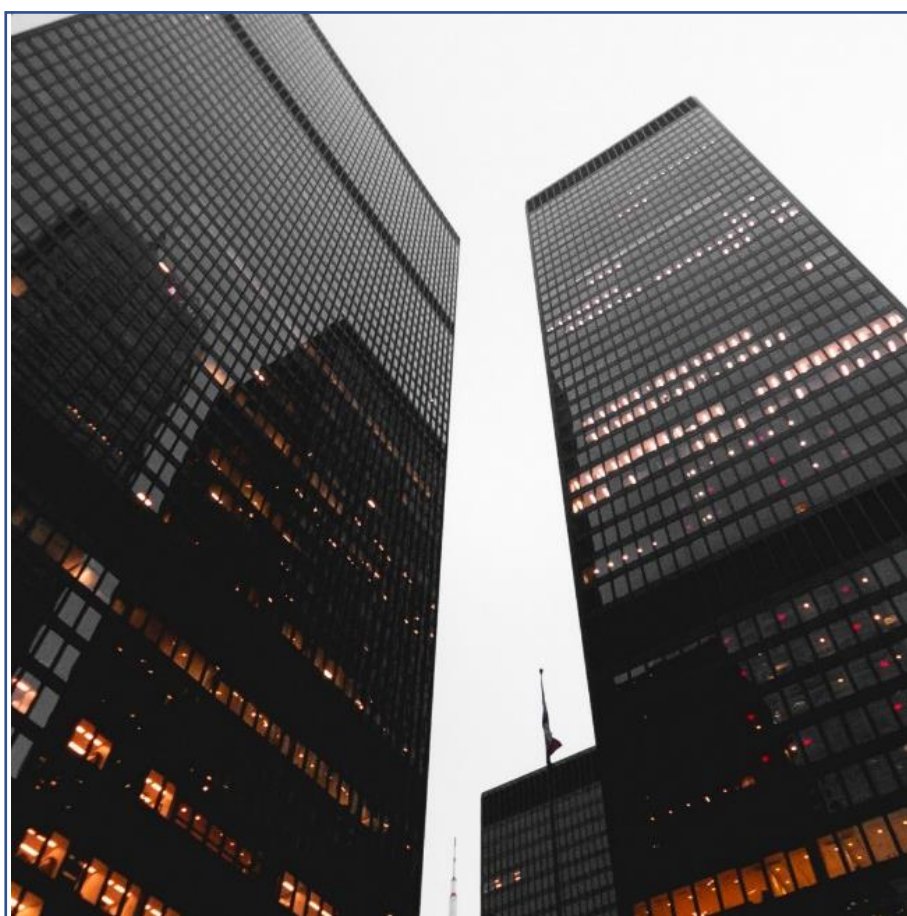


# Newsletter

Issue No. 04 | March 2022



## In this issue

The Securities and Exchange Commission provided various MCs regarding the: 1) Implementation of BSP Circular No. 1133 series of 2021 on the ceiling/s on interest rates and other fees charged by LCs, FCs, and their online lending platforms; 2) Guidelines on disqualifications of directors, trustees, and officers of corporations; and the procedure for their removal; and 3) Guidelines on corporate dissolution under Sections 134, 136 and 138 of the Revised Corporation Code.

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## IMPLEMENTATION OF BANGKO SENTRAL NG PILIPINAS CIRCULAR NO. 1133 SERIES OF 2021 ON THE CEILING/S ON INTEREST RATES AND OTHER FEES CHARGED BY LENDING COMPANIES, FINANCING COMPANIES, AND THEIR ONLINE LENDING PLATFORMS

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To: Financing Companies and Lending Companies

The Commission has issued a Memorandum Circular providing for the rules and regulations implementing the provisions of the BSP Circular No. 1133 in an effort to formulate and promulgate rules and regulations to address the issue regarding imposition of unreasonably high interest rates, fees, and charges by those that operate Online Lending Platforms (OLPs). Thus, causing Filipinos, specifically those in the low-income bracket, to fall into debt traps.

Furthermore, the Monetary Board of Bangko Sentral ng Pilipinas, prescribed maximum interest rates that could be charged by FCs and LCs, in consultation with the Commission and the industry.

This issuance was formulated by the Commission to implement BSP Circular No. 1133 as follows:

### **Applicability and Coverage**

This shall apply to unsecured, general-purpose loans offered by LCs, FCs, and their OLPs, that do not exceed the amount of ₱10,000.00 and loan tenor of up to four (4) months that are entered into, restructured, or renewed beginning March 3 2022, regardless on whether these loans are obtained through online or traditional/offline distribution channels.

