



CORPORATE GOVERNANCE AND FINANCE DEPARTMENT

NOTICE

The Commission hereby requests comments on the attached draft Amended Implementing Rules and Regulations (IRR) of Republic Act No. 8556 or the Financing Company Act of 1998.

Please submit duly signed written comments on the exposure draft to the Corporate Governance and Finance Department of this Commission specifically those items that are underscored, within ten (10) days from the date hereof, by way of any of the following:

Letter	Corporate Governance and Finance Department Ground Floor, North Wing Hall, Secretariat Bldg. PICC Complex, Vicente Sotto St. 1307 Pasay City
Email	cgfd@sec.gov.ph
Fax No.	(02) 818-5990

All interested parties are requested to use the attached *Comments Table* in submitting comments and proposed revisions.

Issued on 10 September 2018.

**AMENDED RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS
OF REPUBLIC ACT NO. 8556 (THE FINANCING COMPANY ACT of 1998)**

To effectively carry out the provisions of Republic Act No. 8556 (The Financing Company Act of 1998), the Securities and Exchange Commission, pursuant to the powers vested in it under said Act, Republic Act No. 1143 and Presidential Decree No. 902-A, as amended, hereby promulgate the following **amended** rules and regulations:

SECTION 1. Definition of Terms

The following definition of terms shall apply for purposes of these Rules:

- a) "Financing companies" are **stock** corporations, except banks, investment houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages or other evidence of indebtedness, or by financial leasing of movable as well as immovable property;
- b) "**Branch**" is a **FIXED or IMMOVABLE place separate and outside the Head Office, where financing activities and business decisions conducted in the Head Office are likewise performed. This may also refer to an Extension Office, Agency, Satellite Office or Unit;**
- c) "**Off-site location**" such as but not limited to "**point-of-sale**" (POS), "**merchant**" or "**kiosk**", is a place where the financing company has existing agreement with a third party allowing it to offer, promote, market its finance products and services to the latter's clients and to assist, disseminate and collect the **information of said clients.**
- d) "Commission" shall mean the office of the Securities and Exchange Commission of the Philippines;
- e) "Funds" shall mean total assets inclusive of valuation reserves and deferred income but shall not include investments in real estate, in shares of stock of real estate development corporations or in real estate based projects, leasehold rights and improvements, fixed assets, foreclosed properties and prepayments.
- f) "Credit" shall mean any loan, mortgage, financial lease, deed of trust, advance or discount, any conditional sales contract, contract to sell, or sale or contract of sale of property or service, either for present or future delivery, under which, part of

all or the price is payable subsequent to the making of such sale or contract; any contract, any option, demand, lien or pledge, or to the other claims against, or for the delivery of, property or money, any purchase, or other acquisition of or any credit upon the security of, any obligation or claim arising out of the foregoing, and any transaction or series of transactions having similar purpose or effect;

- g) "Financial leasing" is a mode of extending credit through a non-cancellable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy percent (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract;
- h) "Purchase discount" is the difference between the value of the receivable purchased or credits assigned, and the net amount paid by the financing company for such purchase or assignment, exclusive of fees, service charges, interest and other charges incident to the extension of credit;
- i) "Lease rentals" shall refer to the periodic payments made by the lessee to the lessor under Section 1 (g), above;
- j) "Receivable financing" is a mode of extending credit through the purchase by, or assignment, to a financing company of evidence of indebtedness or open accounts by discounting or factoring;
- k) "Discounting" is a type of receivables financing whereby evidence of indebtedness of a third party, such as installment contracts, promissory notes, and similar instruments, are purchased by, or assigned to, a financing company in an amount or for a consideration less than their face value;
- l) "Factoring" is a type of receivables financing whereby open accounts, not evidenced by a written promise to pay supported by documents such as but not limited to invoices of manufacturers and suppliers, delivery receipts and similar documents, are purchased by, or assigned to, a financing company in an amount or for a consideration less than the outstanding balance of the open accounts;

- m) "Paid-up capital" refers to the amount paid for the subscription of stock in a corporation including the amount paid in excess of par value;
- n) "Networth" is the excess of assets over liabilities, net of appraisal surplus, unbooked valuation reserves, capital adjustments, overstatement of assets and unrecorded liabilities;
- o) "Digital Financing" refers to ENGAGING IN FINANCING COMPANY ACTIVITIES through the use of digital PLATFORM OR infrastructure such as mobile or internet and involving very limited in-person contact and interference;
- p) "INTERNAL CREDITOR" SHALL MEAN A CREDITOR OF A FINANCING COMPANY WHICH IS:
1. A STOCKHOLDER OF THE FINANCING COMPANY;
 2. A SUBSIDIARY OF THE FINANCING COMPANY;
 3. A SUBSIDIARY OF A STOCKHOLDER OF THE FINANCING COMPANY;
 4. AN ENTITY THAT CONTROLS A STOCKHOLDER OF THE FINANCING COMPANY; OR
 5. AN ENTITY THAT IS CONTROLLED BY THE ENTITY THAT CONTROLS THE FINANCING COMPANY OR IS CONTROLLED BY THE ENTITY THAT CONTROLS A STOCKHOLDER OF THE FINANCING COMPANY;
- q) "EXTERNAL CREDITOR" SHALL MEAN A CREDITOR OF A FINANCING COMPANY WHICH IS NOT AN INTERNAL CREDITOR;
- r) "QUALIFIED BUYER" SHALL HAVE THE MEANING AS SET FORTH IN SECTION 10/1(I) OF THE SECURITIES REGULATION CODE.

