

MEMORANDUM CIRCULAR NO. 2006-07
Series of 2006

TO: ALL CONCERNED

**SUBJECT: GUIDELINES IN THE COMMENCEMENT OF ACTION
FOR VIOLATION OF ARTICLE 124 OF THE COOPERATIVE CODE
OF THE PHILIPPINES**

Pursuant to CDA Board of Administrators Resolution No. 129, Series of 2006, the Authority hereby promulgates the following internal guidelines in the Commencement of Action for Violation of Article 124 of the Cooperative Code:

SECTION 1. TITLE. - These guidelines shall be known as the Guidelines in the Commencement of Action for the Violation of Article 124 of the Cooperative Code of the Philippines.

SECTION 2. DEFINITION OF TERMS. - The following words or terms shall mean:

1. Authority - shall refer to the Cooperative Development Authority and its Extension Offices.
2. Code - shall refer to Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines.
3. Cooperative Laws - shall refer to the Code, Republic Act No. 6939, the Rules and Regulations implementing the Cooperative Code, and other issuances of the Authority.
4. Board of Administrators - shall refer to the Chairman and its six (6) members.
5. Investigating Officers - shall refer to the Legal Officers and other qualified employees of the Authority who are authorized to conduct

preliminary investigation of the acts/omissions in violation of the Code.

6. Legal Division - shall refer to the Central Office.
7. Legal Unit - shall refer to the Extension Offices.
8. Complaint – is a sworn statement in writing charging a person or persons or organizations, whether foreign or domestic, with any of the offenses mentioned in Article 124 of the Code, subscribed by the aggrieved party or any interested person, as the case may be.

SECTION 3. ACTS OR OMISSIONS PUNISHABLE. - The following shall constitute acts or omissions punishable under Article 124 of the Code:

1. The use of the word “Cooperative” by any person or of person or organization, domestic or foreign, unless registered as a cooperative under the Code;
2. Direct or indirect interference or intervention in the internal affairs of a cooperative of a public official or employee of which he is not a member such as, but not limited to, the following:
 - a. Influencing the election or appointment of officers, directors, committee members and employees through public or private endorsement or campaign for or against any person or group of persons;
 - b. Requiring prior clearance for any policy or decision within the cooperative;
 - c. Requesting or demanding the creation of positions or organizational units, or recommending any person for appointment, transfer, or removal from his position; or
 - d. Any other acts inimical or adverse to the autonomy and independence of cooperatives.
3. Violations made by directors, officers or committee of a cooperative of the following provisions of the Code:

- a. Article 46 (Liability of directors, officers and committee members)
 - b. Article 49 (Disloyalty of a director)
 - c. Article 50 (Illegal Use of Confidential Information)
4. Any violations of any provision of the Code for which no penalty is imposed.

SECTION 4. COMMENCEMENT OF ACTION.

An action for violation of any of the provisions of Article 124 shall commence upon the filing of a complaint in accordance with this guidelines or through the endorsement from other government agencies or instrumentalities or the respective departments of this Authority. Any information obtained other than through a complaint shall be given due course only after an initial evaluation has been conducted. In no case shall a complaint be given due course when the same is not in accordance with the form prescribed in Section 5 hereof except when the Authority itself initiates the action.

The Executive Director or Extension Office Director, as the case maybe, upon receipt of a formal complaint or complaints in accordance with these guidelines or any information, written or otherwise from any aggrieved party or from any interested party or through endorsement from other government agencies or instrumentalities or the respective departments of the Authority, shall refer the same to the Legal Division or Legal Units as the case may be, for determination of the need for preliminary investigation.

The Legal Division or Legal Units, as the case may be, shall determine whether there is sufficient evidence to proceed with the investigation.

- a. If there is no basis for the complaint, information or endorsement referred to in the preceding paragraph, the same shall be dismissed by the Authority through an Order of Dismissal signed by the Executive Director or Extension Office Director concerned upon the proper recommendation of the Legal Division or the Legal Unit concerned.
- b. If there appears to be a violation of the Code, upon recommendation of the Legal Division or the Legal Unit concerned, an Order authorizing the conduct of investigation shall be issued by

the Authority through the Executive Director or the Extension Office Director concerned.