### **Applicable ceiling/s on interest rates and other fees for specific loans offered by LCs, FCs, and their OLPs**

Pursuant to Section 1 of BSP Circular No. 1133, the following applicable ceiling/s on interest rates, and other fees are imposed for the covered loans:

- ✓ A Nominal Interest Rate<sup>1</sup> ceiling equivalent to 6 percent per month (~0.2 percent per day).
- ✓ An Effective Interest Rate<sup>2</sup> ceiling equivalent to 15 percent per month (~0.5 percent per day), which shall include the Nominal Interest Rate along with all other applicable fees and charges (i.e., processing fees, service fees, notarial fees, handling fees and verification fees, among others), but excluding fees and penalties for late payment and non-payment.
- ✓ A cap on penalties for late payment or non-payment at 5 percent per month on outstanding scheduled amount due.
- ✓ A total cost cap of 100 percent of total amount borrowed (applying to all interest, other fees and charges, and penalties) regardless of time the loan has been outstanding.

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<sup>1</sup> *Nominal Interest Rate (NIR) refers to the contractual rate or the price paid for the use of money and is expressed as a percentage of the total amount borrowed without considering other fees and charges.*

<sup>2</sup> *Effective Interest Rate (EIR) refers to the total nominal interest paid plus other fees and charges, excluding penalty and late payment fees, expressed as the rate that exactly discounts estimated future cash flows throughout the life of the loan to the net amount of loan proceeds. It shall follow the calculation models implemented in the Truth in Lending Act.*

## Requirements

All FCs and LCs, whether or not offering loans covered by the ceiling, shall:

- ✓ submit an Impact Evaluation Report on or before January 15 each year beginning 2023 using the form that shall be prescribed by the Commission on the SEC website;
- ✓ submit a Business Plan indicating the company's loan products and services as well as the applicable pricing parameters, which must be compliant with Section 3 of BSP Circular No. 1133 on or before May 5, 2022 in **portable document format (pdf)** with text layer to **cgfd\_md@sec.gov.ph** with the following subject line: CGFD\_Complete Name of the Company\_Type of Document\_Date Submitted. The Business Plan submitted under this Section shall supersede the initial Business Plan or Plan of Operation in the Company Information Sheet submitted to the Commission prior to the issuance of the Certificate of Authority of the LC/FC;
- ✓ submit additional forms or documents in support of the submitted Business Plan as the Commission may require;
- ✓ secure the prior approval of the Commission before they can implement the material change to the Business Plan in case of amendments.

FCs and LCs that will be incorporated subsequent to the effectivity shall submit the Business Plan within sixty (60) days from the date of issuance of their Certificate of Authority to Operate as a Financing/Lending Company (CA).

## Administrative Sanctions

Non-compliance herein shall subject the FCs and LCs to the following penalties:

### A. Non-compliance with Section 3 of BSP Circular No. 1133

Frequency	FCs	LCs
First Offense	₱50,000.00	₱25,000.00
Second Offense	₱100,000.00	₱50,000.00
Third Offense	Subject to the facts, circumstances, and gravity of the offense, the Commission, at its discretion, may impose a Fine of not less than twice the penalty for the second offense but not more than One Million Pesos (P1,000,000.00); and/or Suspension of financing and lending activities for a period of sixty (60) days; and/or Revocation of the CA, as appropriate for each circumstance.  Depending on the gravity of the offense, the Commission may also proceed with the suspension or revocation of the company's primary registration.	

### B. Non-compliance with Section 4 of BSP Circular No. 1133

Frequency	FCs	LCs
First Offense	₱10,000.00 plus ₱200.00 daily penalty	₱10,000.00 plus ₱100.00 daily penalty
Second Offense	Suspension of CA	
Third Offense	Suspension of CA	

FCs and LCs who fail to submit the Impact Evaluation Report within the prescribed time but who do not offer loans covered by the ceiling shall only be subject to monetary penalties equivalent to the First Offense stated above.

C. Non-compliance with Section 5 of BSP Circular No. 1133

Violation	FCs	LCs
Late submission of Business Plan	₱10,000.00 plus ₱200.00 daily penalty	₱10,000.00 plus ₱100.00 daily penalty
Non-submission of Business Plan	Suspension or Revocation of CA	
Implementing Amended Business Plan without prior approval of the Commission		

SEC MC No. 03, s. 2022: <https://www.sec.gov.ph/mc-2022/mc-no-3-s-2022implementation-of-bangko-sentral-ng-pilipinas-circular-no-1133-series-of-2021-on-the-ceiling-s-on-interest-rates-and-other-fees-charged-by-lending-companies-financing-companies-and/>

## DISQUALIFICATIONS OF DIRECTORS, TRUSTEES, AND OFFICERS OF CORPORATIONS; AND THE GUIDELINES ON THE PROCEDURE FOR THEIR REMOVAL (PURSUANT TO SECTIONS 26 AND 27 OF THE REVISED CORPORATION CODE OF THE PHILIPPINES)

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To: All Concerned

In relation to Sections 26 and 27 of the Revised Corporation Code (RCC), the Commission promulgated the following disqualifications of directors, trustees, and officers of corporations and the guidelines on the procedure for their removal:

### **GENERAL PROVISIONS**

#### **Scope and Coverage**

These rules shall apply to:

- a. Independent administrative actions for the removal of directors, trustees, and officers;
- b. Removal of directors, trustees, and officers as a sanction in the Commission's proceedings; and
- c. Imposition of sanctions on the board of directors or trustees who, with knowledge of the disqualification, failed to remove a disqualified director or trustee.

