

THIRTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
*First Regular Session* )

'04 JUN 30 P10:20

SENATE

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S. No. 1103

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**Introduced by Senator Franklin M. Drilon**

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**EXPLANATORY NOTE**

The financial system is composed of both banks and non-banks financial institutions (NBFIs).

A Lending Investor (LI) or a lending company is a form of financial institution which had its beginnings in the country in the mid-70s. It crept unnoticed to service the small and not-so-small needs of customers left unserved by the more sophisticated form of credit institutions.

The 1972 banking reforms gave the Central Bank (now Bangko Sentral ng Pilipinas – BSP) authority over the entire credit system and not merely over the banking system to allow it to effectively discharge its responsibilities. Thus, institutions engaged in credit operations without obtaining funds from the public were subjected to regulation by the BSP. Consequently, LIs, because of their primary functions of extending credit, were included under the regulatory umbrella of the Bangko Sentral.

LIs, as non-bank financial institutions without authority to engage in quasi-banking function, are covered by BSP regulations on the 19-lender limit, i.e. LIs cannot accept deposits or placements or borrow from more than 19 lender or from the public. Moreover, LIs, are required to strictly adhere to the provision of RA No. 3765, otherwise known as the "Truth in Lending Act" and to disclose the true and effective cost of borrowing for every loan granted. LIs are likewise not allowed to undertake financing activities under RA No. 5980 or the Financing Company Act, pawnbroking under PD No. 114 and fund management/trust operations under RA No. 337.

Republic Act No. 7653 or the New Central Bank Act, however, mandates BSP to phase out its regulatory powers over certain NBFIs, LIs included, not later than 3 July 1998 and the same to be assumed by the Securities and Exchange Commission (SEC). Lending company subsidiaries and affiliates of banks and quasi-banks, however, shall remain under BSP supervisory authority.

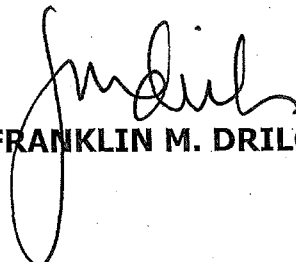
Most NBFIs are governed by special laws such as the Financing Company Act, Investment Houses Act and Pawnshop Regulation Act. LIs, however, are not covered by any specific law. Due to the absence of a specific law and a government institution/agency with supervisory powers over LIs, no specific rules cover LIs on their organization, operations, minimum capital and sanctions for violation of regulations.

As of 30 June 1997, the LI directory of BSP listed 2,138 head offices consisting of 1,163 single proprietorships (55%), 66 partnerships (3%) and 909 corporations (42%).

As of end of 1995, the 1,837 head offices with 169 branches of lending investors had total resources of P5.127 Billion, total loan portfolio of P3.198 Billion and capital accounts of P1.757 Billion.

The upsurge of LIs is expected to continue unabated as evidenced by the continuous registration of new LIs with BSP and some NBFIs converting into LIs. This may be partly attributed to the relatively free and unregulated operational atmosphere that gives LIs a distinct privilege over the regulated NBFIs. Common complaints on LIs cover high lending rates, non-disclosure of all charges on loans and non-issuance of official receipts.

The enactment of a law that would regulate the establishment and operations of LIs appears imperative.

  
**FRANKLIN M. DRILON**

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**AN ACT**  
**GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF**  
**LENDING COMPANIES**

**Chapter I**  
***Declaration of Policy and Definition of Terms***

**Section 1.** *Title.* – This Act shall be known as the “Lending Company Regulation Act of 2004”.

**Section 2.** *Declaration of Policy.* – It is hereby declared the policy of the State to regulate the establishment of lending companies and to place their operation on a sound, efficient and stable basis 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.** *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 direct loans with interest and charges whether on a secured or unsecured basis, but shall not be deemed to include banking institutions, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law. The term shall be synonymous with *Lending Investors*.
- b. *Debtor* shall refer to the borrower or person/entity granted a loan by the lending company.
- c. *Quasi-Bank* shall refer to a non-bank financial institution authorized by the Bangko Sentral ng Pilipinas to engage in quasi-banking functions or to borrow from the public or from twenty (20) or more lenders.
- d. *Subsidiary* shall refer to a corporation more than fifty percent (50%) of the voting stock of which is owned by a bank or quasi-bank.

- e. *Affiliate* shall refer to a corporation, the voting stock of which, to the extent of fifty percent (50%) or less, is owned by a bank or quasi-bank which is related or linked to such institution through common stockholders or such other factors as may be determined by the Monetary Board of the Bangko Sentral ng Pilipinas.
- f. *SEC* shall refer to the Securities and Exchange Commission.
- g. *Bangko Sentral* shall refer to the Bangko Sentral ng Pilipinas created under Republic Act No. 7653.

## **Chapter II** **Organization**

**Section 4.** *Form of Organization.* – A lending company shall be established only as a corporation; *Provided*, That existing LIs organized as single proprietorships or partnerships shall be disallowed from engaging in the business of granting loans to the public six (6) months after the date of effectivity of this Act.

**Section 5.** *Registration and Licensing.* – A corporation desiring to engage in the lending company business shall:

- a. File its Articles of Incorporation and By-Laws with and secure an Authority to Operate from the SEC; and
- b. Secure a license from the appropriate city or municipality having territorial jurisdiction over the place of establishment and operation.

## **Chapter III** **Ownership and Capital Requirements**

**Section 6.** *Capital.* – The minimum paid-in capital of any lending company which may be established after the effectivity of this Act shall be One Million Pesos (P1,000,000.00); *Provided*, however, that lending companies established and in operation prior thereto shall comply with the minimum capitalization required under the provisions of this Section within such time as may be prescribed by the SEC which time shall, in no case, be less than Three (3) years from the date of effectivity of this Act and, *Provided*, further, that the SEC may prescribe a higher minimum capitalization if warranted by circumstances.

