

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

'04 JUN 30 P10:10

SENATE
 S.B. No. **1180**

RECEIVED BY: 

Introduced by Senator Magsaysay, Jr.

EXPLANATORY NOTE

The 1987 Philippine Constitution advocates the competitiveness of Philippine private sector. Intended to enhance the quality of life of the majority of our people, the fundamental law mandated, "[t]he State recognizes the indispensable role of the private enterprise, and provides incentives to needed investments."

This bill is submitted by bridging the gap and implementing the fundamental tenets of the supreme law.

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

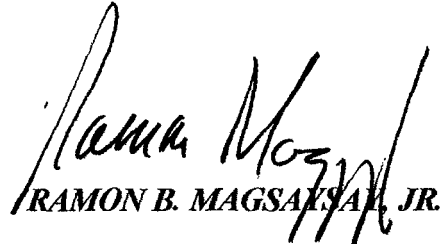
Lending Investor (LI) or lending company, as others would call it, is a form of an institution which had its beginnings in the country in the mid-70s. It emerged to address the needs of individuals left unserved by the more sophisticated form of credit institutions. Lending investors are no different from institutions engaged in *micro-finance*. Micro-finance, as recognized by the Bangko Sentral ng Pilipinas, is the provision of a broad range of financial services such as – deposit, loans, payment services, money transfers and insurance products – to the poor and low income households, for their micro-enterprises and small businesses, to enable them to raise their income levels and improve their living standards.

The 1972 banking reforms gave the then Central Bank 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 function of extending credit, were included under the regulatory umbrella of the Bangko Sentral.

Lending institutions, non-bank financial institutions without authority to engage in quasi-banking functions, are covered by BSP regulations in the 19-lender limit, i.e. Lis cannot accept deposits or placements nor borrow from more than 19 lenders or from the public. Moreover, lending institutions are required to strictly adhere to the provision of Republic Act No. 3765, otherwise known as the "Truth in Lending Act" and to disclose the true and effective cost of borrowing for every loan granted. Further, they are not allowed to undertake financing activities under Republic Act No. 5980 or the "Financing Company Act," pawn broking under Presidential Decree No. 114 and fund management/trust operations under Republic Act No. 337 or the General Banking Act, as amended.

Republic Act No. 7653 or the Banko Sentral ng Pilipinas Law, however, mandates BSP to phase out its regulatory powers over certain NBFIs, LIs included, and the same to be assumed by the Securities and Exchange Commission. Lending company subsidiaries and affiliates of banks and quasi-banks, however, shall remain under BSP.

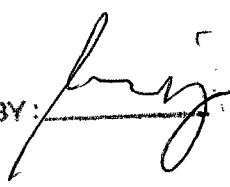
Early approval of this bill is earnestly recommended.


RAMON B. MAGSAYSAY, JR.

THIRTEENTH CONGRESS OF THE REPUBLIC)
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'04 JUN 30 P10:11

SENATE
S.B. No. 1180

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Introduced by Senator Magsaysay, Jr.

AN ACT
REGULATING THE ESTABLISHMENT AND OPERATION OF LENDING
COMPANIES IN THE PHILIPPINES AND FOR OTHER PURPOSES

SECTION 1. Title - This Act shall be known as the ***LENDING COMPANY REGULATION ACT OF 2004.***"

SEC. 2. Declaration of Policy - It is hereby declared the policy of the State to regulate the establishment and activities of lending companies, placing their operations 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.

SEC. 3. Definition of Terms - For purposes of implementing this Act, the following definitions shall apply:

- a. **Lending Company (LC)** shall refer to an entity primarily engaged in the business of microfinance by granting direct loans from their own funds or from other persons, not exceeding nineteen (19), with interests and charges whether on a secured or unsecured basis. LCs shall not be deemed to include banking institutions, investment houses, savings and loan associations, financing companies and non-bank financial institutions performing quasi-banking functions, pawnshops, insurance companies, cooperatives and other financial credit institutions already regulated by law. The term shall be synonymous with "*Lending Investor(LI)*".
- b. **Debtor** shall refer to the borrower or person/entity granted a loan by the LC.
- c. **Quasi-Bank** shall refer to an entity or financial institution authorized by the Bangko Sentral ng Pilipinas to engage in quasi-banking functions or to borrow funds through issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act No.

7653, otherwise known as the New Central Bank Act, for purposes of re-lending or purchasing of receivables and other obligations to more than nineteen (19) non-institutional persons.

- 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 (50%) or less, is owned by a bank or quasi-bank or which is related or linked to such institution through common stockholder 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. **DTI** shall refer to the Department of Trade and Industry.
- h. **DILG** shall refer to the Department of Interior and Local Government.
- i. **BSP** shall refer to the Bangko Sentral ng Pilipinas.
- j. **BIR** shall refer to the Bureau of Internal Revenue.