These rules shall not cover actions or proceedings to prohibit the nomination, election or appointment of an individual as a director, trustee, or officer.

#### **Administrative Sanctions**

The Commission may issue a permanent cease and desist order, and/or impose a fine ranging from P10,000.00 to P400,000 for each violation of the Commission's orders, in addition to the removal as a director, trustee and/or officer.

#### **Close Corporations**

If the articles of incorporation of a close corporation provides that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors, the stockholders removed under these rules shall be excluded from being part of the governing body which exercises the corporate powers, conducts all business, and controls all properties of the corporation.

#### **One Person Corporations**

In case of removal of the sole director under these rules, the nominee shall take the place of the single stockholder as director and shall manage the corporation's affairs, subject to the rights, obligations and responsibilities under Chapter III, Title XIII of the RCC, provided, that the nominee shall possess the qualifications and none of the disqualifications of a director.

#### **Applicability of Other Rules**

The pertinent provisions of the 2016 Rules of Procedure of the Commission, including the amendments thereto, and the Rules of Court of the Philippines may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.

## **When Exemption May Be Given**

In the broader interest of justice and in order to best serve public interest, the Commission may, as called for or justified by the circumstances in a particular case, exempt an action from these rules and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.

## **DISQUALIFICATIONS OF DIRECTORS, TRUSTEES, OR OFFICERS**

### **Disqualifications of Directors, Trustees and Officers**

The following are the disqualifications of a director, trustee or officer of a corporation:

- a. Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years;
- b. Within the tenure, the director, trustee, or officer was convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years;
- c. Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment for violating the Revised Corporation Code;
- d. Within the tenure, the director, trustee, or officer was convicted by final judgment for violating the Revised Corporation Code;
- e. Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment for violating the Securities Regulation Code;
- f. Within the tenure, the director, trustee, or officer was convicted by final judgment for violating the Securities Regulation Code;
- g. Within five (5) years prior to the election or appointment, the director, trustee, or officer was found administratively liable, by final judgment, for any offense involving fraudulent acts punishable under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, Republic Act No. 8799, otherwise known as the Securities Regulation Code, and other laws, rules or regulations enforced or implemented by the Commission;
- h. Within the tenure, the director, trustee, or officer was found administratively liable, by final judgment, for any offense involving fraudulent acts punishable under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, Republic Act No. 8799, otherwise known as the Securities Regulation Code, and other laws, rules or regulations enforced or implemented by the Commission;
- i. Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted or found administratively liable by a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) of Section 26 of the RCC;
- j. Within the tenure, the director, trustee, or officer was convicted or found administratively liable by a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) of Section 26 of the RCC; or
- k. Within five (5) years prior to the election or appointment, or within the tenure, the director, trustee, or officer was found administratively liable, by final judgment, for refusal to allow the inspection and/or reproduction of corporate records.



## **REMOVAL OF DIRECTORS, TRUSTEES, AND/OR OFFICERS**

### **PART 1: Independent Administrative Action for Removal of Director, Trustee, or Officer**

#### **Venue and Authority**

All independent administrative actions for removal brought under this title shall be commenced and heard at the main office of the Commission in Metro Manila, or any of the Extension Offices of the Commission, subject to their respective geographical jurisdictions.

The Operating Departments or Extension Officers shall have original jurisdiction to hear and decide independent administrative actions for the removal of directors, trustees, and/or officers of corporations.

These provisions shall be without prejudice to the discretion of the Commission En Banc to create a Special Hearing Panel for the conduct of hearing and proceedings for the removal of a director, trustee, or officer of a corporation.

#### **Commencement of an Independent Administrative Action for Removal**

An independent administrative action for the removal of a director, trustee, and/or officer of a corporation shall be commenced upon:

- a. the motu proprio issuance of a Formal Charge by the Operating Department that has jurisdiction over the subject matter; or
- b. the filing of a Verified Complaint with the Operating Department that has jurisdiction over the subject matter.

#### **Formal Charge**

If the appropriate Operating Department finds sufficient ground/s to warrant the commencement of an independent administrative action for removal of a director, trustee, or officer of a corporation, it shall issue a formal charge. The Formal Charge shall direct the Respondent/s to file, within fifteen (15) calendar days from the receipt thereof, a Verified Answer in accordance below.

