



COOPERATIVE DEVELOPMENT AUTHORITY

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1070-193



MEMORANDUM CIRCULAR NO. 2023- 19 Series of 2023

TO : ALL CDA REGIONAL EXTENSION OFFICES AND ALL CONCERNED
SUBJECT : GUIDELINES ON PENALTIES AGAINST COOPERATIVES, THEIR OFFICERS, OR MEMBERS.

Section 1. TITLE. This shall be known as the “*Guidelines on Penalties against Cooperatives, their Officers, or Members*”.

Section 2. BACKGROUND.

The adjudication of cases, in the exercise of the CDA's quasi-judicial power vested by RA 11364 under the Legal Affairs Service (LAS) through the Adjudication Division, is one of the remedies that may be availed of in the resolution of cases as provided under Rule VI of the said Rules. This in effect modifies the Articles of Cooperation and By-Laws of the cooperatives with respect to the exclusivity of voluntary arbitration as an alternative mode of dispute resolution. Accordingly, after a failure to amicably settle the dispute, the complainant or aggrieved party may file a complaint for voluntary arbitration or adjudication.

Pursuant to Rule VII (Administrative/Disciplinary Procedure) of the CDA Omnibus Rules of Procedure and Memorandum Circulars establishing penalties for acts or omissions as specified, the Authority establishes and addresses through this issuance, the imposition of specific penalties which are not penal in nature and uncovered for by previous issuances in relation to violations committed by cooperatives, their officers, or members.

Section 3. PURPOSE.

To effectively carry out the adjudication function of the Authority relative to the graduation and imposition of penalties for infractions with no graduated penalties which are not covered by the relevant laws, the rules, and issuances, the CDA seeks to provide:

- a.) A graduation of penalties through this supplemental issuance to effectively sanction erring cooperatives for acts or omissions falling under Section 2, Rule XIII of the Implementing Rules and Regulations of Republic Act No. 11364; and
- b.) Penalties for Sections 1, 2, and 4 of Article II, Rule VI of the CDA Omnibus Rules of Procedure.

Section 4. LEGAL BASES.

The solid legal bases of this guidelines are the following:

1. RA 11364 or the Cooperative Development Authority Charter of 2019

- a.) **Section 4 (p)** Conduct investigations, file necessary charges, discipline, suspend and/or remove erring officers and members of the cooperative for violation of cooperative laws, rules, regulations, issuances of the Authority, the ACBL, after due

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process, and direct the general assembly to replace the suspended/removed officers, in accordance with the rules and regulations as may be promulgated by the Authority;

- b.) **Section 4 (q)** Order the suspension or cancellation of the Certificate of Registration of cooperatives and/or the revocation of the Letter of Authority and/or Certificate of Authority to establish and operate satellite or branch offices, respectively, after due notice and hearing for noncompliance with lawful orders, rules and regulations of the Authority, including the ACBL of the cooperative subject to the conditions as defined in the implementing rules and regulations (IRR) of this Act;
- c.) **Section 4 (t)** Hear and decide inter-cooperative and intra-cooperative disputes, controversies, and/or conflicts, without prejudice to the filing of civil and/or criminal cases by the parties concerned before the regular courts: Provided, that all decisions of the Authority are appealable directly to the Court of Appeals;
- d.) **Section 4 (u)** Adopt and implement a dispute resolution mechanism that will settle conflicts between and among members, officers, and directors of cooperatives, and between and among cooperatives in accordance with Article 137 of Republic Act No. 9520, which amended Republic Act No. 6938, and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". However, in case of election-related issues, the aggrieved party may elevate the case for adjudication to the Authority without undergoing alternative dispute resolution;

2. CDA Omnibus Rules of Procedure

- a.) **Rule VI (Adjudication), Article II, Section 1. Jurisdiction.** The Authority shall have the jurisdiction to hear and decide over the following cases:
 - a. Complaints against the cooperatives, their officers, and or members, for violations of Cooperative Laws, Implementing Rules and Regulations, Issuances of the Authority, and their Articles of Cooperation and bylaws;
 - b. Election-related complaints;
 - c. Adverse inspection, examination, and/or investigation findings against the cooperatives, their officers, and/or members of Cooperative Laws, Implementing Rules and Regulations, issuances of the Authority, and their Articles of Cooperation and bylaws;
 - d. Other cases falling within the jurisdiction of the Authority and/or analogous to the foregoing, such as but not limited to devices or schemes employed by, or any act of the cooperative's board of directors, officers, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the members of the cooperative.
- b.) **Rule VI (Adjudication), Article II, Section 2. Original jurisdiction of the CDA Board.** The CDA Board shall have original jurisdiction over the following:
 - a. Cases involving violations of R.A. No. 11364, R.A. No. 9520, R.A. No. 10744 and their respective Implementing Rules and Regulations, other Issuances,

