

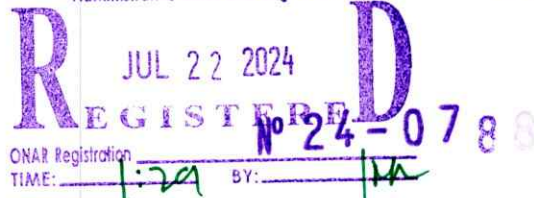


COOPERATIVE DEVELOPMENT AUTHORITY

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U.P. LAW CENTER
OFFICE of the NATIONAL ADMINISTRATIVE REGISTER
Administrative Rules and Regulations



MEMORANDUM CIRCULAR NO. 2024- 16 Series of 2024

SUBJECT : REITERATION OF THE PROHIBITIONS UNDER ARTICLES 45, 48 and 49 OF REPUBLIC ACT NO. 9520

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

Section 1. Objective. This Memorandum Circular (MC) entitled "Reiteration of the Prohibitions under Articles 45, 48 and 49 of Republic Act No. 9520" is issued to serve as guidance to the cooperative officers to uphold the best interest of their members pursuant to the universally accepted cooperative principles and to refrain from using their privileges and the cooperative's financial resources for their personal gains and to benefit their business interests in another company where they have personal investment or interest.

Section 2. Legal Bases. This MC is issued based on the following provisions of law, to wit:

1. RA 11364

Section 4. Powers, Functions and Responsibilities. -The Authority shall have the following powers and functions:

(a) **Develop and formulate**, in consultation with the cooperative sector and other concerned institutions, appropriate regulations, **standards, rules, orders, guidelines and/or circulars to implement this Act and Republic Act No. 9520** to ensure the effective and sound operation of cooperatives;

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(f) **Exercise supervision and jurisdiction** over all types and categories of cooperatives registered with the Authority;

2. RA 9520

ART. 45. Liability of Directors, Officers and Committee Members. – Directors, officers and committee members, who willfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee members shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons.

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When a director, officer or committee member attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence, he shall, as a trustee for the cooperative, be liable for damages and shall be accountable for double the profits which otherwise would have accrued to the cooperative.

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ART. 48. Disloyalty of a Director. – **A director who, by virtue of his office, acquires for himself an opportunity which should belong to the cooperative shall be liable** for damages and must account for double the profits that otherwise would have accrued to the cooperative by refunding the same, unless his act has been ratified by a three-fourths (3/4) vote of all the members with voting rights, present and constituting a quorum. This provision shall be applicable, notwithstanding the fact that the director used his own funds in the venture.

ART. 49. Illegal Use of Confidential Information. – (1) **A director or officer, or an associate of a director or officer, who, for his benefit or advantage or that of an associate, makes use of confidential information** that, if generally known, might reasonably be expected to adversely affect the operation and viability of the cooperative, shall be held:

- (a) Liable to compensate the cooperative for the direct losses suffered by the cooperative as a result of the illegal use of information; and
 - (b) Accountable to the cooperative for any direct benefit or advantage received or yet to be received by him or his associate, as a result of the transaction.
- (2) The cooperative shall take the necessary steps to enforce the liabilities described in subsection (a).

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ART. 140. Penal Provisions. – The following acts or omissions affecting cooperatives are hereby prohibited:

- (1)...
- (2)...
- (3)...
- (4)...

(5) A director, officer or committee member who violated the provisions of Article 45 on the Liability of Directors, Officers and Committee Members, Article 48 on the Disloyalty of a Director, and Article 49 on the Illegal Use of Confidential Information shall upon conviction suffer a fine of not less than Five thousand pesos (P5,000.00) nor more than Five hundred thousand pesos (P500,000.00) or imprisonment of not less than five (5) years but not more than ten (10) years or both at the court's discretion;

3. RULE VII OF THE CDA OMNIBUS RULES OF PROCEDURES

ARTICLE V

CASES COGNIZABLE AS GRAVE OFFENSES

The following are grave offenses wherein removal shall be imposed:

- a. Serious Dishonesty;
- b. Grave misconduct;
- c. Conviction of a crime involving moral turpitude;
- d. Falsification or tampering of documents;
- e. Disgraceful and immoral conduct;
- f. Inefficiency and incompetence in the performance of duties;
- g. Willfully and knowingly assent or vote to patently unlawful act;
- h. Gross negligence or bad faith in directing the affairs of the cooperative;
- i. Attempts to acquire or acquire in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence;**
- j. By virtue of his office, acquires for himself an opportunity which should belong to the cooperative; and**
- k. Illegal use of confidential information.**

Section 3. Coverage. It shall apply to all cooperatives registered with the CDA, regardless of size and category, its officers¹ and its members.

Section 4. Prohibitions. The following are prohibited:

¹ Art. 5 (11) of Republic Act No. 9520 defined the term "Officers of the Cooperative" as: "(11) Officers of the Cooperative shall include the members of the board of directors, members of the different committee created by the general assembly, general manager or chief executive officer, secretary, treasurer and members holding other positions as may be provided for in their bylaws;

- a. Those acts and or omissions provided under Article 45 (Liability of Directors, Officers and Committee Members), Article 48 (Disloyalty of a Director), and Article 49 (Illegal Use of Confidential in Nature) of Republic Act No. 9520 as these acts and or omissions are classified as grave offenses as defined under Rule VII of the CDA Omnibus Rules of Procedure;
- b. Willfully and knowingly vote for or assent to patently unlawful acts such as but not limited to owning a business entity that is distinct and separate from the cooperative itself which engages in the same business as that of the cooperative;
- c. The officers and members of a cooperative are not allowed to be a party, in any capacity, to another company or business that engages in the same business as that of their cooperative; and
- d. All resources of the cooperative, including but not limited to money, personnel, office, vehicle, equipment, intellectual properties, licensed program and software cannot be used to support another company or business entity engaging in the same business as that of the cooperative, except those allowed investment of capital under Art. 78 of Republic Act No. 9520.

The above-enumerated prohibited acts and/or omissions shall be a ground for administrative or disciplinary action against the officers who committed the same and shall be dealt with in accordance with the CDA Omnibus Rules of Procedure on Administrative/Disciplinary Procedure or such rules/issuances as may be issued by the CDA.

Section 5. Sanctions. The following sanctions shall be imposed after due process:

- a. The Board of Directors and other officers who have been found guilty of violating the preceding provision may be removed or suspended as such officers in addition to their joint liability to pay the losses suffered by the cooperative, if applicable.
- b. Officers and members who facilitated the occurrence of the violation for personal pecuniary interest are liable to pay the amount double the profits that otherwise would have accrued to the cooperative.

Any claims against any individual who is not an officer and or member of the cooperative must be filed before the regular court that has jurisdiction over the claim/s or causes of action and the person of the said individual.

Section 6. Monitoring and Evaluation. The CDA shall maintain a database for the proper monitoring of the implementation of this MC. There shall be a regular monitoring of the strict adherence to these guidelines and establish a systematic feedback mechanism; and evaluate, address, and report implementation and policy issues that may arise. This Guidelines may be reviewed periodically for purposes of amendment and/or revision.

Annually, the Board of Directors and Officers are required to submit an oath along with the Cooperative Annual Progress Report (CAPR) to the Regional Office with jurisdiction over the cooperative where they belong. The sworn statement should affirm their adherence to the provisions outlined in RA 9520 and this Memorandum Circular concerning the specified subject matter. Attached is the template copy of said Oath as Annex A for reference.

Section 7. Separability Clause. If for any reason, any provision of this Guidelines is declared null and void or unconstitutional, the other provisions hereof which are not affected thereby shall continue to be in full force and effect. The Doctrine of Operative Fact shall also be applicable to provisions that were later declared to be unconstitutional.

Section 8. Repealing Clause. All previous circulars and/or Guidelines issued by the Authority which are inconsistent with this Guidelines are hereby repealed or modified accordingly.

Section 9. Application of the Doctrine of Operative Fact. Pursuant to the Doctrine of Operative Fact, acts performed by the Authority in accordance with this Circular prior to its being declared as unconstitutional are considered as legitimate exercise of its regulatory and quasi-judicial power.

Therefore, in applying the doctrine, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand.²

Section 10. Effectivity. This Memorandum Circular shall take effect immediately following the completion of its publication in a newspaper of general circulation or in the Official Gazette and filing of the copy thereof with the Office of the National Administrative Register (ONAR).

Approved by the CDA Board of Directors pursuant to Res. No. 403, S-2021 dated May 20, 2024.

Issued this 1st day of July 2024, Quezon City

For the CDA Board of Directors

By:

USEC. JOSEPH B. ENCABO
Chairman

² *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. 203754, October 15, 2019 citing *Municipality of Malabang v. Benito*, 137 PHIL 398.

SWORN STATEMENT

We, the undersigned Board of Directors, officers, or committee members of _____ (insert name of cooperative) _____ with office address at _____, do solemnly swear that as directors, officers, or committee members, we are fully aware of and committed to abiding by the provisions set forth in Article 45 concerning the Liability of Directors, Officers, and Committee Members, Article 48 addressing the Disloyalty of a Director, and Article 49 pertaining to the Illegal Use of Confidential Information under Republic Act No. 9520 or the Philippine Cooperative Code of 2008.

We understand that any violation of the aforementioned articles may lead to administrative, civil, and criminal liabilities. With full awareness of the legal consequences, we pledge to uphold the principles of integrity, loyalty, and confidentiality in the performance of our duties, recognizing the gravity of the penalties stipulated in the law and issuance of the Cooperative Development Authority for any breach of these responsibilities.

We have hereunto affixed our signatures above printed name and competent identification card, this _____ day of _____, 2024 at _____.

SUBSCRIBED AND SWORN to me before this ___ day of _____, 2024 at _____. The affiants exhibited to me their competent identification cards as indicated below their names.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.

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