#### **Verified Complaint**

A real party in interest may commence an independent administrative action for the removal of a director, trustee, or officer of a corporation by filing a Verified Complaint with the Operating Department that has jurisdiction over the subject matter, in accordance with the following rules:

- a. The Verified Complaint may include, as Respondents, the other directors or trustees.
- b. The Complainant shall file three (3) original (properly marked) copies of the Verified Complaint with its supporting documents, and an additional copy per Respondent. Hence, if there are five (5) Respondents, the Complainant shall file three (3) original copies of the Verified Complaint with its supporting documents, and Five (5) additional copies.
- c. Prior to filing the Complaint, the Complainant shall pay the Filing Fee in the amount of Three Thousand and Sixty pesos (13,060.00), inclusive of Legal Research Fee and Documentary Stamp Tax, or such amount deemed proper by the Commission En Banc.
- d. The Complaint shall contain the following:
  - i. The complete names and addresses of the parties;
  - ii. The ground and legal basis for disqualification/removal;
  - iii. A statement of material or relevant facts;
  - iv. The issues to be resolved;
  - v. The reliefs sought which must specifically include the prayer for removal;



- vi. The proof of authority of the representative of the juridical person, if applicable;
  - vii. The documentary evidence, affidavits of witnesses and such other pieces of evidence necessary to establish the prima fade truth of the factual allegations therein;
  - viii. The proof of payment of the filing fee;
  - ix. Verification; and
  - x. Certification against forum shopping.
- e. The Verification, in the form of an affidavit, shall allege the following attestations:
- i. The allegations in the Verified Complaint are true and correct based on the Complainant's personal knowledge, or based on authentic documents;
  - ii. The Verified Complaint is not filed to harass, cause unnecessary delay, or needlessly increase the cost regulation and/or litigation; and
  - iii. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
- f. The Certification Against Forum Shopping shall be signed by the Complainant, wherein he/she shall certify under oath:
- i. That he/she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein;
  - ii. If there is such other pending action or claim, a complete statement of the present status thereof; and
  - iii. If he/she should thereafter learn that the same or similar action or claim has been filed or is pending, he/she shall report that fact within five (5) calendar days therefrom to the appropriate Operating Department of the Commission.
- g. Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice to the refiling of the Complaint. If the acts of the party or his/her counsel constitute willful forum shopping, the same shall be considered as a justifiable ground for the summary dismissal with prejudice, and constitute direct contempt of the Commission with the attendant administrative and criminal consequences.

### **Outright Dismissal of Complaint**

After an initial examination of the Complaint, the Director of the Operating Department that has jurisdiction to dismiss outright the Complaint based on any of the following grounds:

- a. The Complaint is not compliant with the requirements set forth in Section 11 of these rules;
- b. The Commission or the Operating Department that has jurisdiction over the subject matter has no jurisdiction over the subject matter of the Complaint;
- c. There is a pending action or complaint involving the same subject matter or issues in any court, tribunal or agency; or
- d. The Operating Department finds insufficient evidence as would reasonably tend to establish prima facie the truth of the factual allegations contained therein, on the basis of the documents, affidavits and other evidence attached to the Complaint.

### **Summons**

After the above-mentioned procedures, the Operating Department shall forthwith issue the corresponding summons together with a copy of the Complaint and all attachments to the Respondent/s.

## **Verified Answer**

Within fifteen (15) calendar days from the receipt of the Formal Charge or Summons, the Respondent shall file three (3) original copies of his/her Verified Answer to the Formal Charge or Verified Complaint, and serve a copy thereof to the Complainant. If there are several Respondents, and they decide to file their separate Verified Answers, each Co-Respondent must also be furnished a copy of their respective Verified Answers.

The Verified Answer shall be accompanied by an affidavit, which shall allege the following attestations:

- a. The allegations in the Verified Answer are true and correct based on the Respondent's personal knowledge, or based on authentic documents;
- b. The Verified Answer is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation; and
- c. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

The Commission-bound Verified Answer shall be accompanied by the proof of service to the Complainant and Co-Respondent/s, if applicable. The Verified Answer shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any.

If the Respondent fails to answer the Formal Charge or Verified Complaint within the period fixed in these rules, the Operating Department may, *motu proprio*, render a judgment granting such relief, or imposing the sanction/s, as the Complaint and/or the evidence presented or established in the course of the proceedings may warrant; Provided, that the decision, resolution, or final order shall be issued in accordance with the 2016 SEC Rules of Procedure and the amendments thereto. The Director of the Operating Department may require the Complainant to submit additional evidence *ex parte*.

## **Clarificatory Hearing**

Should the Hearing Officer of the Operating Department find it necessary to clarify certain material facts, it may, before rendition of judgment, conduct a clarificatory hearing for the purpose of ascertaining facts, issues and other matters that are necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents pertinent thereto.

