

SENATE

S. B. No. 1762

RECEIVED BY: _____

Introduced by Senator Madrigal

EXPLANATORY NOTE

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

A Lending Company (LC) is a form of an institution, which had its beginnings in the country in the mid-70s. It emerged to address the needs of the individuals left unserved by the more sophisticated form of credit institutions. LCs are no different from institutions engaged in microfinance. Microfinance, 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 microenterprises and small businesses, to enable them to raise their income levels and improve their living standards.

The 1972 banking reforms, however, gave 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, LCs, because of their primary function of extending credit, were included under the regulatory umbrella of the Bangko Sentral.

LCs, as non-bank financial institutions without authority to engage in quasi-banking functions, are covered by SSP regulations in the 19-1 lender limit, i.e. LCs cannot accept deposits or placements nor borrow from more than 19 lenders or from the public. Moreover, LCs 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, LCs 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 of the New Central Bank Act, however, mandates BSP to phase out its regulatory powers over certain NBFIs, LCs included, and the same to be assumed by the Securities and Exchange Commission. Subsidiaries and affiliates of banks and quasi-banks, however, shall remain under BSP supervisory authority.

Special laws such as the Financing Company Act, Investment Houses Act and Pawnshop Regulation Act govern most NBFIs. No specific law, however, covers LCs.

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

As of the end of 1995, the 1,837 head offices with 169 branches of lending companies had a total resources of P5.127 billion, a total loan portfolio of P3.195 billion and capital accounts of P1.757 billion.

As of the present, over 20,000 micro lenders are believed to exist all over the country.

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

In view of their growth in numbers and the significant impact LCs have in the economic activities of the general public, the enactment of a law that would regulate their establishment and operations appears imperative.



~~M.A. MADRIGAL~~
Senator

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

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 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.

SECTION 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.”

b. Debtor shall refer to the borrower or personal 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 relending or purchasing of receivable 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 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. 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.

SECTION 4. *Form of Organization* – An LC shall be established as a corporation; provided that, existing LCs organized as single proprietorships 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.

SECTION 5. *Citizenship Requirements* – At least majority of the subscribed and outstanding capital stock on an LC shall be owned by citizens of the Philippines.

SECTION 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.

SECTION 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.

SECTION 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 Sections 8 and 12 of the Securities and Regulation Code, and shall likewise require a quasi-banking license issued by the Bangko Sentral ng Pilipinas.

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 of BSP, as the case may be, a Disclosure Statement.

SECTION 9. *Amount and Changes 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.

SECTION 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.

SECTION 11. *Delineation of Authority Between DTI and Bangko Sentral* – LCs 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.

SECTION 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.

SECTION 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.

SECTION 14. *Penalty* – A fine of not less than TEN THOUSAND PHILIPPINE PESO (Php 10,000.00) of imprisonment of not less than SIX (6) months but not more than TEN (10) years both at the discretion of the court, shall be imposed upon any person who shall violate any provision of this Act.

SECTION 15. *Suppletory 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 this Act.

SECTION 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.

SECTION 17. *Promulgation of Implementing Rules and Regulations* – Within forty five (45) days from the effectivity of this Act, the Department of Trade and Industry (DTI), Department of Social Welfare and Development (DSWD), in consultation with the Bangko Sentral ng Pilipinas, the Bureau of Internal Revenue and other key government and non-government institutions, shall promulgate the necessary implementing rules and regulations of this Act.

SECTION 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 circumstance shall not be affected thereby.

SECTION 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,