SECTION 2. *Form of Organization.* – A Financing Company shall be organized in the form of a stock corporation in accordance with the provisions of the Corporation Code of the Philippines, subject to the following:

a. Equity ownership

A FINANCING Company may be owned up to one hundred percent (100%) by a foreign national (as amended by R.A. No. 10881).

b. Minimum paid-up capital:

1. Fully-owned by Filipinos or up to 40% Foreign-owned:

- i. P10,000,000.00 for financing companies located in Metro Manila and Other 1st Class Cities;
- ii. P5,000,000.00 for financing companies located in other classes of Cities; and
- iii. P2,500,000.00 for financing companies located in Municipalities.

Provided, that the foregoing shall be subject to periodic review and increase by the Commission.

2. More than 40% Foreign-Owned:

The minimum paid-up capital shall be P10,000,000.00, provided, that the same shall in no case be lower than US\$200,000 or its Philippine Peso equivalent, in accordance with the provisions of the Foreign Investments Act (FIA) and its implementing regulations, provided further, that the same shall be subject to periodic review and increase by the Commission.

3. Financing Companies engaged in “Digital Financing”:

The minimum paid-up capital shall be P10,000,000.00, regardless of the location of its Head Office, without prejudice to the requirements of the FIA and its implementing regulations provided, that the same shall be subject to periodic review and increase by the Commission.

4. Financing Companies with off-site locations:

The minimum paid-up capital shall be P10,000,000.00, regardless of the location of its Head Office provided, that the same shall be subject to periodic review and increase by the Commission.

~~Financing Companies duly existing and in operation before the effectivity of this Act shall comply with the minimum capital requirement within one (1) year from the date of the said effectivity.~~

- c. **Other Requirements:**
- i. **A Financing Company shall comply with the constitutional provision on ownership of land (Article XII, Section 7).**
 - ii. The corporate-name of financing companies shall contain the term "financing", "finance", or "finance and investment" or other term(s) or word(s) descriptive of their operations and activities as a financing company.
 - iii. **In accordance with Section 23 of the Corporation Code, a majority of the Board of Directors of Financing Companies established under the provisions of R.A. No. 10881 shall be residents of the Philippines.**

SECTION 3. *Rights and Powers.* – Financing companies shall have the following powers: –

- a. Engage in quasi-banking and money market operations with the prior approval of the Bangko Sentral ng Pilipinas;
- b. Engage in trust operations subject to the provisions of the General Banking Act upon prior approval by the Bangko Sentral ng Pilipinas;
- c. Issue bonds and other capital instruments subject to pertinent laws, rules and regulations;
- d. Rediscount their paper with government financial institutions subject to relevant laws, rules and regulations;
- e. Participate in special loan or credit programs sponsored by or made available through government financial institutions;
- f. Provide foreign currency loans and leases to enterprises that earn foreign currency by exports or other means, subject to existing laws and rules and regulations promulgated by the Bangko Sentral ng Pilipinas.

The Commission shall allow the inclusion of the foregoing rights and powers in the Articles of Incorporation of a financing company after submission by the applicant financing company of the appropriate license/authority issued by the **relevant** government agency.

SECTION 4. *Requirements for Registration.* –

4.1. Registration papers to be submitted to the Commission

Any stock corporation may be registered as a financing company by filing with the Commission an original plus three (3) copies of an application to operate as a financing company under R.A. No. 8556, signed under oath by its President, together with the following documents in the prescribed forms:

4.1.1. All documents required for registration as a corporation;

4.1.2. **Information Sheet of registrant company;**

4.1.2.1. **The company should disclose therein if it will market its financial products as follows:**

a. **Traditional Marketing:**

a.1. the number of branches, extension offices, satellite offices, agencies or units it shall operate, and specifically identifying the following:

a.1.1. complete address of each branch, extension office, satellite office, agency or unit; and

a.1.2. other documents as may be required by the Commission.

b. **Digital Marketing in accordance with Section 8 (b) of these Rules;**

c. **Through an Off-site location such as POS:**

c.1. the number of off-site location/POS that shall be established and the city or municipality where they shall be operating.

4.1.2.2. **Existing financing companies shall likewise submit an Information Sheet to update the Commission with Information on Digital Marketing and Off-site location, if applicable.**

4.1.3. **Other documentary requirements:**

4.1.3.1. **Cover Sheet**

4.1.3.2. **Application Form**

4.1.3.3. **For Filipino Directors and Officers:**

- a. Original NBI clearance with right thumb print and reflecting the residential address as stated in the Information Sheet & Articles of Incorporation;
- b. Notarized Personal Information Sheet of Directors & officers using the prescribed format by the Commission;
- c. Bank credit information to be issued by his depository or creditor bank(s), if any;

4.1.3.4. For Foreign Directors and Officers:

- a. Original NBI Clearance with right thumb print and reflecting the residential address as stated in the Information Sheet & Articles of Incorporation/General Information Sheet (GIS), if applicable;
- b. Notarized Personal Information Sheet of Directors & officers using the prescribed format by the Commission;
- c. Presentation of Original and Photocopy of the following:
 - c.1. Alien Certificate of Registration Identification Card (ACR i-Card) or Special Resident Retiree's Visa (SRRV); or
 - c.2. Immigration Certificate of Registration

Subject to determination of the Department of Foreign Affairs (DFA), Bureau of Immigration (BI) and the Philippine Retirement of Authority (PRA), only authorized and valid ACR i-Card/SRRV shall be recognized by the Commission.