## **Effect of Withdrawal of Complaint**

The withdrawal of a complaint does not automatically result in the outright dismissal of the proceedings of the independent administrative action for removal of a director, trustee, or officer of a corporation, nor discharge the Respondent/s from the possible imposition of any administrative sanction or penalty when there is merit to the charges, or where there is documentary evidence which would tend to establish a *prima facie* case warranting the continuation of the proceedings.

In all instances, the Commission may take the place of the Complainant as if it has *motu proprio* instituted a Formal Charge.

## **Submission of Position Papers**

Within fifteen (15) calendar days from the Order terminating the Clarificatory Hearing, the parties shall submit their respective position papers setting forth the law and facts relied upon, with supporting affidavits and other-evidence on such facts.

Upon submission of the position paper, or upon expiration of the period mentioned above and no position paper has been filed, the case shall be deemed submitted for resolution.

Only the complaint, answer and position paper can be filed and all other pleadings shall be disallowed unless they are filed with leave of the Operating Department.

## **Decisions, Resolutions, Final Orders, Motions for Reconsideration, Appeals and Execution**

The decisions, resolutions, or final orders shall be rendered by the Operating Department pursuant to the 2016 SEC Rules of Procedure and the amendments thereto.

Appeals and Motions for Reconsideration or Execution shall also be filed pursuant to the 2016 SEC Rules of Procedure and the amendments thereto.

### **PART 2: Removal as a Sanction in the Commission's Proceedings**

#### **Removal as Sanction**

The Commission may remove a director, trustee, and/or officer of a corporation as a sanction in its proceedings, if it has been established, by substantial evidence, that any of the grounds enumerated in these rules is present.

#### **Show Cause Order**

Prior to the removal, and/or imposition of other administrative sanctions, the Commission shall issue an order, directing the director, trustee, and/or officer of a corporation to show cause under oath, within fifteen (15) calendar days from receipt, why he/she should not be disqualified or removed as a director, trustee, and/or officer, and/or why he/she should not be administratively penalized.

#### **Verified Response**

The Verified Response to the Show Cause Order shall be filed in three (3) original copies. The Verified Response shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any. If there are several Respondents, and they decide to file their separate Verified Responses, each Co-Respondent must also be furnished a copy of their respective Verified Responses.

- a. The Verified Response shall be accompanied by an affidavit, which shall allege the following attestations:
- b. The allegations in the Verified Response are true and correct based on the affiant's personal knowledge, or based on authentic documents;
- c. The Verified Response is not filed to harass, cause unnecessary delay, or needlessly increase the cost regulation and/or litigation; and
- d. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
- e. The Commission-bound Verified Response shall be accompanied by the proof of service to the Co-Respondent/s, if applicable. The Verified Response shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any.

If the Respondent fails to answer the Show Cause Order within the period fixed in these rules, the Commission may, *motu proprio*, render a judgment imposing the sanction/s, as the evidence presented or established in the course of the proceedings may warrant; Provided, that the decision, resolution, or final order shall be issued in accordance with the 2016 SEC Rules of Procedure and the amendments thereto.

## REMOVED DIRECTORS, TRUSTEES AND OFFICER'S INDEX

### Removed Directors, Trustees, and Officers Index

The Operating Departments shall furnish the Corporate Filing and Records Division ("CFRD") of the CRMD a copy the order, decision, or resolution, which includes the removal of a director, trustee, and/or officer of a corporation.

The CFRD shall maintain an index of individuals removed by the Commission from the position of a director, trustee, or officer of a corporation. The index shall include the following:

- a. The corporate name and SEC registration number of the corporation;
- b. Complete name and position of the removed director, trustee, or officer;
- c. Date of election or appointment as a director, trustee, or officer;
- d. The Operating Department which issued or promulgated the order, decision, or resolution;
- e. Case title and number;
- f. Date of issuance/promulgation of the order, decision, or resolution; and
- g. Ground/s for removal, which shall include the following:
- h. Date of finality of judgment or conviction, if applicable;
- i. Penalty imposed, if applicable; and/or
- j. The specific qualification imposed by the Commission or the PCC.

SEC MC No. 04, s. 2022: <https://www.sec.gov.ph/mc-2022/mc-no-04-s-2022/>

## GUIDELINES ON CORPORATE DISSOLUTION UNDER SECTIONS 134,136 AND 138 OF THE REVISED CORPORATION CODE

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### To: All Concerned

The Commission issued Memorandum Circular No.5 last March 8, 2022 providing for the requirements and guidelines for corporate dissolution under Sections 134,136, and 138 of the RCC to standardize the procedure on corporate dissolution under the authority of the Company Registration and Monitoring Department (CRMD) and Securities and Exchange Commission (SEC) Extension Offices.