**Section 7.** *Citizenship Requirements.* – Upon the effectivity of this Act, at least a majority of the voting capital stock shall be owned by citizens of the Philippines.

The percentage of foreign-owned voting stock in any domestic lending company existing prior to the effectivity of this Act, if such percentage is in excess of 49% of the voting stock of the lending company, shall not be increased but may be reduced, and, once reduced, shall not be increased thereafter beyond 49% of the voting stock of the lending company.

The percentage of foreign-owned voting stocks in any lending company shall be determined by the citizenship of the individual stockholders in that lending company. In the case of corporations owning shares in a lending company, the citizenship of the individual owners of voting stock in such corporations shall be the basis of computing the percentage.

#### **Chapter IV** ***Operations***

**Section 8.** *Amount and Charges on Loans.* – A lending company may grant loans in such amounts and interest rates and charges as may be agreed upon between the lending company and the borrower or debtor. *Provided,* That the agreement shall be in compliance with the provisions of RA 3794, otherwise known as the Consumer Act of the Philippines; and *Provided,* further, That the Monetary Board, in consultation with the SEC and the industry, may prescribe such interest rate as may be warranted by prevailing economic and social conditions.

**Section 9.** *Maintenance of Books of Accounts and Records.* – Every lending company shall maintain books of accounts and records as may be required by the SEC and prescribed by the Bureau of Internal Revenue and other government agencies. In case the lending company engages in other businesses, it shall maintain separate books of accounts for these businesses.

The Manual of Accounts prescribed by the Bangko Sentral for lending investors shall continue to be adopted by lending companies for uniform recording and reporting of their operations, until a new Manual of Accounts shall have been prescribed by the SEC.

It shall issue the appropriate instruments and documents to the parties concerned to evidence its lending and borrowing transactions.

#### **Chapter V** ***Supervision***

**Section 10.** *Authority of the SEC.* – The SEC is hereby authorized to:

- a. Issue rules and regulations to implement the provisions contained herein;
- b. To issue rules and regulations on, among other things, minimum capitalization, uses of funds received, method of marketing and distribution, maturity of funds received, restrictions or outright prohibition of purchases or sales of receivables with or without recourse basis;
- c. Require from lending companies reports of condition and such other reports necessary to determine compliance with the provisions of this Act;
- d. Exercise visitorial powers whenever deemed necessary; and

- e. Impose such administrative sanctions including suspension or revocation of the lending company's Authority to Operate and the imposition of fines for violations of this Act and regulations issued by the SEC in pursuance thereto.

**Section 11.** *Implementing Rules and Regulations.* – Within six (6) months after the approval of this Act, the SEC shall promulgate the necessary rules and regulations implementing the provisions of this Act.

**Section 12.** *Delineation of Authority between SEC and Bangko Sentral.*  
– Lending companies shall be under the supervision of the SEC: *Provided*, however, that lending companies which are subsidiaries and affiliates of banks and quasi-banks shall be subject to Bangko Sentral supervision and examination in accordance with Republic Act No. 7653.

Moreover, the Monetary Board, after being satisfied that there is reasonable ground to believe that a lending company is being used as a conduit by a bank, quasi-bank or their subsidiary/affiliate to circumvent or violate Bangko Sentral rules and regulations, may order an examination of the books and accounts of the lending company.

**Section 13.** *Penalty.* – A fine of not less than Ten Thousand Pesos (P10,000.00) and not more than Fifty Thousand Pesos (P50,000.00) or imprisonment of not less than six (6) months but not more than Ten (10) years or both, at the discretion of the court, shall be imposed upon:

1. Any person who shall engage in the business of a lending company without a validly subsisting authority to operate from the SEC.
2. The President, Treasurer and other officers of the corporation, including the managing officer thereof, who shall knowingly and willingly:
  - a. Engage in the business of a lending company without a validly subsisting Authority to Operate from the SEC;
  - b. Hold themselves out to be a lending company, either through advertisement in whatever form, whether in its stationery, commercial paper, or other document, or through other representations without authority;
  - c. Make use of a trade or firm name containing the words "*lending company*" or "*lending investor*" or any other designation that would give the public the impression that it is engaged in the business of lending company as defined in this Act without authority; and
  - d. Violate the provisions of this Act.
3. Any officer, employee, or agent of a lending company who shall:
  - a. Knowingly and willingly make any statement in any application, report, or document required to be filed under this Act, which

statement is false or misleading with respect to any material fact; and

- b. Overvalue or aid in overvaluing any security for the purpose of influencing in any way the action of the company in any loan, or discounting line.
4. Any officer, employee or examiner of the SEC directly charged with the implementation of this Act or of other government agencies who shall commit, connive, aid, or assist in the commission of acts enumerated under Subsections 1 and 2 of this Section.

## **Chapter VI** ***General Provisions***

**Section 14.** *Matters not covered by this Act.* – The provisions of Republic Act No. 3765, otherwise known as the "Truth in Lending Act", Republic Act No. 7394 or the "Consumer Act of the Philippines" and other existing laws, insofar as they are not in conflict with any provision of this Act, shall apply in matters not otherwise specifically provided in this Act.

**Section 15.** *Repealing Clause.* – All laws, executive orders, letters of instruction, rules and regulations, or provisions thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

**Section 16.** *Separability Clause.* – If any portion hereof shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions which shall remain in full force and effect.

**Section 17.** *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved.