

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated SEPTEMBER 10, 2019, which reads as follows:

“A.M. No. 19-08-06-SC

**RULE ON ADMINISTRATIVE SEARCH AND INSPECTION
UNDER THE PHILIPPINE COMPETITION ACT**

RESOLUTION

WHEREAS, Republic Act No. 10667, otherwise known as the “Philippine Competition Act,” defines anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions; prescribes fines and penalties therefor; and provides for their investigation, prosecution, and adjudication;

WHEREAS, Section 12(g) of the Philippine Competition Act provides that the Philippine Competition Commission shall have the power, “[u]pon order of the court, to undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records or other documents”;

WHEREAS, the detection, investigation and prosecution of violations of the Philippine Competition Act, its implementing rules and regulations, and other competition laws, necessitate a rule of procedure for the application, issuance, and implementation of inspection orders suited to competition cases;

WHEREAS, pursuant to Section 5(5), Article VIII of the 1987 Constitution, the Supreme Court is vested with the power to promulgate rules concerning the pleading, practice, and procedure in all courts;

WHEREAS, through Memorandum Order No. 27-2019 dated May 9, 2019, the Special Committee for the Rules on Inspection was created to draft and review the Philippine Competition Commission's proposed Rule on Inspection, and is composed of the following:

Chairperson: **Hon. Diosdado M. Peralta**
Associate Justice, Supreme Court

Vice Chairperson: **Hon. Alexander G. Gesmundo**
Associate Justice, Supreme Court

Members: **Hon. Ramon Paul L. Hernando**
Associate Justice, Supreme Court

Hon. Jose Midas P. Marquez
Court Administrator

Commissioner Amabelle C. Asuncion
Philippine Competition Commission

Commissioner Johannes R. Bernabe
Philippine Competition Commission

Commissioner Macario R. de Claro, Jr.
Philippine Competition Commission

Atty. Rigor R. Pascual
Representative, Office of the Chief Justice

Atty. Genevieve E. Jusi
Philippine Competition Commission

Atty. Gifany L. Tongohan
Philippine Competition Commission

Secretariat: **Atty. Ralph Jerome D. Salvador**
Office of Associate Justice Diosdado M. Peralta

Atty. Camille Sue Mae L. Ting
Office of the Court Administrator

Atty. Noreen B. Bragas
Representative, Office of the Chief Justice

September 10, 2019

WHEREAS, the Special Committee for the Rules on Inspection was created to ensure that the exercise of the power granted by the Philippine Competition Act is effective, objective and efficient, as well as to provide a balance between the fundamental right to due process and the strong public interest in the enforcement of the said law;

NOW, THEREFORE, acting on the recommendation of the Chairperson of the Special Committee for the Rules on Inspection, the Court resolved to **APPROVE** the “*Rule on Administrative Search and Inspection under the Philippine Competition Act.*”

The Rule on Administrative Search and Inspection under the Philippine Competition Act shall take effect on November 16, 2019 following its publication in the Official Gazette or in two newspapers of national circulation.

September 10, 2019, Manila, Philippines.

(Original Signed)
LUCAS P. BERSAMIN
Chief Justice

(Original Signed)
ANTONIO T. CARPIO
Associate Justice

(Original Signed)
DIOSDADO M. PERALTA
Associate Justice

(Original Signed)
ESTELA M. PERLAS-BERNABE
Associate Justice

(Original Signed)
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

(Original Signed)
FRANCIS H. JARDELEZA
Associate Justice

(Original Signed)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(Original Signed)
ANDRES B. REYES, JR.
Associate Justice

(Original Signed)
ALEXANDER G. GESMUNDO
Associate Justice

(Original Signed)
JOSE C. REYES, JR.
Associate Justice

(On Leave)
RAMON PAUL L. HERNANDO
Associate Justice

(Original Signed)
ROSMARI D. CARANDANG
Associate Justice

(Original Signed)
AMY C. LAZARO-JAVIER
Associate Justice

(Original Signed)
HENRI JEAN PAUL B. INTING
Associate Justice

(Original Signed)
RODIL V. ZALAMEDA
Associate Justice

(A.M. No. 19-08-06-SC)

**Rule on Administrative Search and Inspection under
the Philippine Competition Act**

Section 1. Coverage.— This Rule shall govern the application, issuance, and enforcement of inspection orders for administrative investigations of alleged violations of Republic Act No. 10667, otherwise known as the Philippine Competition Act, its implementing rules and regulations, and other competition laws.