Furthermore, voluntary dissolution where no creditors are affected under Section 134 of the RCC, dissolution by shortening of corporate term under Section 136 of the RCC and involuntary dissolution under Section 138 of the RCC shall be under the authority of the CRMD and SEC Extension Offices. Voluntary dissolution where creditors are affected under Section 135 of the RCC shall be under the authority of the Office of the General Counsel (OGC).

### **A. Voluntary dissolution where no creditors are affected under Section 134 of the RCC.**

#### **Verified Request for Dissolution**

If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution shall be initiated by filing, with the CRMD or SEC Extension Office, a verified request for dissolution signed by the corporation's duly authorized representative, stating:

- a. The corporate name, SEC registration number, principal office of the corporation and email address of the corporation as required pursuant to SEC Memorandum Circular (MC) No. 28, Series of 2020;
- b. The complete name, position in the corporate structure of the corporation, and mailing address of the authorized representative of the corporation;
- c. That the corporation requests for the dissolution of the corporation, and the dissolution does not prejudice the rights of any creditor having a claim against it;
- d. The reason for the dissolution;
- e. The form, manner, and time when the notices were given; Provided that: 1.) at least twenty (20) days prior to the meeting, notice shall be given to each shareholder or member of record personally, by registered mail, or by any means authorized under its by-laws, regardless of whether or not they are entitled to vote at the meeting, in the manner provided in Section 50 of the RCC; 2.) the notice shall state the time, place and object of the meeting; 3.) the notice of the time, place, and object of the meeting shall be published once prior to the date of the meeting in a newspaper published in the place where the principal office of the said corporation is located, or if no newspaper is published in such place, in a newspaper of general circulation in the Philippines; and 4.) the notice shall state that the purpose of the meeting is to vote on the dissolution of the corporation, and shall be accompanied by the following:
  - i. The agenda for the meeting;
  - ii. A proxy form; and
  - iii. The requirements and procedures to be followed for attendance, participation, and voting by remote communication or in absentia, if applicable.
- f. Names of the stockholders and directors, or members and trustees, and who approved the dissolution; Provide, that the majority of the directors or trustee, and the stockholders owning or controlling at least a majority of the outstanding capital stock including the holders of non-voting shares or majority of the members voted for the dissolution of the corporation;

- g. That the above- mentioned stockholders and directors, or members and trustees, are the duly elected directors or trustees, and the stockholders or members of record as of the date of the meeting;
- h. The date, place, and time of the meeting in which the vote was made;
- i. Details of publication, such as: 1.) name of the newspaper; 2.) complete name of the publisher; 3.) principal office of the publisher; 4.) area of circulation of the newspaper; 5.) date when the notice was published; and 6.) contents of the notice as published; and
- j. That the corporation has no pending case involving intra-corporate dispute;

### **Verification and Certification Against Forum Shopping**

The Verified Request for Dissolution shall contain an affidavit and certification duly signed by the authorized representative of the corporation, which shall allege the following attestations:

- a. The allegations in the Verified Request for Dissolution are true and correct based on his or her personal knowledge, or based on authentic documents;
- b. That he/she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein;
- c. If there is such other pending action or claim, a complete statement of the present status thereof; and
- d. If he/she should thereafter learn that the same or similar action or claim has been filed or is pending, he/she shall report that fact within five (5) calendar days therefrom to the Company Registration and Monitoring Department, or the appropriate SEC Extension Office;

### **Supporting Documents**

The following shall be filed with the Verified Request for Dissolution;

- a. A notarized copy of the board resolution or directors'/trustees' certificate authorizing the dissolution and designating an authorized representative to file the verified request for dissolution, signed by a majority of the board of directors or trustees and countersigned by the secretary of the corporation;
- b. Publisher's Affidavit of Publication of the Notice of Meeting;
- c. Latest due General Information Sheet (GIS);
- d. Audited Financial Statements (AFS) as of last fiscal year, except:
  - 1. Where the applicant has ceased operations of at least one (1) year, submit:
    - a) AFS as of the last year of operation; and
    - b) Affidavit of Non-Operation certified under oath by the President and Treasurer
  - 2. Where the applicant has no operation since incorporation, submit:
    - a) Balance Sheet certified under oath by the Treasurer and President;
    - b) Affidavit of Non-Operation certified under oath by the President and Treasurer;
    - c) Certificate of Non-Registration issued by the BIR;
  - 3. Where the applicant corporation is (stock or nonstock) is with total assets or liabilities of less than Six Hundred Thousand Pesos (Php600,000.00), it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.
- e. Affidavit executed under oath by the President and Treasurer that:
  - 1. That the dissolution is not prejudicial to the interest of the creditors; and
  - 2. There is no opposition from any creditors from the time of publication of the notice of dissolution up to the filing of the dissolution with the Commission;

- f. Bureau of Internal Revenue (BIR) Tax Clearance Certificate;
- g. Notarized Secretary's Certificate of no pending case involving intra- corporate dispute;
- h. Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary, under Section 4 hereof.

