

## CLIENT ADVISORY BULLETIN NO. 2020-005E

23 October 2020

Gentlemen/Mesdames,

Please be informed that the Securities and Exchange Commission (SEC) has issued *Memorandum Circular (MC) No. 25 s. 2020*<sup>1</sup>, dated September 9, 2020, which prescribes the guidelines in the filing, investigation, and resolution of complaints for violation of the right to inspect and/or reproduce corporate records.

### **Where to File; Filing Fees**

Section 1 of MC No. 25 s.2020 states that an aggrieved party may file a report, in the form of a Verified Complaint, with the Company Registration and Monitoring Department (CRMD), paying a Filing Fee of Ten Thousand One Hundred Thirty Pesos (₱10,130.00). The required contents of the Verified Complaint and additional documents are provided in Section 3 of the MC.

### **Grounds for the Complaint**

Section 2 of MC No. 25 s.2020 enumerates the instances which constitute a violation of the right to inspect and/or reproduce corporate records:

- a. Outright refusal to allow the director, trustee stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative;
- b. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative;
- c. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to inspect any of the corporate records in person, or by a representative;
- d. Outright refusal to allow the director, trustee stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense;
- e. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense; or

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<sup>1</sup> [MC No. 25 s.2020](#)

- f. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to reproduce any of the corporate records in person, or by a representative, at his/her own expense.

### **Outright Dismissal of Verified Complaint**

Section 4 of MC No. 25 s.2020 grants the Director of the CRMD the authority to dismiss the Verified Complaint outright, based on any of the following grounds:

- a. The Verified Complaint is not compliant with the requirements set forth in Section 3 of the MC;
- b. The CRMD or the appropriate Extension Office has no jurisdiction over the subject matter of the Verified Complaint;
- c. Pending action or complaint involving the same subject matter or issues in any court, tribunal or agency; or
- d. The CRMD or the appropriate Extension Office 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 Verified Complaint.

### **Process of Investigation**

Upon filing of the Verified Complaint and payment of the Filing Fees, Summons shall be issued within five (5) calendar days therefrom, upon a determination by the Director of the CRMD of the sufficiency and substance thereof.<sup>2</sup> Within ten (10) calendar days from receipt of the Summons, the Respondent shall file its Verified Answer, serving a copy thereof to the Complainant. Failure to file and serve a Verified Answer will entitle the Complainant to take judgment by default or the CRMD may, *motu proprio*, proceed to render judgment.<sup>3</sup>

Before issuing a Final Order, the CRMD, in its discretion, may conduct a Clarificatory Conference for the purpose of ascertaining facts, issues and other matters necessary and relevant to the resolution of the proceedings, not later than thirty (30) days after filing of the Verified Answer.<sup>4</sup> Similarly, before the issuance of a Final Order, the parties may arrive at an amicable settlement or resolution, which shall be in writing, in English or Filipino, signed by them and accompanied by a jurat or acknowledgement before a notary public, which shall have the effect of withdrawing the Verified Complaint.<sup>5</sup> The withdrawal of a Verified Complaint, however, does not automatically result in the outright dismissal of the investigation when: (a) there is merit to the charge, or (b) where there is documentary evidence which would tend to establish a *prima facie* case warranting the continuation of the proceedings.<sup>6</sup>

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<sup>2</sup> Section 5.

<sup>3</sup> Section 6.

<sup>4</sup> Section 7.

<sup>5</sup> Section 8.

<sup>6</sup> *Ibid.*

Within thirty (30) days after the conclusion of the Clarificatory Conference, or receipt of the last affidavits, documents, or papers requested or ordered to be submitted during the conference, the CRMD shall issue a Final Order, containing the appropriate order, sanction, grant of relief or denial thereof or such other conditions or terms to be imposed.<sup>7</sup>

If the Final Order includes a directive to the Respondent to allow the Complainant to inspect and/or reproduce any of the corporate records within a specified period, both parties shall file a joint Verified Status Account (VSA), or their respective VSAs, within fifteen (15) days from the date of compliance, or from the last day of the period within which to comply.<sup>8</sup> If an appeal or motion for reconsideration has been made and is denied, both parties shall file a joint VSA, or their respective VSAs, within fifteen (15) days from the finality of the Final Order and/or the Decision or Resolution on the Appeal or Motion for Reconsideration.<sup>9</sup> It shall be presumed that the respondent complied with the Final Order if the respondent filed a VSA while the complainant failed to file a VSA within the provided period, unless contradicted and overcome by evidence.<sup>10</sup> On the other hand, the Respondent shall be presumed not to have complied with the Final Order if:

- a. The complainant filed a VSA while the respondent failed to file a VSA within the period stated in the immediately preceding paragraphs; or
- b. Both the complainant and the respondent failed to file a Joint VSA, or their respective VSAs, within the provided period.<sup>11</sup>

**Exclusion from the Alternative Dispute Resolution System**

Please note that Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*), its Implementing Rules and Regulations, and the Arbitration Agreements provided in the Articles of Incorporation shall not apply to the resolution or settlement of disputes arising from violations of the right to inspect and/or reproduce corporate records.

In keeping with our commitment of providing our clients and the public with the best possible service we can, we will continue to provide you with relevant updates on issuances made by the various government agencies during the period of GCQ.

Keep safe.

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<sup>7</sup> Section 9.

<sup>8</sup> Section 10.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



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Thank you very much.

  
DAMIAN M. PLACIDO, JR.  
Managing Partner

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