In case the issuance of the authorized ACR i-Card/SRRV is pending before the appropriate agency, the concerned incorporator or shareholder shall submit proof of filing of the application for ACR i-Card/SRRV and submit said ACR i-Card/SRRV to the Commission within thirty (30) days after its issuance.

- d. Presentation of Original and Photocopy of Passport showing valid visa or stay in the Philippines;
 - e. Original and Photocopy of Clearance from the Bureau of Immigration.
- 4.1.3.5. Clearance from the Bangko Sentral ng Pilipinas, if the applicant financing company is a subsidiary or affiliate of a bank and/or non-bank financial institution with quasi-banking license or trust license.
- 4.1.3.6. Manual on Corporate Governance shall be required if the following conditions exist:
- a. if the foreign participation in voting stock is more than forty percent (40%);
 - b. if the total assets amount to at least Fifty Million Pesos (Php 50,000,000.00); or
 - c. if the Financing Company is a commercial paper issuer, either exempt or registered.
- 4.1.3.7. Manual on Anti-Money Laundering shall be required as follows:
- a. Foreign participation in voting stock is more than forty percent (40%); or
 - b. If the total paid-up capital amount to at least Ten Million Pesos (Php 10,000,000.00).
- 4.1.3.8. Board Resolution on the Adoption of the Manuals Certified by the Corporate Secretary;
- 4.1.3.9. Format of Disclosure Statement on Loan/Credit Transactions indicating the name of the Company;
- 4.1.3.10. Notarized Bank Certificate of Deposit of the Paid-up Capital;
- 4.1.3.11. The following documents shall be required IN CASE OF A PENDING APPLICATION FOR AMENDED

ARTICLES OF INCORPORATION OR INCREASE OF CAPITAL STOCK FOR PURPOSES OF ISSUANCE OF CERTIFICATION OF AUTHORITY:

- a. **Report of an Independent CPA on the conduct and result of the verification procedures required under SEC Memorandum Circular No. 6, Series of 2008 (MC 6, s. 2008);**
- b. **Management Representation under MC 6, s. 2008;**
- c. **Latest GIS;**
- d. **Latest required Audited Financial Statements; or Notarized Interim Financial Statements signed by the President and Treasurer;**
- e. **All documents required for Filing of Amended Articles of Incorporation/Certificate of Increase in Capital Stock; and**
- f. **Monitoring Clearance from the appropriate Department.**

4.1.3.12. THE MANUAL ON CORPORATE GOVERNANCE AND ANTI-MONEY LAUNDERING SHALL BE SUBMITTED TO THE COMMISSION WITHIN 30 DAYS FROM THE DATE THAT THE FINANCING COMPANY HAS MET THE CONDITIONS SET FORTH HEREIN WHICH REQUIRE EITHER OR BOTH MANUALS TO BE ADOPTED BY THE FINANCING COMPANY.

4.1.3.13. Such other documents as may be required by the Commission.

4.2. Publication of Notice and Order

Upon receipt of the above registration papers of a proposed financing company, the Commission shall cause the Notice and Order to be published by the applicant company at its expense in a national newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks.

The Notice and Order shall state, among others, the name of the proposed financing company, the capital structure, and the names of its directors.

4.3. Opposition to Registration

Any interested party may oppose the registration of a financing company in writing, personally or through counsel, within fifteen (15) days after the last date of the publication of the Notice and Order. If the Commission finds that the requirements of R.A. 8556, its implementing rules and regulations and other pertinent laws have been complied with and that no valid reason exists for the disapproval of the application, the Commission shall issue a Certificate of Authority to Operate as a Financing Company.

SECTION 5. Issuance of Certificate of Filing of Articles of Incorporation and By-Laws: Certificate of Authority to Operate and Commencement of Operations. –

- a. The Commission shall register the Articles of Incorporation and issue the Certificate of Authority to Operate as Financing Company to any proposed financing company if it is satisfied that the establishment of such company will promote public interest and convenience and:
 1. All the requirements of R.A. No. 8556, other existing laws, and applicable rules and regulations to engage in the business for which the applicant is proposed to be incorporated, or organized, have been complied with;
 2. The organization, direction and administration of the applicant, as well as the integrity and responsibility of the organizers and administrators, reasonably assure the protection of the interest of the general public; and
 3. Proof of the publication of Notice and Order for registration is in accordance with Sec. 4.2. hereof.
- b. A corporation that has been duly registered and granted a Certificate of Authority to Operate as a Financing Company in accordance with law and this Rules shall commence operations within one hundred twenty (120) days from date of grant of such certificate. Failure to operate within the one hundred twenty (120) day period shall subject the financing company to a fine of not less than Ten Thousand (P10,000.00) Pesos.

- c. Notwithstanding failure to operate as aforesated, a financing company may be granted a grace period of another sixty (60) days from the expiry date of the first one hundred twenty (120) days within which to commence operations. Failure to operate within the extended period shall empower the Commission, after notice and hearing, to revoke its Certificate of Authority.