Section 2. The inspection order. — An inspection order is an order in writing issued in the name of the Republic of the Philippines, signed by a judge, upon application of the Philippine Competition Commission (PCC), through its duly authorized officer, authorizing the PCC and any law enforcement agency that may be deputized by the PCC to assist in the execution of the order, to search and inspect business premises and other offices, land and vehicles, for information to be examined, copied, photographed, recorded, or printed, in order to prevent the removal, concealment, tampering with, or destruction of such information.

Information shall include, but shall not be limited to, books, tax records, documents, papers, accounts, letters, photographs, objects or tangible things, databases and means of accessing information contained in such databases, and electronically stored information as defined in the rules of procedure of the PCC, which relate to any matter relevant to the administrative investigation covered by this Rule. (see Annex “A”)

Section 3. Where application is filed; Special Commercial Courts with authority to issue inspection orders. — Special Commercial Courts in Quezon City, Manila, Makati, Pasig, Cebu City, Iloilo City, Davao City and Cagayan De Oro City shall have authority to act on applications for the issuance of inspection orders, which shall be enforceable nationwide.

Within their respective territorial jurisdictions, the Special Commercial Courts in the judicial regions where the place to be inspected is located shall have concurrent jurisdiction to act on the applications for the issuance of inspection orders. Where inspection of multiple locations is sought relative to the same investigation, an application may be made with any of the Special Commercial Courts in Quezon City, Manila, Makati, Pasig, Cebu City, Iloilo City, Davao City and Cagayan De Oro City and Special Commercial Courts in the judicial regions of the places to be inspected.

Section 4. *Contents of verified application.* — The verified application for an inspection order shall contain a particular description of: (1) the subject of the administrative investigation; (2) the premises, other offices, land or vehicles, as used by the entity, sought to be searched or inspected; and (3) the information sought to be examined, copied, photographed, recorded, or printed, and their relevance and necessity to the investigation. (see Annex “B”)

Section 5. *Examination of applicant; record; confidentiality of proceedings.* — The application shall be acted upon within twenty-four (24) hours from its filing. The judge must, before issuing the inspection order, examine in the form of searching questions and answers, in writing and under oath or affirmation, the applicant and the witnesses he may produce on facts personally known to them; or on facts based on (1) the applicant’s or witnesses’ training and/or experience; (2) authentic records; (3) verifiable data; or (4) economic analysis. The examination of the applicant and his witnesses shall be recorded. Their sworn statements and their affidavits shall form part of the record of the case.

The hearing on the application for the inspection order shall be conducted *ex parte* and held in the chambers of the judge. Court personnel shall maintain the confidentiality of the application proceeding.

Section 6. *Issuance of inspection order.* — The inspection order shall be issued if the court finds that there is a reasonable ground to suspect: (1) that the information is kept, found, stored, or accessible at the premises indicated in the application; (2) the information relates to any matter relevant to the investigation; and (3) the issuance of the order is necessary to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents to be inspected.

Section 7. *Effective period of inspection order.* — An inspection order shall only be effective for the length of time as determined by the court, which shall not exceed fourteen (14) days from its issuance. The court may, upon *ex parte* motion, extend the effectivity of an inspection order for a period not exceeding fourteen (14) days from the expiration of the original period.

Section 8. *When order shall be served.* — The order shall be served in the presence of a duly designated officer of the court, during business hours of the premises, or at any time on any day, as may be determined by the court for compelling reasons stated in the application.

Section 9. *Person whose presence is required during inspection.* — The premises shall be inspected in the presence of the person designated by the entity, either a compliance officer or a legal counsel, who shall be given the opportunity to read the order before its enforcement.

Any unreasonable delay, failure, or refusal to designate a representative by the entity shall not prevent the PCC officers, deputies and agents from implementing the inspection order.

Section 10. *Manner of inspection.* — Upon securing an inspection order under this Rule, the PCC officers, deputies, and agents shall enter, search and inspect the premises indicated in the order, and examine, copy, photograph, record, or print information described in the order.

