until the registration of OLPs is permitted under relevant regulations and the corporation has complied with the same; provided, however, that borrowings shall be sourced from not more than nineteen (19) lenders, including shareholders, and that there shall be continuing compliance with SEC Memorandum Circulars on (1) Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC) and (2) Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platform (MC Nos. 18 and 19, s. 2019, respectively), and such other rules and regulations as may be prescribed by the Commission.?"

STATEMENT OF FACTS

On 26 October 2023, FinLenD issued a Show Cause Letter (SCL) against Golden Koi for violation of SEC Memorandum Circular No. 19, Series of 2019 (SEC MC 19)[1] and SEC Memorandum Circular No. 10, Series of 2021 (SEC MC 10)[2], specifically for launching and/or operating an Online Lending Platform (OLP) named "Zippeso."

In the said SCL, FinLenD noted that Golden Koi failed to register "Zippeso" among its business names in violation of Section 2 of SEC MC 19 in relation to SEC Memorandum Circular No. 13, Series of 2019.

Golden Koi also failed to file an Affidavit of Compliance (SEC Form 2 - Prospective Online Lending Platforms) prior to commencing the operations of said OLP in violation of Section 3 of SEC MC 19.

[1] Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms.
[2] Moratorium on New Online Lending Platforms.

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Lastly, Golden Koi launched and operated the "Zippeso" OLP despite the imposition of the moratorium in violation of SEC MC 10.

In the same SCL, FinLenD ordered Golden Koi to immediately cease and desist the operations/activities of "Zippeso", immediately remove said OLP from the Google Play Store, Apple Store and other digital platforms, and provide proof of the same, and explain/show cause within ten (10) days why it should not be held administratively sanctioned for the violations alleged in the SCL.

On 5 November 2023, Golden Koi submitted its Answer in letter form through its President, Ms. Jeanny Magante, praying for reconsideration of FinLenD's action and assessment against it.

Golden Koi stated that it had ceased all of its business operations, including its marketing, debt collection, and customer service operations, following the execution on 20 October 2023 of the search warrants docketed as WSSECD Nos. 23-33770-71[3]. The Respondent added that their equipment and electronic devices were seized and remain in the custody of the Philippine National Police - Anti-Cybercrime Group (PNP-ACG) and that while their directors and officers were not charged with any crime, it has no practical means to continue its principal operations in whatever form and manner. Golden Koi further added it appears only to be left with no alternative but to completely shut down and dissolve as a body corporate in due course.

The Respondent also clarified its business operations, stating that it does not conduct any online lending but is lawfully functioning as the third-party service provider (TPSP) of other licensed lending companies. Golden Koi stated that it has held off any online lending activities while it remains unable to register its own OLP due to the ongoing moratorium on the recording of new OLPs.

It further added that it has instead offered its services as a TPSP to other lending companies whose services are incidental to its primary purpose and allowed under Article II(B) 3 to 5 of its secondary purposes. Golden Koi likewise underscored that the employment of TPSPs in relation to the outsourcing of operations of a lending company is not prohibited under the Lending Company Regulation Act of 2007[4] (LCRA), Republic Act No. 11765 or the Financial Products and Services Consumer Protection Act (FCPA) and/or other implementing rules. It also cited SEC Memorandum Circular No. 18[5] (SEC MC 18) in stating the SEC's recognition of employing TPSPs as a permissible practice of lending and financing companies.

Golden Koi manifested that the inadvertent disclosure on the public-facing "Zippeso" OLP that said OLP is owned by it was a completely unintentional lapse on its part and that it has already addressed said matter.

The Respondent ultimately expressed its full cognizance and deep commitment to comply with SEC's lawful orders and regulations fully and undertook full cooperation and coordination with the latter should it be found to have violated the law.

ISSUE

Whether Respondent violated SEC MC 19 and SEC MC 10.

FINLEND'S RULING

Dispensing the technicalities[6] required under the 2016 SEC Rules of Procedure that the Answer must be a verified one, FinLenD rules in the affirmative.

Golden Koi operated the Zippeso OLP

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[3] The Warrant to Search, Seize and Examine Computer Data was issued by Branch 24 of the Regional Trial Court of Manila and applied and implemented by the Philippine National Police - Anti-Cybercrime Group (PNP-ACG).

[4] Republic Act No. 9474.

[5] Prohibition on Unfair Debt Collection Practices of Financing Companies(FC), and Lending Companies(LC).