### **Favorable Recommendation**

No application for dissolution shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

### **Withdrawal of Request for Dissolution**

Within fifteen (15) days from receipt by the Commission of the Verified Request for Dissolution, a withdrawal of the said request may be made in writing, duly verified by any incorporator, director, trustee, shareholder, or member, and signed by the majority of the directors or trustees, and stockholders owning or controlling at least majority of the outstanding capital stock or majority of the members who voted for the dissolution of the corporation.

### **Investigation on Withdrawal of Request for Dissolution**

Upon receipt of a Verified Withdrawal of Request for Dissolution, the Commission shall withhold action on the request for dissolution and shall, after investigation:

- a. Make a pronouncement that the request for dissolution is deemed withdrawn; or
- b. Direct a joint meeting of the board of directors or trustees and the stockholders or members for the purpose of ascertaining whether to proceed with dissolution; or
- c. Issue such other orders as it may deem appropriate.

### **Change in the Ownership, Membership, and/or Composition of the Board**

If there has been a change in the ownership, membership, and/or composition of the board of directors or trustees prior to the filing of the withdrawal of request for dissolution, sufficient documentary evidence of such change must be filed together with and attached to the withdrawal of request for dissolution.

### **Verification of Withdrawal**

- a. The verified withdrawal of request for dissolution shall contain an affidavit duly signed by any incorporator, director, trustee, shareholder, or member, which shall allege the following attestations:
- b. The allegations in the Verified Withdrawal of Request for Dissolution are true and correct based on his or her personal knowledge, or based on authentic documents;
- c. The Verified Withdrawal of Request for Dissolution is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation;
- d. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after reasonable opportunity for discovery;

### **Approval and Issuance of Certificate**

After fifteen (15) days from receipt of the Verified Request for Dissolution, and in the absence of any withdrawal of request for dissolution within said period, the Commission shall approve the request and issue the Certificate of Dissolution. The dissolution shall take effect only upon the issuance by the Commission of a Certificate of Dissolution.



**B. Dissolution by Shortening Corporate Term under Section 136 of the RCC – A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of the RCC**

**Documentary Requirements**

The following must be submitted to the CRMD or SEC Extension Office:

- A. For amendment to shorten corporate term where the proposed expiration of the corporate term is one year or more than one year from approval of the application for amendment under Corporate and Partnership Registration Division (CPRD) of CRMD or SEC Extension Office-
  1. Cover Sheet;
  2. Notarized Directors' Certificate signed by majority of the directors or trustees and the corporate secretary, attesting that: 1.) the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock, stock including the holders of non-voting shares/members of the corporation; 2.) date and place of the stockholders' or members' meeting; and 3.) the tax identification number of the signatories which shall be place below their names;
  3. Amended Articles of Incorporation;
  4. Compliance Monitoring Division (CMD) Monitoring Clearance;
  5. Notarized Secretary's Certificate of no pending case involving intra corporate dispute;
  6. Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary.
- B. For amendment to shorten corporate term where the proposed expiration of the corporate term is less than one year, from approval of the application for amendment under Financial Analysis and Audit Division (FAAD) of CRMD or SEC Extension Office. -
  1. Cover Sheet;
  2. Notarized Directors' Certificate signed by majority of the directors or trustees and the corporate secretary , attesting that: 1.) the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock, stock including the holders of non-voting shares/members of the corporation ; 2.) date and place of the stockholders' or members' meeting; and 3.) the tax identification number of the signatories which shall be place below their names;
  3. Amended Articles of Incorporation;
  4. Audited Financial Statements (AFS) as of last fiscal year, except:
    - a. Where the applicant has ceased operations of at least one (1) year, submit:
      - 1.) AFS as of the last year of operation; and
      - 2.) Affidavit of non-operation certified under oath by the President
    - b. Where the applicant has no operation since incorporation, submit:
      - 1.) Balance Sheet certified under oath by the Treasurer and President.
      - 2.) Affidavit of Non-Operation certified under oath by the President and Treasurer;
      - 3.) Certificate of Non-Registration issued by the BIR;
    - c. Where the applicant corporation is (stock or nonstock) is with total assets or liabilities of less than Six Hundred Thousand Pesos (Php600,000.00), it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer;

5. Affidavit executed under oath by the President and Treasurer that:
  - a. The dissolution is not prejudicial to the interest of the creditors; and
  - b. There is no opposition from any creditors from the time of publication of the notice of dissolution up to the filing of the dissolution with the Commission;
6. Bureau of Internal Revenue (BIR) Tax Clearance Certificate;
7. Publisher's Affidavit of Publication of the Notice of Meeting (once);
8. Notarized Secretary's Certificate of no pending case involving intra corporate dispute;
9. Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary.

