23 November 2020

SEC-OGC Opinion No. 20-03
Re: Power to invest
Corporate Funds for any
other purpose; primary
and secondary purpose.

Atty. ANTHONY T. CO
Head of Legal, HC Consumer Finance Philippines, Inc.
15th Floor, Ore Central, 9th Avenue cor. 31st Street,
Bonifacio Global City, Taguig

Dear Mr. Co,

We write in response to your letter requesting the Commission for an opinion on whether HC Consumer Finance Philippines, Inc. (HCFP) may engage in credit card activities as part of investing its corporate funds in a similar purpose in relation to Section 41 of the Revised Corporation Code (RCC) without the need of stockholders' ratification.

In your letter, you mentioned the primary purpose of HCFP, to wit:

> "To extend loans, credit or any and all types of financial accommodations, from its own capital funds, or from funds sourced from not more than nineteen persons including its own stockholders, without collateral or on the security of a pledge or mortgage of vehicles, home and office appliances, mobile phones, furniture and furnishings, merchandise, and other types of real and personal properties; to purchase or otherwise acquire, discount, negotiate, collect, mortgage, pledge or otherwise deal in or with all or any part of the bonds debentures, accounts receivables, promissory notes, evidences of indebtedness, trade acceptance, commercial papers, certificate actions, issued, created assumed or guaranteed by any domestic or foreign corporation, partnership, firm syndicate, or individual entity; to engage in the business of financing by leasing all kinds of equipment, machinery, vehicles, facilities, appliances and all other types of real and personal property for whatever use through finance related transactions such as but not limited to sale – leaseback arrangements and hire – purchase agreements; and generally to carry on the business of a financing company, in accordance with the Financing Company Act of 1998 (Republic Act No. 8556), and to do any and all acts that may be directly or indirectly necessary, proper or convenient for the accomplishment and furtherance of its primary purpose."

Thereafter, the Board of Directors approved the amendment of HCFP's Articles of Incorporation to include credit card activities as part of its secondary purposes, to wit:

> "To engage in the business of credit card operations including, but not limited to, the issuance of credit cards and other access devices to allow its clients to obtain goods, services, money, and any other thing of value or to initiate the transfer of funds; the collection of receivables, fees, interests, and such other charges arising from or connected to the credit card activities of the client to the extent allowed by law; and the undertaking of such activities as may be necessary, incidental, or connected with the credit card business."

Hence, your query.

Section 41 of the RCC[1] provides:

> "*Section 41. Power to Invest Corporate Funds in Another Corporation or Business or for Any Other Purpose.* – Subject to the provisions of this Code, a ***private corporation may invest its funds in any other corporation, business, or <u>for any purpose other than the primary purpose for which it was organized</u>, when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of nonstock corporations, at a meeting duly called for the purpose.*** Notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at the place of residence as shown in the books of the corporation and deposited to the addressee in the post office with postage prepaid, served personally, or sent electronically in accordance with the rules and regulations of the Commission on the use of electronic data message, when allowed by the bylaws or done with the consent of the stockholders*: Provided,* That any dissenting stockholder shall have appraisal right as provided in this Code: ***Provided, however, That where the investment by the corporation is <u>reasonably necessary to accomplish its primary purpose</u> as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary."*** (emphasis supplied)

The Commission explained in its previous opinion that "where the investment by the corporation is *<u>reasonably necessary</u>* to accomplish its primary purpose as stated in its articles of incorporation, the approval only of the Board of Directors or Trustees is necessary. However, where the investment of funds is made in any other corporation or business or for any purpose *<u>other than the primary purpose</u>* for which the investing corporation was organized, the approval by the majority of the board of directors or trustees need the ratification by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the

---

[1] Section 42 under Batas Pambansa Blg. 68 (the Corporation Code of the Philippines)

members in case on non-stock corporation.[2] Corollary thereto, other purposes not allied or incidental to its primary purpose shall be classified as secondary purposes.[3]

Moreover, we note that Republic Act No. 10870, otherwise known as "the Philippine Credit Card Industry Regulation Law", defines credit card as any card or other credit device intended for the purpose of obtaining money, property, or services on credit. In the context of the afore-quoted definition, it is our opinion that the grant or extension of loan/credit through the issuance or use of credit cards is an activity which is reasonably necessary in furtherance of the the primary purpose for which HCFP was established which is to extend loans, credit or any and all types of financial accommodations.

On account thereof, the Commission affirms your position that the ratification by the stockholders of HCFP of the said act is no longer required.

It shall be understood, however, that the above-stated opinion is rendered solely on the basis of the facts and circumstances presented to the Commission; is relevant and applicable only to the particular issue raised herein, and 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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[4]

Please be guided accordingly.

ROMUALD C. PADILLA
General Counsel

---

[2] SEC OGC Opinion No. 54 – 03 dated 3 November 2003 *citing* J. Campos and M.C. Campos, The Corporation Code (1990 ed.), p. 493, *citing* De La Rama v. Ma – ao Sugar Central, GR – L – 17504 & L – 17506.

[3] SEC Opinion dated 6 June 1995 addressed to Atty. Juan Ricardo B. Tan.

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