SECTION 6. *Branches, Agencies, Extension Offices, Satellite Offices Units, or with Offsite Location.* –

- a. Evaluation Guideposts – The branch, agency, extension office, satellite office, or unit to be established shall provide full service, including the receiving, processing, approving, tracking loan applications, and releasing the proceeds thereof.
- b. Additional Capital Requirement – A financing company shall be required to put up minimum additional paid-up capital for each **Branch, Agency, Extension Office, Satellite Office, or Unit** as follows:
 - 1. **Fully-owned by Filipinos or up to 40% Foreign-owned:**
 - Metro Manila and Other 1st Class Cities - P1,000,000.00
 - Other classes of cities - P500,000.00
 - Municipalities - P250,000.00
 - 2. **More than 40% Foreign-Owned:**
 - Metro Manila and Other 1st Class Cities - P1,250,000.00
 - Other classes of cities - P1,125,000.00
 - Municipalities - P1,000,000.00
- c. For a financing company granted with special rights and powers mentioned in Section 3 hereof, additional capital required shall be based on letter (b) above or on the capitalization requirement under the rules and regulations promulgated by the appropriate government agency, whichever is higher.
- d. Reporting Requirement – A financing company shall report a Branch, Agency, Extension Office, Satellite Office, or Unit to the Commission within thirty (30) days from the issuance by a Local Government Unit (LGU) of its business permit. It shall pay the applicable license/filing fee and submit a written notice to the Commission disclosing the complete address/es and proof of capitalization. Failure to comply and pay the corresponding fees to

the Commission shall subject the said financing company to a fine of not less than Ten Thousand Pesos (P10,000.00), provided that continuous failure to comply with the capitalization requirement and the payment of fees shall be a ground for the suspension or revocation of its Certificate of Authority, without prejudice to its right to due process.

The financing company shall also report the closure of a Branch, Agency, Extension Office, Satellite Office, or Unit to the Commission within thirty (30) days from said closure.

In complying with the foregoing reporting requirements, financing companies shall use the Commission's prescribed forms.

SECTION 7. Off-site location. -

- a. Reporting Requirement - A financing company shall report to the Commission the address of its Off-site location/s and pay the fees under Section 10 hereof within thirty (30) days from its agreement with a third party, subject to the Transitory Provision in Section 19 hereof.**

The financing company shall also report the closure of such off-site location to the Commission within thirty (30) days from such closure.

In complying with the foregoing reporting requirements, financing companies shall use the Commission's prescribed forms.

Financing companies with existing Off-site location/s prior to the approval of this Implementing Rules and Regulation (IRR) shall report the address of its Off-site location/s within sixty (60) days from the approval of these Rules. Payment of the corresponding fees shall be subject to the Transitory Provision in Section 19 hereof.

- b. Activities Allowed - A financing company shall only perform the following activities in its Off-site location/s:**
- 1. Offer, market, promote its products and services to the public by way of display of tarpaulin or any forms/mode of display or make available/distribute product brochures;**
 - 2. Conduct customer due diligence, or "Know-your-Client" (KYC) procedure as required by law;**
 - 3. Advise and/or assist clients in filling up loan applications;**

4. Transmit said loan applications electronically to the Head Office, or Branch, Agency, Extension Office, Satellite Office or Unit for evaluation and approval;

5. Disclose, explain and/or provide, prior to the consummation of the transaction, printed copy of the loan document containing the information required by law to be disclosed;

Such other analogous activities except underwriting, credit verification and scoring, approval or disapproval of loan application and collections.

SECTION 8. Digital Financing

a. A financing company may do Digital Financing under the following terms and conditions:

b. Thirty (30) days prior to engaging in Digital Financing, it shall submit to the Commission a written notice of such intent together with a description of the process and system that will be used for Digital Financing, which shall include, but not limited to the following:

1. Electronic signature process (e.g. One time password);
2. Electronic customer due diligence procedure;
3. Disbursement of loan amount, if applicable;
4. Process with e-shops, if applicable.

c. Obligations of a financing company engaged in Digital financing:

1. Develop and use electronic signature in accordance with Republic Act No. 8792 (Electronic Commerce Act) to confirm and execute contracts pertaining to Digital financing services.
2. Conduct customer due diligence through the use of Information and Communication Technology in accordance with Republic Act 9160, as amended (Anti-Money Laundering Act) and its Revised Implementing Rules and Regulations.
3. Ensure the integrity and security of electronic documents pertaining to digital financing services under the Republic Act No. 10173 (Data Privacy Act of 2012).

4. File a Business Continuity Disaster Risk Plan to the Commission.
5. Display in its website or in any of its digital platform the following Corporate Information:
 - 5.1. Corporate Name and Trade Name, as applicable;
 - 5.2. Complete Principal Office/Business Address;
 - 5.3. Contact Information (Telephone/Fax Numbers and Email Address);
 - 5.4. SEC Registration Number;
 - 5.5. Certificate of Authority Number;
 - 5.6. List of Branch/es, Extension Office/s, Agency/ies, Satellite Office/s or Unit/s, with complete address;
 - 5.7. Information of its obligation to provide a disclosure statement to its borrower on the true cost of credit prior to the consummation of the transaction, pursuant to the provisions of Republic Act No. 3765 or the Truth in Lending Act;
 - 5.8. Interest rates, default interest, penalties, surcharges and other finance charges imposed; and
 - 5.9. A clear procedure for resolving customer complaints.