[6] SEC.3-3. Verified Answer to the Formal Charge. - Within fifteen (15) days from receipt of the Formal Charge, the respondent shall file an Answer, which shall either be verified by a statement therein, or by attaching a separate affidavit, which states that the respondent has read the Formal Charge and that the allegations in the Answer are true and correct of his personal knowledge or based on authentic records. An answer or affidavit, containing a verification based on "information and belief," or upon "knowledge, information and belief," or lacking a proper verification, shall be treated as an unsigned answer.
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Long-established is the rule "that words of a statute would be interpreted in their natural, plain, and ordinary acceptation and the signification that they have in common use unless it is evident that the legislature intended a technical or special legal meaning to those words"[7]. The term "operate," in its usual meaning, is the performance of a function by exerting power or influence over something or someone. In Black's Law Dictionary, it either means the following:

> "1. To run some part of machinery or a business.
> 2. To function properly.
> 3. To perform medical surgery."[8]

In the case of Calleja v. Executive Secretary[9], the Supreme Court has held that provisions of a law must be read in whole, to wit:

> "A law must not be read in truncated parts and its provisions must be read in relation to the whole law. Every part of the statute must be interpreted with reference to the context (i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment). Thus, in construing a statute, courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible."

Clearly, the term "operate" as it is commonly understood in connection to the case at bar and in conjunction with SEC MC 19, means the performance of a function by exerting power or influence over an online lending platform.

FinLenD finds no merit in Golden Koi's manifestation that the inadvertent disclosure on the public-facing "Zippeso" OLP that the same is owned by it was but a completely unintentional lapse on its part. Also, despite having addressed the said matter, it can not be denied that individuals who accessed the Zippeso OLP at the time Golden Koi was the stated owner believed the same.

It can be deduced that Golden Koi, in having the ability to change the information within the Zippeso OLP and inadvertently disclosing in the said OLP that Golden Koi owns it, implies that the Respondent was able to operate it. Golden Koi was able to perform functions that go beyond its claim of simply functioning as a Third-Party Service Provider to other licensed lending companies.

Golden Koi violated SEC MC 19 and SEC MC 10.

While FinLenD commends Golden Koi's awareness of the existing moratorium, as evidenced by the Respondent's reply of its holding off any online lending for its inability to register its own OLP due to the moratorium and the primary purpose indicated in its Articles of Incorporation, it still finds the Respondent to be violative of SEC MC 19 and SEC MC 10.

a. Having operated the Zippeso OLP, Golden Koi should have complied with SEC MC 19.

It is without question that before any OLP's operations commence, the company that will operate it should comply with SEC MC 19. Section 3 of the said circular requires the submission of the corresponding Affidavit of Compliance, to wit:

> "SECTION 3. Report to the Commission. FCs and LCs shall submit to the Corporate Governance and Finance Department (CGF) of the Commission an Affidavit of Compliance (SEC Form 1 - Existing Online Lending Platforms, within ten (10) days from the effectivity of this Circular. Said report shall include, but not be limited to, the following information:

[7] Republic v. Pryce Corp., Inc., G.R. No. 243133, 8 March 2023.
[8] Retrieved from https://thelawdictionary.org/operate/.
[9] G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, 7 December 2021.

1. Name of Online Lending Platform/s;
2. Proof of compliance with Section 2 hereof;
3. Images of the Online Lending Platform/s as they appear to the public; and
4. Illustrations of the Online Lending Platforms showing how the required Disclosure and Advisory are displayed.

Online Lending Platforms that are developed, operated, utilized or amended by LCs and FCs shall likewise be reported to the Commission through an Affidavit of Compliance (SEC Form 2- Prospective Online Lending Platforms), not later than ten (10) days before the commencement of the operations of siad Online Lending Platform/s."

FinLenD finds Golden Koi's claims of having only functioned as a TPSP and inadvertence in having been reflected as the owner of the Zippeso OLP as baseless grounds used by the latter. The mere operation of the Zippeso OLP compelled its compliance with pertinent laws, specifically the filing of an Affidavit of Compliance for its prospective OLPs (SEC Form 2) not later than ten (10) days prior to the actual commencement of Zippeso's operations.

b. Golden Koi violated SEC MC 10.

At the time Golden Koi was incorporated on 15 August 2022, not only was SEC MC 19 in place, but SEC MC 10, or the moratorium on the registration of new online lending platforms, had long been implemented. SEC MC 10 expressly provides that only the recorded LCs and FCs with OLPs as of 2 November 2021 may operate and be used for online lending and financing, to wit:

> "Only the recorded lending and financing companies with OLPs as of 2 November 2021 may operate and be used for online lending/financing,which shall be subject to strict monitoring by theCommission of their compliance with all applicable laws, rules, and regulations, Provided that, this is without prejudice to the outcome of any pending administrative actions involving FCs and LCs."