SEC. 4. Form of Organization - An LC shall be established as a corporation; *provided that*, existing LCs organized as single proprietorship or partnerships shall cease from engaging in the business of granting loans to the public, *unless*, these existing LCs convert into corporations within One (1) year after the date of effectivity of this Act.

No LC shall conduct business unless granted a License to Operate by the DTI.

SEC. 5. Citizenship Requirements - At least majority of the subscribed and outstanding capital stock of an LC shall be owned by citizens of the Philippines.

SEC. 6. Paid-Up Capital Requirements - All LC shall have a paid-up capital of not less than One Million (Php 1,000,000.00) Philippine Pesos.

SEC. 7. Maintenance of Books of Accounts and Records - Every LC shall maintain books of accounts and records as may be prescribed by the DTI.

The Manual of Accounts prescribed by the Bangko Sentral for LC shall continue to be adopted by LC for uniform recording and accounting of their operations, until the DTI shall have prescribed a new Manual of Accounts.

SEC. 8. Registration of Securities - All securities, such as but not limited to bonds, debentures, notes, investment contracts, evidence of indebtedness issued by an LC

to more than nineteen (19) non-institutional persons, shall be registered with the SEC, pursuant to Section 8 and 12 of the Securities and Regulation Code, and shall likewise require a quasi-banking license issued by the BSP.

If an LC shall issue securities to not more than nineteen (19) persons, it need not register such securities, *provided*, that it shall file with the DTI or BSP, as the case may be, a Disclosure Statement.

SEC. 9. Amount and Charges on Loans - An LC shall grant loans in such amounts and reasonable interest rates and charges as may be agreed upon between the LC and the borrower or debtor. *Provided, however*, that the agreement shall be in compliance with the provisions of Republic Act No. 3765, otherwise known as the Truth in Lending Act and Republic Act No. 7394, otherwise known as the Consumer Act of the Philippines; *And provided however, that*, the Monetary Board, in consultation with DTI and the industry, may prescribe such interest rate as may be warranted by prevailing economic and social conditions.

SEC. 10. Delineation of Authority Between SEC & DTI - The incorporation of LC shall be administered by the SEC following pertinent laws, rules and regulations being implemented by said Commission. The DTI, on the other hand, shall have supervision and regulation over the operations of these LC.

SEC. 11. Delineation of Authority Between DTI and Bangko Sentral - LCs which are subsidiaries and affiliates of banks and quasi-banks shall be subject to BSP supervision and examination in accordance with Republic Act No. 7653.

SEC. 12. Periodic Reportorial Requirements - Every LC shall file with the DTI a Schedule of Liabilities, identifying the debtors and indicating the maturity pattern of transactions, as well as other reports as DTI may further provide.

The reports shall be signed under oath by the company's principal executive officer and principal financial officer.

SEC. 13. Inspection Powers of the DTI - Having jurisdiction and supervision over LCs after their incorporation, the DTI shall be allowed under this law to make the necessary inspection of records and books of accounts, as well as inspection and/or entry into the premises of the LCs' principal places of business during working hours or upon reasonable grounds warranting the necessity to make such inspection and/or entry, as the

case may be. The DTI shall promulgate in its rules and regulations what reasonable grounds may warrant said inspection and/or entry.

SEC. 14. Penalty - A fine of not less than Ten Thousand Philippine Pesos (PhP 10,000.00) 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 any person who shall violate any provision of this Act.

SEC. 15. Supplementary Application of Other Laws - 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 for in this Act.

SEC. 16. Entities Excluded by this Act - All entities, whether stock or non-stock corporations, which do not declare any dividends to its stockholders or profits to its members, receiving donations, grants, aid or contributions from local or foreign entities for the purpose of giving assistance or support in the form of small loans to help alleviate the poor and low-income households, cooperatives duly registered with the pertinent government agency charged with the supervision of cooperatives, associations and partnerships, which may be engaged in direct lending shall be excluded from the coverage of this Act.

SEC. 17. Promulgation of Implementing Rules and Regulations - Within forty-five (45) days from the effectivity of this Act, the Department of Trade and Industry, Department of Social Welfare and Development (DSWD), in consultation with the BSP, the BIR and other key government and non-government institutions, shall promulgate the necessary implementing rules and regulations of this Act.

SEC. 18. Separability Clause - If any provision of this Act or the application thereof to any person or circumstances is held invalid, the other provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 19. Effectivity - This Act shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in two (2) national newspapers of general circulation.

APPROVED,