SECTION 9. *Applicability of Bangko Sentral ng Pilipinas Regulations.*

The following financing companies, including their **Branches, Agencies, Extension Offices, Satellite Offices, or Units**, shall be subject to applicable rules and regulations of the Bangko Sentral ng Pilipinas (BSP) and must comply with BSP requirements prior to issuance by the Commission of the Certificate of Authority to Operate, as a Financing Company:

- a. Financing companies with quasi banking license;
- b. Financing companies that are subsidiaries/affiliates of banks;
- c. Financing companies that are subsidiaries/affiliates of non-bank financial intermediaries with quasi-banking license;
- d. Financing companies with authority to engage in trust operations.

SECTION 10. Fees –

- a. A **license** fee of 1/10 of 1% of the paid up capital of the financing company shall be charged for the issuance of a Certificate of Authority to Operate as a Finance Company, provided that, for those engaged in Digital Financing, the license fee shall be **1/2** of 1% of the paid-up capital, **but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission;**
- b. A **filing** fee of 1/10 of 1% of the required capital of the **Branch, Agency, Extension Office, Satellite Office or Unit** shall likewise be charged for the establishment for each **Branch, Agency, Extension Office, Satellite Office or Unit** of a financing company.
- c. **A fee of P1,000 for every off-site location, regardless of where it is situated, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission.**
- d. An annual fee shall be charged as follows and the same shall be paid not later than forty-five (45) days before the anniversary date of the Certificate of Authority to Operate as a Financing Company and for as long as its license to operate is in effect:

Head Office of the Financing Company	1/8 of 1% of the <u>paid-up</u> capital, provided that for those engaged in Digital Financing, the annual fee shall be <u>1/2 of 1% of the paid-up capital, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission.</u>
For Each Branch, Extension Office, Agency, Satellite Office or Unit of the Financing Company	1/8 of 1% of the required capital of the Branch, Extension Office, Agency, Satellite Office or Unit, <u>or such amount as may be prescribed by the Commission.</u>
For each off-site location	P1,000 for every off-site location, regardless of where it is situated, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), <u>or such amount as may be prescribed by the Commission.</u>

SECTION 11. *Loans and Investments*. – Unless otherwise authorized by the Commission:

- a. The total investment of a financing company in real estate and in shares of stock in a real estate development corporation and other real estate based projects shall not at any time exceed twenty-five (25%) percent of its networth.
- b. More than fifty (50%) percent of the funds of a financing company shall be used or invested in financing company activities; Provided, that in the computation of the amount of funds used or invested in financing company activities, investments in government securities with maturity of not more than one (1) year and special savings deposits shall be taken into consideration;
- c. The total credit that a financing company, WHICH HAS ONE OR MORE EXTERNAL CREDITORS OR WHICH HAS ONE OR MORE MINORITY STOCKHOLDERS THAT ARE NOT QUALIFIED BUYERS, may extend to its directors, officers, and stockholders shall not exceed fifteen (15%) percent of its networth. For purposes of this Section, loans and other credit extended by a financing company to the following shall be deemed to have been extended to its directors, officers, and stockholders:
 1. Spouse or relatives within the first degree of consanguinity or affinity, or relatives by legal adoption, of the officer, director or stockholder of the financing company;
 2. Partnerships in which a director or officer or stockholder of the financing company, or their spouse or relatives referred to in (c) (1) of this Section, is a general partner;
 3. Corporations where a director or officer or stockholder of the financing company, or their spouse or relatives referred to in (c) (1) of this Section, is also a director or officer of the corporation;
 4. Corporations where more than twenty (20%) percent of its subscribed capital stock is owned by a director or officer or stockholder of the financing company or their spouse or relatives referred to in (c) (1) of this Section;
 5. Corporations wholly or majority-owned or controlled by entities mentioned in (c)(2), (c)(3) and (c)(4) of this Section.

- d. The total credit that a financing company, WHICH HAS ONE OR MORE EXTERNAL CREDITORS OR WHICH HAS ONE OR MORE MINORITY STOCKHOLDERS THAT ARE NOT QUALIFIED BUYERS, may extend to any person, company, corporation or firm shall not exceed thirty (30%) percent of its net worth.
- e. EXEMPTION FROM THE THIRTY PERCENT (30%) SINGLE BORROWER'S LIMIT RULES AS ABOVE-PROVIDED MAY BE GIVEN TO QUALIFIED APPLICANTS SUBJECT TO THE FOLLOWING CONDITIONS:
1. WRITTEN APPLICATION ADDRESSED TO THE COMMISSION SPECIFYING THE NATURE, PARTIES INVOLVED AND CIRCUMSTANCES THAT WILL WARRANT EXEMPTION, PROVIDED THAT THE COMMISSION, AFTER EVALUATION OF THE APPLICATION, MAY REQUEST ADDITIONAL SUPPORTING DOCUMENTS, IF WARRANTED;
 2. THE EXEMPTION SHALL APPLY ONLY TO THE PARTIES OR CIRCUMSTANCES REFERRED TO AND UNDER THE SAME TERMS AND CONDITIONS AS STATED IN THE APPLICATION AND SUPPORTING DOCUMENTS SUBMITTED;
 3. ~~THE PARTIES SHALL REPORT TO THE COMMISSION ABOUT THE CONSUMMATION OF THE TRANSACTION/LOAN AND SUBMIT THE PERTINENT DOCUMENTS SUCH AS MASTER LOAN AGREEMENT, LOAN CONFIRMATION FORM, FINANCIAL GUARANTEE, RECEIPTS, IF ANY, AND OTHER DOCUMENTS RELEVANT TO THE TRANSACTIONS, WITHIN FIFTEEN (15) DAYS FROM CONSUMMATION/COMPLETION OF THE CONTRACT;~~
 4. THE COMPANY SHALL NOT DEVIATE FROM ITS REPRESENTATIONS WITH REGARD TO THE EXEMPTION GRANTED OTHERWISE THE EXEMPTION SHALL BE DEEMED REVOKED AND SIMILAR FUTURE REQUESTS SHALL NO LONGER BE CONSIDERED.
- f. Unless collected, interest income shall not be recognized on loans and lease receivables that remain outstanding beyond their maturity dates.
- g. A 100% allowance for probable losses should be set up for the following:

1. Clean loans and advances past due for a period of more than six (6) months;
2. Past due loans secured by collateral such as inventories, receivables, equipment and other chattels that have declined in value by more than 50% without the borrower offering additional collateral for the loans;
3. Past due loans secured by real estate mortgage title which is subject to an adverse claim rendering settlement through foreclosure doubtful;
4. When the borrower, and his co-maker or guarantor, is insolvent or where their whereabouts is unknown, or their earning power is permanently impaired;
5. Accrued interest receivable that remain uncollected after six (6) months from the maturity date of such loans to which it accrues;
6. Accounts receivable past due for 361 days or more;

SECTION 12. *Conveyance of Evidence of Indebtedness and Financed Receivables.* –

- a. The negotiation, sale or assignment by financing companies of evidence of indebtedness shall be in accordance with the rules of the Commission on registration of commercial papers and with the 19-lender limit allowed a financing company without quasi-banking license pursuant to Republic Act No. 337.
- b. Accounts which have been factored or discounted by, the lease receivables of, and other evidence of indebtedness (not covered in item a, above) issued or negotiated to, a financing company shall not be sold, assigned or transferred in any manner except to banks including their trust accounts, trust companies, non-bank financial intermediaries authorized to engage in quasi-banking functions, investment houses including their trust accounts, financing companies, investment companies, non-stock savings and loan associations, insurance companies, government financial institutions, pension and retirement funds approved by the Bureau of Internal Revenue, educational assistance funds established by the National Government; Provided: That the negotiation of evidence of indebtedness to pension funds or educational assistance funds shall be on a recourse basis.

SECTION **13.** *Required Networth for Operating Financing Companies.* – The company's networth shall be maintained at an amount not less than that required under Sections 2(b) and 6(b) hereof.

SECTION **14.** *Prohibitions.* –

- a. No corporation shall be allowed to include discounting, factoring and leasing as herein defined as one of its secondary purposes.
- b. Unless so authorized under R.A. No. 8556, no person, association, partnership or corporation shall:
 1. Engage in the business of a financing company;
 2. Hold itself out to be a financing company, either through advertisement in whatever form, whether in its stationery, commercial paper or other document, or through other representations;
 3. Make use of trade or firm name containing the words "Financing" or "Leasing" or "Finance and Leasing" or "Finance and Investment" or any other designation that would give the impression that it is engaged in the business of a financing or leasing company;

SECTION **15.** *Periodic Reports.* – Every financing company shall file with the Commission, the following reports:

- a. Within one hundred twenty (120) days after the end of the fiscal year, four (4) copies of the audited financial statements (AFS);
- b. Within thirty (30) calendar days from the actual stockholders' meeting, four (4) copies of the General Information Sheet (GIS);
- c. Any change in the membership or composition of the board of directors, officers from the rank of vice president and up or their equivalent, **Branch** manager, cashier and administrative officer shall be reported to the Commission within seven (7) working days thereafter, and the requirements prescribed under Section 4.1.3 to 4.1.3.5 hereof shall be submitted within thirty (30) working days from date of the aforesaid change;

- d. Within thirty (30) days from the due date of the submission of the AFS, the Special Form of Financial Statement (FCFS), in the form prescribed by the Commission;
- e. Within forty-five (45) days from the end of the semester, Semi-Annual Financial Statements (FCIF) in the form prescribed by the Commission;
- f. A Compliance form that shall be submitted in June 1 of the year following the due date of the submission of the Anti-Money Laundering Operating Manual (Manual) and every three (3) years thereafter or as determined by the Commission;
- g. Compliance Officer's Certificate on the extent of compliance with the Manual on Corporate Governance, which shall be submitted in accordance with the rules and regulations issued by the Commission;
- h. Corporate Governance Scorecard and the Compliance Officer's Certificate on the extent of compliance with the Manual on Corporate Governance, which shall be submitted in accordance with the rules and regulations issued by the Commission;
- i. In the event of any change in the loan type/s offered, and/or interest rates imposed by a financing company (as indicated in the Information Statement filed in relation to the application for a Certificate of Authority), it shall file a report informing the Commission of the intended change/s at least thirty (30) days prior to the implementation thereof in such form/s as may be prescribed by the Commission, and subject to the payment of corresponding fees; and
- j. Such other reports as the Commission and/or the Bangko Sentral ng Pilipinas may require.