### **Proposed Expiration of Corporate Term**

The proposed expiration of corporate term for all applications for amendment filed under Section 136 of the RCC must contemplate a future date. No application for amendment under Section 136 of the RCC shall be accepted if the proposed expiration of corporate term had already lapsed at the time of filing of the application.

### **Effectivity of Dissolution**

Upon the expiration of the shortened term, as stated in the approved amended articles of incorporation, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation. Dissolution shall automatically take effect on the day following the last day of the corporate term stated in the amended articles of incorporation, without the need for the issuance by the Commission of a certificate of dissolution.

### **C. Involuntary Dissolution under Section 138 of the Revised Corporation Code and Section 6(i) of Presidential Decree 902-A.**

#### **Grounds under Section 138 of the RCC and How Initiated**

Under Section 138 of the RCC, the Commission may motu proprio, or upon filing of a verified complaint by any interested party, dissolve a corporation based on the following:

- a. Non-use of corporate charter as provided under Section 21 of the RCC;
- b. Continuous inoperation of a corporation as provided under Section 21 of the RCC;
- c. Upon receipt of a lawful court order dissolving the corporation;
- d. Upon finding by final judgment that the corporation procured its incorporation through fraud; and
- e. Upon finding by final judgment that the corporation:
  - i. Was created for the purpose of committing, concealing or aiding the Commission of securities violations, smuggling, tax evasion, money laundering or graft and corrupt practices;
  - ii. Committed or aided in the Commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew; and
  - iii. Repeatedly and knowingly tolerated the Commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

However, when another agency or tribunal has been identified by law as the primary regulator, investigative or administrative body for specific cases such as smuggling, tax evasion, money laundering or graft and corrupt practices, all complaints or petitions for revocation based on the Commission of acts enumerated under Section 1 (e) of item C of this Guidelines shall be endorsed to said primary regulator, investigative or administrative body, for their appropriate action.

## **Grounds under Section 6(i) of Presidential Decree (PD) 902-A**

In addition to the grounds provided in Section 1 hereof, revocation of certificate of registration on the grounds provided in Section 6(i) of PD 902-A likewise fall within the jurisdiction of the CRMD and SEC Extension Office:

- a. Fraud in the procurement of certificate of registration;
- b. Failure to file or register any of the following for a period of at least five (5) years: 1.) Financial Statements; 2.) General Information Sheet; and 3.) Stock and Transfer Book or Membership Book.

## **Documentary Requirements**

For verified complaints filed by interested parties based on the grounds provided in Section 138 of the RCC and Section 6(i) of PD 902-A as provided in Section 1 and Section 2 hereof, the following documents must be submitted to the CRMD and SEC Extension Office.

- a. Verified Complaint/Petition;
- b. Certificate against Forum Shopping;
- c. Secretary's Certificate authorizing the filing of the complaint, if filed by a corporation; and
- d. Affidavits and other documentary evidence to support the claim.

## **Applicable Rules**

The provisions on investigation proceedings and administrative actions under Part II of The 2016 Rules of Procedure of the Securities and Exchange Commission and amendments thereto, shall be applied to involuntary dissolution of corporations commenced by the Commission motu proprio.

On the other hand, the provisions on adjudicative actions under Part III of The 2016 Rules of Procedure of the Securities and Exchange Commission and amendments thereto, shall be applied for the involuntary dissolution of corporations filed by any interested party through verified complaint/petition.

## **Forfeiture of Assets**

If a corporation is ordered dissolved by final judgment pursuant to the grounds set forth in subparagraph (e) of Section 1 hereof, its assets, after payment of liabilities, shall, upon petition of the Commission with the appropriate court, be forfeited in favor of the national government. Such forfeiture shall be without prejudice to the rights of innocent stockholders and employees for services rendered, and to the application of other penalty or sanction under the RCC or other laws.

## **Notice to and Coordination with Other Regulatory Agencies**

The Commission shall give reasonable notice to, and coordinate with, the appropriate regulatory agency prior to the involuntary dissolution of companies under their special regulatory jurisdiction.

## **Other Provisions**

- a. Number of Copies-The applicant corporation shall submit the documentary requirements provided in these Guidelines in three (3) original copies and additional one (1) copy as the applicant's receiving copy.
- b. The SEC Rules of Procedure and other relevant rules and regulations promulgated by the Commission shall be complied with as far as practicable.

SEC MC No. 05, s. 2022: <https://www.sec.gov.ph/mc-2022/sec-mc-no-5-s-of-2022guidelines-on-corporate-dissolution-under-sections-134-136-and-138-of-the-revised-corporation-code/>

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Comments and suggestions are welcome.

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