A look at the List of Financing and Lending Companies Registered with the SEC and their Online Lending Platforms as reported pursuant to SEC MC 19, series of 2019[10] shows that Golden Koi is omitted.

Further perusal of the Commission's records provides that of the above-mentioned list, Treasure Bowl Fintech Lending Corp. (Treasure Bowl) has disclosed its OLPs, with one named Zippeso, and submitted the Affidavits of Compliance (SEC Form 1 and 2) on 16 September 2021.

Moreover, even assuming arguendo that the Zippeso OLP disclosed by Treasure Bowl is the same Zippeso OLP subject of this case and is among the recorded OLPs with the Commission as of 2 November 2021, Golden Koi was not included in the list of FCs and LCs with recorded OLPs and is hence without authority to operate any OLP for that matter.

FinLenD finds its mere operation of Zippeso OLP despite not being included on the subject list to be in violation of SEC MC 10 in relation to Rule 8(c)[11] of the Implementing Rules and Regulations of the LCRA (LCRA IRR).

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[10] The list can be accessed at https://www.sec.gov.ph/mc-financing-lending-companies/mc-no-10-s-2021moratorium-on-new-online-lending-platforms/#gsc.tab=0.

[11] (c) Administrative Sanctions - The SEC shall, at its discretion, impose upon any lending company a basic fine of P10,000.00 and P100.00 for each day of continuing violation but such daily fine shall not exceed P50,000.00 for the following:
i. Violation of the Act and its Implementing Rules and Regulations;
ii. Violation of the terms and conditions of the Certificate of Authority;
iii. Violation of any lawful order, decision, or ruling of the Commission;
iv. Unjustified refusal to have its bank of accounts audited; and

Golden Koi violated the terms and conditions of the Certificate of Authority to operate as a Lending Company granted to it.

FinLenD commends Golden Koi's attitude of being abreast with laws and regulations affecting the regulated money lending industry, as demonstrated by its statement that, due to the moratorium, it has instead offered its services as a TPSP to other lending companies, which services are incidental to its primary purpose and allowed under Article II(B) 3 to 5 of its secondary purposes, and that said employment of TPSPs in outsourcing the operations of a lending company is not prohibited.

FinLenD agrees that the employment of TPSPs in relation to the outsourcing of operations of a lending company is not prohibited under the LCRA, FCPA, SEC MC 18, and other implementing rules and commends Golden Koi's awareness of the existing moratorium. However, Golden Koi's statements are considered admissions that its operation of Zippeso OLP indeed violated the terms and conditions of the CA granted to it pursuant to Rule 8(c) of the LCRA IRR.

Undoubtedly, the CA granted to Golden Koi gives it the authority to operate as a lending company. The operations contemplated in the CA are traditional lending operations and in no way pertain to providing lending services through an OLP or limiting lending operations to OLPs only.

A reading of Article 2(A) and Items 3, 4, and 5, of Article 2(B) of the Respondent's Articles of Incorporation provide for its primary and secondary purposes, among others. The pertinent provisions read:

> "ARTICLE 2: A. The primary purpose of this corporation is:
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> To engage in the business of direct lending including the provisions of services through fintech-enabled platforms, without however engaging in pawnbroking under Presidential Decree No. 114, financing under Republic Act No. 8556, and online lending platforms (OLPs) until the registration of OLPs is permitted under relevant regulations and the corporation has complied with the same; provided, however, that borrowings shall be sourced from not more than nineteen (19) lenders, including shareholders, and, that there shall be continuing compliance with SEC Memorandum Circulars on (1) Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC) and (2) Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platform (MC No. 18 and 19, s. 2019, respectively), and such other rules and regulations as may be prescribed by the Commission.
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> B. The secondary purposes of this corporation are the following:
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> xxx
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> > (3) To provide IT-enabled services encompassing data preparation, encoding, transcription, programming, and adaptation of a system software and middleware for commercial and/or research applications, including all aspects of business process outsourcing activities;
> >
> > (4) To perform, through all reasonable and legally permissible means, collection, verification, and/or settlement services in relation to unsettled liabilities including but not limited to unpaid and/or overdue amounts, credit receivable, and/or debt, and to do everything suitable, convenient, incidental, and/or proper for the accomplishment of such purposes including utilizing information technology related tools, applications, software and instruments;

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v. Continuous failure to comply with SEC requirements.

The penalty of suspension shall be imposed in case of three (3) violations and revocation in case of four (4) violations.