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

SECTION 16. *Administrative Sanctions.* – If the Commission finds that there is a violation of R.A. 8556, of these Rules and Regulations, of the terms and conditions of the Certificate of Authority to Operate as a Financing Company, of any Commission order, decision or ruling, or the financing company refuses to have its books of accounts audited, or continuously fails to comply with SEC requirements, the Commission shall, in its discretion, impose any or all of the following sanctions:

- a. Suspension or revocation of the Certificate of Authority to Operate as a Financing Company after proper notice and hearing;

- b. A basic fine of not less than Ten Thousand Pesos (P10,000) and P100 for each day of continuing violation, but in no case shall the total fine be more than One Hundred Thousand Pesos (P100,000) per category of violation;
- c. Other sanctions within the power of the Commission.

The imposition of the foregoing administrative sanctions shall not preclude the institution of appropriate action against the officers and directors of the financing company or any person who might have participated therein, directly or indirectly, in violation of R.A. 8556 and this Rules and Regulations.

SECTION 17. *Cease and Desist Order.* – The Commission, after proper investigation or verification, motu proprio, or upon verified complaint by an aggrieved party, may issue a Cease and Desist Order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, may cause grave or irreparable injury or prejudice to the investing public or may amount to fraud or violation of the requirements of R.A. 8556 and the rules and regulations of the Commission.

The issuance of such Cease and Desist Order automatically suspends the authority to operate as a financing company.

Immediately upon the issuance of such Order, the Commission shall furnish the parties involved with a copy thereof and schedule a hearing not later than fifteen (15) days after service of notice. The Commission shall, within thirty (30) days upon submission of the case for resolution, decide on whether to lift the Cease and Desist Order and/or to impose the administrative sanctions provided for in Section 14.

SECTION 18. *Repealing Clause.* – These Rules and Regulations supersede the NEW RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF R.A. 5980 (THE FINANCING COMPANY ACT) AS AMENDED dated October 16, 1991 and the Rules and Regulations to Implement the Provisions of Republic Act No. 8556 (the Financing Company Act of 1998) dated May 20, 1999. All other rules, regulations, orders memorandum circulars of the Commission which are inconsistent herewith are hereby repealed or modified accordingly.

SECTION 19. *Transitory Provision.* – Any corporation which at the time of the effectivity of these Rules has been registered and licensed by the Commission to operate as a financing company, shall be considered as registered and licensed under the provisions of these Rules and shall be governed by the provisions hereof; Provided, That where such corporation is affected by the new provisions hereof, said corporation shall, unless otherwise herein provided or allowed by the Commission, be given a period of not more than one (1) year from the effectivity of these Rules within which to comply with the same.

SECTION 20. *Effectivity*. – These rules and regulations shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation in the Philippines.

COMMENTS ON THE PROPOSED AMENDED IMPLEMENTING RULES AND REGULATIONS OF THE FINANCING COMPANY ACT OF 1998

RULES	COMMENTS	PROPOSED REVISIONS
<p>Section 1.a</p> <p>“Financing companies” are stock corporations, except banks, investment houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages or other evidence of indebtedness, or by financial leasing of movable as well as immovable property.</p>		
<p>Section 2.b.1</p> <p><u>Fully-owned by Filipinos or up to 40% Foreign-owned:</u></p> <ul style="list-style-type: none"> i. P10,000,000.00 for financing companies located in Metro Manila and Other 1st Class Cities; ii. P5,000,000.00 for financing companies located in other classes of Cities; and iii. P2,500,000.00 for financing companies located in Municipalities. 		

RULES	COMMENTS	PROPOSED REVISIONS
<p><u>Provided, that the foregoing shall be subject to periodic review and increase by the Commission.</u></p>		
<p>Section 2.b.2</p> <p>More than 40% Foreign-Owned:</p> <p>The minimum paid-up capital shall be P10,000,000.00, provided, that the same shall in no case be lower than US\$200,000 or its Philippine Peso equivalent, in accordance with the provisions of the Foreign Investments Act (FIA) and its implementing regulations, <u>provided further, that the same shall be subject to periodic review and increase by the Commission.</u></p>		
<p>Section 2.b.3</p> <p><u>Financing Companies engaged in “Digital Financing”:</u></p> <p><u>The minimum paid-up capital shall be P10,000,000.00, regardless of the location of its Head Office, without prejudice to the requirements of the FIA and its implementing regulations provided, that the same shall be subject to periodic review and increase by the Commission.</u></p>		

RULES	COMMENTS	PROPOSED REVISIONS
<p>Section 2.b.4</p> <p><u>Financing Companies with off-site locations:</u></p> <p><u>The minimum paid-up capital shall be P10,000,000.00, regardless of the location of its Head Office provided, that the same shall be subject to periodic review and increase by the Commission.</u></p>		
<p>Section 3</p> <p><i>Rights and Powers.</i> — Financing companies shall have the following powers: —</p> <ul style="list-style-type: none"> a. Engage in quasi-banking and money market operations with the prior approval of the Bangko Sentral ng Pilipinas; b. Engage in trust operations subject to the provisions of the General Banking Act upon prior approval by the Bangko Sentral ng Pilipinas; c. Issue bonds and other capital instruments subject to pertinent laws, rules and regulations; d. Rediscount their paper with government financial institutions subject to relevant laws, rules and regulations; 		

