

[SEC, May 20, 1999]

**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 promulgates the following rules and regulations:

SECTION 1. Definition of Terms. — The following definition of terms shall apply for purposes of these Rules:

a. "Financing companies" are 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 evidences of indebtedness, or by financial leasing of movable as well as immovable property;

b. "Commission" shall mean the office of the Securities and Exchange Commission of the Philippines;

c. "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.

d. "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;

e. "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 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.

f. "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.

g. "Lease rentals" shall refer to the periodic payments made by the lessee to the lessor under Section 1 (e), above;

h. "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;

i. "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.

j. "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.

k. "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.

l. "Networth" is the excess of assets over liabilities, net of appraisal surplus, unbooked valuation reserves, capital adjustments, overstatement of assets and unrecorded liabilities

SECTION 2. Form of Organization. — Financing companies shall be organized in the form of stock corporation in accordance with the provisions of the Corporation Code of the Philippines, subject to the following:

a. At least forty percent (40%) of the voting stock of the corporation shall be owned by citizens of the Philippines

b. A minimum paid-up capital of:

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

iii. P2,500,000.00 for financing companies located in Municipalities

Financing companies duly existing and in operation before the effectivity of R.A. 8556 shall comply with the minimum capital requirement within one (1) year from the date of said effectivity.

c. The corporate-name of financing companies shall contain the term "financing company", "finance company", or finance and investment company " or other title or word(s) descriptive of its operations and activities as a financing company.

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 government agency involved.

SECTION 4. Requirements for Registration. —

a. Registration papers to be submitted to the Commission

Any stock corporation may be registered as a financing company by filing with the Commission five (5) copies of an application to operate as a financing company under R.A. 8556, signed under oath by its President, together with the following documents in the prescribed forms:

1. All documents required for registration as a corporation;

2. Information Sheet of registrant company;

3. Personal Information Sheet of each of the directors, officers with the rank of Vice-President and up or their equivalent or managing partners;

4. Answer to the questionnaire of the Commission;

5. Documents required of each Filipino director, officer to be appointed from the rank of Vice-President and up or their equivalent, such as the following:

- i. Police clearance from local police of the city or municipality of which he is a resident;
- ii. NBI clearance;
- iii. Certificate of good moral character to be executed under oath by at least (2) reputable and disinterested persons in the community; and
- iv. Bank credit information to be issued by his depository or creditor bank(s), if any;

In lieu of Items (ii) and (iii), a foreign director or officer shall submit a clearance from the Bureau of Immigration and Deportation and photocopies of passport and Alien Certificate of Registration (ACR).

6. 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.

7. Such other documents as may be required by the Commission;

b. 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 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 and residences of its directors.

c. 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. 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 (b) 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 aforestated, 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 or Units. —

a. Certificate of Authority — No financing company shall establish or operate a branch, agency, extension office or unit without a prior certificate of authority to be issued by the Commission. The application for authority filed under this section shall be accompanied by the following documents:

1. Information sheet of the proposed branch;
2. Answer to SEC questionnaire;
3. Police clearance of the manager, cashier, and administrative officer from the local police of the city or municipality where they reside;
4. NBI Clearance of the manager, cashier and administrative officer of the proposed branch;
5. Copy of the proposed personnel chart;
6. Such other documents as may be required by the Commission.

The above application shall be published in accordance with the provisions of Sec. 4(b) of these Rules.

b. Evaluation Guideposts — The number of branches, agencies, extension offices or units to be established shall depend upon the capacity of the company to conduct expanded operations and/or upon the capacity of the area wherein the proposed branch, extension office, agency or unit will be established to absorb new entities engaged in financing, as may be determined by the Commission.