SECTION 5. FORM OF COMPLAINT. - All complaints must be in affidavit form together with the accompanying evidence, when available. When the Authority initiates the investigation, the complaint need not be in affidavit form.

The complaint should be written in a clear, simple and concise language containing the following:

1. Full name and address of the aggrieved party or any interested person;
2. Full name and address of the person or persons or organizations, whether foreign or domestic complained of;
3. A narration of the relevant and material facts which shows the acts or omissions allegedly violated by such person or persons or organizations, whether foreign or domestic complained of; and,
4. Subscribed by the aggrieved party or any interested person, as the case may be.

SECTION 6. CONDUCT OF FORMAL INVESTIGATION.

In the conduct of investigation, the investigating officer shall draft an investigation plan to ascertain the following matters:

- a. Nature of the violation;
- b. Relevant laws, rules, regulations and orders;
- c. Elements under which the existence of a violation is proven;
- d. Procedure for conducting the investigation; and,
- e. The time frame for the conduct of the investigation.

During an investigation, the investigating officer shall have the authority to request for information and documents and receive information through voluntary compliance. The investigating officer may also require or allow any person to file a statement in writing, under oath or otherwise as he may determine, with respect to the facts and circumstances relevant to the matter under investigation.

In furtherance of the investigation and in the interest of the service, he may also request the assistance of law enforcement agencies.

The fact that a person, organization, director, officer or committee member is under investigation shall remain strictly confidential, unless otherwise provided under these guidelines.

SECTION 7. INVESTIGATION REPORT. - After the completion of the formal investigation, the Investigating Officer shall submit an investigation report, which shall include all the supporting evidence gathered, to the Executive Director or the Extension Office Director as the case may be.

If based on the Investigation Report submitted there is a prima facie finding sufficient to warrant the filing of a criminal complaint, the procedure shall be:

A. For complaints handled by the Extension Office

The Investigation Report together with a draft complaint - affidavit with all the supporting affidavits and evidence shall be forwarded to the Legal Division-Central Office for evaluation.

The Legal Division shall complete its review within ten (10) days from receipt of the draft complaint-affidavit and investigation report. If the same is meritorious, the Legal Division shall either adopt the complaint-affidavit or draft a new complaint-affidavit and shall prepare the case folder which contains the case history and index of the documents.

If the Legal Division does not find the contents of the draft complaint-affidavit to be meritorious, it may refer the case back to the Extension Office for further case build-up or recommend the archiving of the draft complaint-affidavit including the Investigation Report to the Board of Administrators.

B. For complaints handled by the Central Office.

A review shall be conducted and the review shall be completed within ten (10) days from receipt of the

investigation report and draft complaint-affidavit from the Investigating Officer. If the case is meritorious, the Investigating Officer upon approval of the Chief of the Legal Division shall prepare the case folder which contains the case history and index of the documents.

If the same is not meritorious, the case may be referred back to the investigating officer for further case build-up or recommend the archiving of the draft complaint-affidavit including the Investigation Report to the Board of Administrators.

SECTION 8. DROPPING OF THE COMPLAINT-AFFIDAVIT. - After or before the investigation but prior to the filing of the complaint with the appropriate officer/court, the complaint-affidavit may be dropped through the approval of the Board of Administrators upon recommendation of the Chief of the Legal Division with the concurrence of the Executive Director.

SECTION 9. FILING OF COMPLAINT. - Upon approval of the Board of Administrators of the complaint-affidavit, the Legal Division or the Extension Office legal officer assigned to the case, shall file the same in accordance with the 2000 Revised Rules on Criminal Procedure, Rules of Court of the Philippines.

SECTION 10. SEPARABILITY CLAUSE. - If any provision or article of these guidelines is held invalid the remaining provisions or articles shall not be affected thereby.

SECTION 11. EFFECTIVITY. - These Guidelines shall take effect fifteen (15) days following its filing in the Office of the National Administrative Register, University of the Philippines, Law Center.

June 30, 2006.

FOR THE BOARD OF ADMINISTRATORS:

ORIGINAL SIGNED
LECIRA V. JUAREZ
Chairperson