



COOPERATIVE DEVELOPMENT AUTHORITY

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749-81



MEMORANDUM CIRCULAR NO. 2023-17
Series of 2023

TO : ALL CONCERNED

SUBJECT : LEGAL INTERPRETATION OF ART. 18, R.A. NO. 9520 AND GUIDELINES FOR OPTIONAL CONDUCT OF REFERENDUM TO AMEND ARTICLES OF COOPERATION AND BYLAWS AS WELL AS MANDATORY AMENDMENTS

Pursuant to the power vested in the Cooperative Development Authority (“the Authority” for brevity) by Republic Act (R.A.) No. 11364 to formulate rules and regulations to implement its provisions and of Republic Act (R.A.) No. 9520, and to ensure the efficient and effective operations of cooperatives, **this Memorandum Circular is hereby issued.**

Art. 18 of R.A. No. 9520, otherwise known as the “Philippine Cooperative Code of 2008”, provides:

“ART. 18. Amendment of Articles of Cooperation and Bylaws. – Unless otherwise prescribed by this Code and for legitimate purposes, any provision or matter stated in the articles of cooperation and bylaws may be amended by two-thirds (2/3) vote of all the members with voting rights, without prejudice to the right of the dissenting members to exercise their right to withdraw their membership under Article 30. xxx” (Underscoring supplied)

Clearly, the said provision requires that any amendments to the provision/s of the articles of cooperation and bylaws of the cooperative can only be made by 2/3 vote of all members with voting rights, subject to the restrictions imposed by the cooperative bylaws, including Art. 32 of R.A. No. 9520 which states that –

“ART. 32. Composition of the General Assembly. – The General Assembly shall be composed of such members who are entitled to vote under the articles of cooperation and bylaws of the cooperative.” (Underscoring supplied)

Accordingly, the following is the legal interpretation of Art. 18, R.A. No. 9520, to wit:

1. Art. 18 of R.A. No 9520 is clear and unambiguous. There is no room for interpretation. Interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. The law is clear in this case.¹ Any amendments to the provision/s of the articles of cooperation and bylaws of the cooperative can only be made by 2/3 vote of all members with voting rights.

¹ Armando Barcellano v. Dolores Bañas, represented by her son and Attorney-in-fact Crispino Bermillo, G.R. No. 165287, September 14, 2011.



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2. **Voting rights** is the right to participate in the elections of the cooperative, including the conduct of plebiscite, referendum, and other initiatives involving the cooperative members' exercise of their right of suffrage. But the exercise of this right is not absolute. It is granted only to regular members² of the cooperative who vote as persons unless limited, restricted, denied or broadened such as who are entitled to vote in accordance with the criteria or qualifications prescribed by the articles of cooperation and bylaws. On the other hand, to be entitled to vote, a regular member must have complied with all the membership requirements of the cooperative and has met all the conditions as provided by the articles of cooperation and bylaws of the cooperative.

3. Thus, a *regular* member must have the right to vote in accordance with the articles of cooperation and bylaws of the cooperative for purposes of **amendments of the articles of cooperation and bylaws**, division of cooperatives, mergers and consolidations, exercise of the powers of the general assembly, and voluntary dissolution of the cooperative.³

Finally, it should be emphasized that the framers of R.A. No 9520 purposely deleted the phrase "present and constituting a quorum" during the Senate deliberations of the bill.⁴

² A regular member is one who has complied with all the membership requirements and entitled to all the rights and privileges of membership. In contrast, an associate member is one who has no right to vote nor be voted upon and shall be entitled only to such rights and privileges as the bylaws may provide. (Art. 26, R.A. No. 9520).

³ The term **voting rights** is found under the following provisions of R.A. No. 9520: (a) ART. 4. Cooperative Principles; (b) ART. 18. *Amendment of Articles of Cooperation and Bylaws*; (c) ART. 20. *Division of Cooperatives*; (d) ART. 21. *Merger and Consolidation of Cooperatives*; (e) ART. 26. *Kinds of Membership*; (f) ART. 33. *Powers of the General Assembly*; (g) ART. 39. *Directors*; (h) ART. 46. *Compensation*; (i) ART. 47. *Dealings of Directors, Officers, or Committee Members*; (j) ART. 48. *Disloyalty of a Director*; (k) ART. 64. *Voluntary Dissolution Where no Creditors are Affected*; (l) ART. 65. *Voluntary Dissolution Where Creditors Are Affected*; and (m) ART. 99. *Quorum and Voting Rights*.

⁴ The actual transcript of the said deliberations reveals as follows:

"Senator Zubiri. On the third proposal, Mr. President, on page 8, line 29, under Article 18, after the words "amended by," retain the words "two-thirds (2/3) of all the members with voting rights."

The President Pro Tempore. Instead of THREE-FOURTHS (3/4)?

Senator Zubiri. Yes, and delete the phrase "A THREE-FOURTHS (3/4/) PRESENT AND CONSTITUTING A QUORUM"

The President Pro Tempore. Is that all?

Senator Zubiri. Yes, retain the words "two-thirds (2/3) of all the members with voting rights."

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment is approved." (Page 134, 2nd Regula Session, July 29, 2008, Philippine Senate)

Nevertheless, the Authority recognizes that some cooperatives may have difficulty in complying with the strict requirement of the law. For this purpose, such cooperatives may amend their articles of cooperation or bylaws by employing REFERENDUM as a voting procedure for the same reason as electric cooperatives⁵ since Art. 18 does not specifically provide that amendment shall be made only by virtue of a meeting; Provided, that such cooperatives shall seek the approval of the CDA Extension Office before conducting the referendum; Provided further, that the conduct of proper information dissemination on the proposed amendments to the articles of cooperation or bylaws shall be required prior to the Extension Office's approval to ensure that the cooperative's membership shall be duly informed and that any clarificatory questions will be adequately addressed in lieu of deliberations in a meeting proper.

Relative to mandatory amendments to the articles of cooperation and bylaws as prescribed by law, rules and regulations, the same need not go through the ratification of the General Assembly. Hence, any amendment as required or prescribed by law may be implemented by the cooperatives by submitting a copy of the amended articles of cooperation and bylaws with proper highlighting of the amended mandatory provisions and an affidavit under oath that no other amendments have been made which would otherwise require prior ratification of the General Assembly.

These Guidelines shall take effect immediately upon the completion of its publication in the Official Gazette and the filing of the copy thereof with the Office of National Administrative Registry (ONAR).

Approved by the CDA Board of Directors pursuant to Res. No. 501, Series of 2023, dated July 12, 2023.

Issued this 10th day of October, 2023.

For the CDA Board of Directors:

By:


USEC. JOSEPH B. ENCABO
Chairman *N*

⁵ Arts. 127, 128, and 129 of R.A. No. 9520 (The Philippine Cooperative Code of 2008).