(5) Subject to the provisions of the Data Privacy Act of 2012, to gather credit data, prepare credit reports, and manage a credit information system for purposes of evaluating the credit score of potential customers;

xxx"

FinLenD agrees that the secondary purposes of Golden Koi, as reflected in its AOI, were incidental to its primary purpose. However, we disagree with the Respondent's logic that its secondary purposes specified under Items 3, 4, and 5 mean that they can act as third-party service providers to licensed lending companies. First, these secondary purposes were incidental to its primary purpose of providing direct lending. Then, the IT-enabled services in Item 3, the performance of collection, verification, and settlement in relation to unsettled liabilities in Item 4, and the gathering and management of credit information in Item 5 should be incidental to the loan transactions provided by the Respondent. Second, there is nothing in Items 3, 4, and 5 that pertains to providing the services to clients or other licensed lending companies, as claimed by Golden Koi. In fact, the clients of Golden Koi, based on the Certificate of Authority to operate as a lending company (CA) granted to it and the primary purpose as stated in its Articles of Incorporation, pertain to those that were able to avail loans from the Respondent.

Golden Koi cannot then detach itself from the violations committed simply by stating that the secondary purposes in its AOI had licensed lending companies as their intended clients.

Golden Koi's admitted to having no lending operations since its inception.

As earlier discussed, FinLenD found no merit in Golden Koi's denial for violation of SEC MC 19, which merely rested on bare assertions. The Respondent had presented no evidence[12] enough to substantiate its claim that it only served as a TPSP for other licensed lending companies, such as Treasure Bowl for the Zippeso OLP in this matter.

It is also noted that, based on an Order[13] issued by the Commission on 8 June 2023, no lending companies have disclosed Golden Koi among its list of TPSPs.

The Respondent likewise cited Rule 3(e)[14] of the LCRA IRR which requires lending companies to commence operations within one hundred twenty (120) days from the grant of CA to them, as an excuse for offering their services as a TPSP to other licensed lending companies.

The said admission, expressly stated in the Respondent's letter and signed by their President, is relevant[15] in determining whether Golden Koi indeed violated Rule 3(e) of the LCRA IRR and can be held against them.

Having been incorporated on 15 August 2022, Golden Koi had until 13 December 2022 to commence lending operations. It is noted that the above admission was made through their Letter-Answer dated 5 November 2023. FinLenD finds its continuous non-operation one year, two months, and twenty-one days from the day it was granted the authority to operate as a lending company to warrant suspension.

WHEREFORE, in view of the foregoing,

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[12] In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Añonuevo v. CBK Power Company, Ltd., G.R. No. 235534, 23 January 2023)
[13] Submission of List of Third-Party Service Providers in Compliance with the Financial Products and Services Consumer Protection Act of 2022 (RA No. 11765) and its Implementing Rules and Regulations.
[14] (e) Commencement of Operations

A corporation/company that has been duly registered and granted a Certificate of Authority to Operate as a Lending Company shall commence operations within one hundred twenty (120) days from date of grant of such authority.

Failure to commence operations within said period shall be a ground for the suspension of its CA.
[15] Section 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (Revised Rules on Evidence)

1. Pursuant to SEC Memorandum Circular No. 19, Golden Koi Lending Tech Corp. is hereby **ORDERED TO PAY ONE HUNDRED ELEVEN THOUSAND AND TWO HUNDRED PESOS (P111,200.00)** within fifteen (15) days from the receipt of this Order.

2. Golden Koi Lending Tech Corp. is hereby **ORDERED TO STOP OPERATING AS A THIRD-PARTY SERVICE PROVIDER** until its Articles of Incorporation stating the said service as its primary purpose is approved by the Commission.

3. For its violation of SEC Memorandum Circular No. 10 and Implementing Rules and Regulations of the Lending Company Regulation Act, Golden Koi Lending Tech Corp. is **ORDERED TO PAY FIFTY THOUSAND PESOS (P50,000.00)** within fifteen (15) days from the receipt of this Order.

4. In view of Golden Koi Lending Tech Corp.'s violations of the Implementing Rules and Regulations of the Lending Company Regulation Act, its Certificate of Authority to Operate as a Lending Company is hereby **SUSPENDED for a period of Sixty (60) Days** from the receipt of this Order.

5. Golden Koi Lending Tech Corp. is further directed to:
    a. Inform the Commission of the date of receipt of this Order;
    b. Settle in full the fine of One hundred Sixty-One Thousand Two Hundred Pesos (P161,200.00);
    c. Discontinue operations until after the lapse of the suspension period; and
    d. Submit proof of compliance with this Order.

Let a copy of this Order be furnished to the Company Registration and Monitoring Department, the Information & Communications Technology Department for encoding in the CIS-URDB, and all other Departments concerned.

SO ORDERED.

28 February 2025. Makati City, Philippines.

Kenneth Joy A. Quimio

ATTY. KENNETH JOY A. QUIMIO
OIC-Director

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