Orders, Rules and Regulations of the Authority, and Articles of Cooperation and Bylaws by cooperatives registered with and directly supervised by the CDA Head Office;

- b. Acts or omissions committed by officers/members of said cooperatives prejudicial to its operations and/or the existence or that of its members thereof; and*
- c. Inter-cooperative disputes between or among cooperatives registered in two or more regions.*

c.) Rule VI (Adjudication), Article II, Section 3. Appellate Jurisdiction of the CDA Board. *The Board shall have exclusive appellate jurisdiction to review, reverse, set aside, modify, alter, or affirm resolutions, orders, and decisions of the CDA Regional Offices.*

No resolutions, orders, or decisions of the CDA Regional Offices on any issue, question, matter, or incident raised before them shall be elevated to the CDA Board until all available remedies have been exhausted and the case decided on the merits.

d.) Rule VI (Adjudication), Article II, Section 4. Original Jurisdiction of the CDA Regional Offices. *The CDA Regional Offices shall have original jurisdiction over cases involving violations of R.A. No. 11364, R.A. No. 9520, R.A. No. 10744, and their respective Implementing Rules and Regulations, other Issuances, Orders, Rules and Regulations of the Authority, and Articles of Cooperation and Bylaws of cooperatives registered with or directly supervised by the CDA Regional Offices, including acts or omissions committed by officers/members of said cooperatives within the respective regions.*

e.) Rule VI (Adjudication), Article II, Section 5. Adjudicatory Power to Use Compulsory Process. *The CDA Board of Directors, and the Regional Offices through its Regional Director or Adjudicator, are empowered to summon witnesses, issue subpoena ad testificandum and subpoena duces tecum, administer oaths, require an answer to interrogation, issue writ of possession, writ of execution, writ of demolition, cease and desist orders, and other writs to enforce its Orders, Decisions, and Resolutions, through a deputized employee, deputized law enforcement agencies, or the local government unit concerned as may be necessary.*

For this purpose, whenever deemed necessary, the CDA Board of Directors, and the Regional Offices through its Regional Director or Adjudicator, shall request the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), and their other component units, other law enforcement agencies, or the local government unit concerned, to assist in the enforcement and execution of their Decisions, Resolutions, Final Orders Writs, and other processes.

3. *Implementing Rules and Regulations of Republic Act No. 11364*

a.) **Rule XIII, Section 2. Suspension of Cancellation of Certificate of Registration.**

The Authority may suspend or revoke/cancel, after due notice and hearing, the certificate of registration of a cooperative on any of the following grounds:

- a. *Having obtained its registration by fraud;*
- b. *Existing for an illegal purpose;*
- c. *Willful violation, despite notice by the authority RA 9520, RA 10744 or its by-laws;*
- d. *Willful failure to operate on a cooperative basis;*
- e. *Failure to meet the required minimum number of members in the cooperative; and*
- f. *Non-compliance with lawful orders, and regulations of the Authority, including the Articles of Cooperative and by-laws of the Cooperative.*

Section 5. DEFINITION OF TERMS

Registration by Fraud - Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by a cooperative, through a member or its officers, to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated in terms of obtaining the registration of a cooperative or securing its Certificate of Registration.¹

Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact to mislead the Authority to believe that the cooperative indeed possesses the qualifications and not the reasons for its disqualification.²

Forms

- a. Misrepresentation by false or incorrect information
- b. Misrepresentation by furnishing false or incorrect information
- c. Fabrication or possession of fabricated forms and supporting documents

Elements

- a. There is an employment of deceit by a member or an officer of the cooperative seeking its registration with Authority
- b. The deceit involves a breach of legal or equitable duty, trust or confidence
- c. The breach results in the unwarranted/unqualified registration by fraud of the cooperative

¹ People v. Balasa, G.R. No. 106357, September 3, 1998

² Republic v. Guerrero, G.R. No. 133168, March 28, 2006

- d. Undue advantage is taken of the cooperative-applicant through its member/s or officer/s by securing its registration with the Authority by fraudulent means

Illegal³ - Not authorized by law; illicit; unlawful; contrary to law.

Section 6. SCOPE AND COVERAGE.

This guideline is issued for the information and guidance of all concerned as to the graduation and imposition of penalties for erring cooperatives, their officers, or members falling under the jurisdiction of the Authority.

Section 7. PENALTIES.

The following shall be the graduation of penalties in accordance with the exercise of quasi-judicial functions of the Authority:

For cooperatives:

Violation of Section 2, Rule XIII of the Implementing Rules and Regulations of Republic Act No. 11364; Sections 1,2, and 4, Article II of Rule VI of the CDA Omnibus Rules which are not penalized under existing Rules and Issuances and which are not penal in nature as provided in Section 140 of RA9520 shall be sanctioned as follows:

a. Violation of Section 2 (a) and (b), Rule XIII of the Implementing Rules and Regulations of Republic Act No. 11364

1st offense - **Revocation/Cancellation of Certificate of Registration of the Cooperative**

b. Section 2 (c), (d), (e), and (f), Rule XIII of the Implementing Rules and Regulations of Republic Act No. 11364

1st offense - **Suspension of Certificate of Registration for one (1) month and fulfillment of its obligation and/or compliance with the requirements of existing Cooperative Laws, Rules and Regulations, or issuances of the Authority.**

2nd offense - **Cancellation/Revocation of the Certificate of Registration of the Cooperative**

c. Sections 1,2, and 4, Article II of Rule VI of the CDA Omnibus Rules which are not penalized under existing Rules and Issuances and which are not penal in nature as provided in Section 140 of RA9520

1st offense - **Suspension of Certificate of Registration for one (1) month and fulfillment of its obligation and/or compliance with the**

³ Black's Law Dictionary, 2nd edition

requirements of existing Cooperative Laws, Rules and Regulations, or issuances of the Authority.

2nd offense - Suspension of Certificate of Registration for three (3) months and fulfillment of its obligation and/or compliance with the requirements of existing Cooperative Laws, Rules and Regulations, or issuances of the Authority.

3rd offense - Revocation/Cancellation of the Certificate of Registration

For members and/or officers of the cooperatives:

Violations of Sections 1, 2, and 4, Article II, Rule VI of the CDA Omnibus Rules, which are not penalized under the existing Rules, Memorandum Circulars, and Issuances which are not penal in nature as provided in Section 140 of RA9520, shall be penalized as follows:

1st offense - Sixty (60) days suspension without remuneration for erring officers; or

- Sixty (60) days suspension for erring members

2nd offense

INVOLVING A DIFFERENT CHARGE/VIOLATION

- Ninety (90) days suspension without remuneration for erring officers

- Ninety (90) days suspension for erring members

INVOLVING THE SAME CHARGE/VIOLATION

- Removal from the position as an officer and termination of membership from the Cooperative for erring officers

- Termination of membership from the Cooperative for erring member

3rd offense

REGARDLESS OF THE CHARGE/VIOLATION

- Removal from the position as an officer and termination of membership from the Cooperative for erring officers

- Termination of membership from the Cooperative for erring member

- ***With perpetual prohibition to be an officer or co-founder of a cooperative***

Section 8. TRANSITORY PROVISION.

The provisions of this Memorandum Circular shall be applied prospectively in the adjudication of cases before the Authority. Penalties for existing/pending cases against erring officers/members, prior to the effectivity of this Circular, which are not sanctioned by existing rules or issuances shall be based on the Articles of Cooperation and By-Laws or the internal policy of the Cooperative.

Section 9. EFFECTIVITY.

This Memorandum Circular shall take effect immediately upon approval of the CDA Board of Directors and after fifteen (15) days from its publication in the Official Gazette and filing with the Office of National Administrative Register (ONAR).

Approved by the CDA Board of Directors pursuant to Res. No. 866, S-2023 dated December 5, 2023.

Issued this 20th day of December, 2023

For the CDA Board of Directors

By:

USEC. JOSEPH B. ENCABO
Chairman