RULES	COMMENTS	PROPOSED REVISIONS
<p>e. Participate in special loan or credit programs sponsored by or made available through government financial institutions;</p> <p>f. Provide foreign currency loans and leases to enterprises that earn foreign currency by exports or other means, subject to existing laws and rules and regulations promulgated by the Bangko Sentral ng Pilipinas.</p> <p>The Commission shall allow the inclusion of the foregoing rights and powers in the Articles of Incorporation of a financing company after submission by the applicant financing company of the appropriate license/authority issued by the relevant government agency.</p>		
<p>Section 4.1.2.1.c</p> <p><u>Through an Off-site location such as POS:</u> <u>c.1. the number of off-site location/POS that shall be established and the city or municipality where they shall be operating.</u></p>		
<p>Section 6.b.1</p> <p><u>Fully-owned by Filipinos or up to 40% Foreign-owned:</u></p>		

RULES	COMMENTS	PROPOSED REVISIONS
Metro Manila and Other 1st Class Cities - P1,000,000.00 Other classes of cities - P500,000.00 Municipalities - P250,000.00		
Section 6.b.2 More than 40% Foreign-Owned: <u>Metro Manila and Other 1st Class Cities - P1,250,000.00</u> <u>Other classes of cities - P1,125,000.00</u> <u>Municipalities - P1,000,000.00</u>		
Section 8.c.4 <u>File a Business Continuity Disaster Risk Plan to the Commission.</u>		
Section 8.c.5.7 <u>Information of its obligation to provide a disclosure statement to its borrower on the true cost of credit prior to the consummation of the transaction, pursuant to the provisions of Republic Act No. 3765 or the Truth in Lending Act;</u>		
Section 8.c.5.8 <u>Interest rates, default interest, penalties, surcharges and other finance charges imposed; and</u>		

RULES	COMMENTS	PROPOSED REVISIONS				
<p>Section 8.c.5.9</p> <p><u>A clear procedure for resolving customer complaints.</u></p>						
<p>Section 10.d</p> <p>An annual fee shall be charged as follows and the same shall be paid not later than forty-five (45) days before the anniversary date of the Certificate of Authority to Operate as a Financing Company and for as long as its license to operate is in effect:</p> <table border="1" data-bbox="317 748 747 1437"> <tr> <td data-bbox="317 748 485 1247"> Head Office of the Financing Company </td> <td data-bbox="485 748 747 1247"> <u>1/8 of 1% of the paid-up capital, provided that for those engaged in Digital Financing, the annual fee shall be 1/2 of 1% of the paid-up capital, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission.</u> </td> </tr> <tr> <td data-bbox="317 1247 485 1437"> For Each Branch, Extension Office, Agency, Satellite </td> <td data-bbox="485 1247 747 1437"> 1/8 of 1% of the required capital of the Branch, Extension Office, Agency, Satellite Office or Unit, <u>or</u> </td> </tr> </table>	Head Office of the Financing Company	<u>1/8 of 1% of the paid-up capital, provided that for those engaged in Digital Financing, the annual fee shall be 1/2 of 1% of the paid-up capital, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission.</u>	For Each Branch, Extension Office, Agency, Satellite	1/8 of 1% of the required capital of the Branch, Extension Office, Agency, Satellite Office or Unit, <u>or</u>		
Head Office of the Financing Company	<u>1/8 of 1% of the paid-up capital, provided that for those engaged in Digital Financing, the annual fee shall be 1/2 of 1% of the paid-up capital, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), or such amount as may be prescribed by the Commission.</u>					
For Each Branch, Extension Office, Agency, Satellite	1/8 of 1% of the required capital of the Branch, Extension Office, Agency, Satellite Office or Unit, <u>or</u>					

RULES		COMMENTS	PROPOSED REVISIONS
Office or Unit of the Financing Company	<u>such amount as may be prescribed by the Commission.</u>		
For each off-site location	P1,000 for every off-site location, regardless of where it is situated, but not exceeding One Hundred Fifty Thousand Pesos (P150,000.00), <u>or such amount as may be prescribed by the Commission.</u>		
Section 15.d <u>Within thirty (30) days from the due date of the submission of the AFS, the Special Form of Financial Statement (FCFS), in the form prescribed by the Commission</u>			
Section 15.e <u>Within forty-five (45) days from the end of the semester, Semi-Annual Financial Statements (FCIF) in the form prescribed by the Commission</u>			
Section 15.i <u>Corporate Governance Scorecard and the Compliance Officer's Certificate on the extent</u>			

RULES	COMMENTS	PROPOSED REVISIONS
<p><u>of compliance with the Manual on Corporate Governance, which shall be submitted in accordance with the rules and regulations issued by the Commission</u></p>		
<p>Section 15.i</p> <p><u>In the event of any change in the loan type/s offered, and/or interest rates imposed by a financing company (as indicated in the Information Statement filed in relation to the application for a Certificate of Authority), it shall file a report informing the Commission of the intended change/s at least thirty (30) days prior to the implementation thereof in such form/s as may be prescribed by the Commission, and subject to the payment of corresponding fees; and</u></p>		
<p>Section 19</p> <p><i>Transitory Provision.</i> — Any corporation which at the time of the effectivity of these Rules has been registered and licensed by the Commission to operate as a financing company, shall be considered as registered and licensed under the provisions of these Rules and shall be governed by the provisions hereof, Provided, That where such corporation is affected by the new provisions hereof, said corporation shall, unless otherwise herein provided <u>or allowed by the Commission</u>, be given a period of not more than one (1) year from the effectivity of these Rules within which to comply with the same.</p>		