Electronically stored information, databases, and means of accessing information contained in such databases that are kept, found, stored or accessed in the premises indicated in the order may be examined and copied by copying the information, whether through forensic imaging or other means of copying, photographing or recording the electronically stored information, or by printing out its contents. The PCC officers, deputies, and agents may likewise require that such electronically stored information and databases be produced in a form that is visible and legible, and may be copied, photographed, recorded, or printed out. Such copies, photographs, recordings, or printouts shall be considered and treated as original documents.

The PCC officers, deputies, and agents may ask explanations on facts or documents relating to the subject and purpose of the inspection and record the answers. An individual, who may be assisted by counsel, must answer questions, although the answer may tend to establish a claim against him/her. However, such individual has the right not to give an answer which will tend to subject him/her to a criminal penalty for an offense, unless otherwise provided by law.

As may be reasonably necessary for the conduct of the inspection, the PCC officers, deputies or agents may secure or seal the area and equipment, gadgets or devices where the information is located or stored, and attach to them a tag or label warning all persons from tampering with them, until the examination, copying, photographing, recording, or printing is completed, but in no case beyond the effectivity of the inspection order. The act of tampering with, breaking or removing the seal affixed shall subject the

offender to contempt of court, which procedures shall be governed by Rule 71 of the Rules of Civil Procedure, insofar as they are applicable.

The person designated by the entity under Section 9 shall disclose to the PCC officers, deputies, and agents the location where the information subject of the inspection order is stored, and provide them with all reasonable facilities and assistance for the conduct of the inspection.

The PCC officer shall prepare a list of the information copied, photographed, recorded, or printed. He/she shall give a copy of the same to the person designated by the entity. Such person shall have the opportunity to check the information against those described in the list and shall acknowledge receipt by affixing his/her signature.

Such person shall likewise certify that the copies, photographs, recordings, or printouts made by the PCC officers, deputies or agents are faithful reproductions of their respective originals. Once certified, the copies, photographs, recordings, or printouts shall be admissible as evidence for the purpose of the administrative proceedings.

If the entity delays, fails, or refuses to designate a representative, the copies, photographs, recordings, or printouts shall be certified by the highest ranking officer or employee of the entity present in the premises.

If the PCC officers, deputies, or agents, in the course of implementing the inspection order, inadvertently discover other relevant information in plain view that they believe on reasonable grounds to be evidence of a violation of the Philippine Competition Act, its implementing rules, or other competition laws, then they may examine, copy, photograph, record, or print such information and use the same as evidence of said violation.

Section 11. *Use of reasonable force to effect order.* — The PCC officers, deputies, and agents, if refused admittance to the premises after giving notice of their purpose and authority, may use reasonable force to gain entry to the premises, land, vehicle, or any part of the building or anything therein, to enforce the inspection order or to liberate themselves or any person lawfully aiding them when unlawfully detained therein.

Section 12. *Return.* — Within three (3) days from the enforcement of the inspection order or after the expiration of the period provided under the inspection order, whichever comes first, the authorized officer of the PCC shall make a verified return to the court which issued the order.

The return shall be accompanied by a list of information copied, photographed, recorded, or printed, and by the affidavit of the authorized officer of the PCC containing:

1. The date and time of examination and copying of the documents, electronically stored information, databases, or means of accessing information contained in such databases;
2. The particulars of the documents, electronically stored information, databases, or means of accessing information contained in such databases, including its hash value; and
3. The manner by which the documents, electronically stored information, databases, or means of accessing information contained in such databases was copied, including a list of all actions taken to enforce the inspection order.

The return on the inspection order shall be filed and kept by the custodian of the logbook on inspection orders who shall enter therein the date of the return, the name of the affiant, and other actions of the judge.

It is the duty of the issuing judge to ascertain if the return has been made, and if none, to summon the duly authorized officer to whom the inspection order was issued and require him to explain why no return was made. (see Annex "C")

Section 13. *When an inspection order is improperly issued or implemented.* — Before a return is filed, the person or entity whose premises were inspected may file a written motion with the issuing court to quash the inspection order on the ground that it was improperly issued or implemented.

The motion shall be resolved in a summary hearing by the issuing court after due notice to the PCC.

Section 14. *Duty to keep distinct and separate logbook.* — The court which issued the inspection order shall keep a distinct and separate logbook therefor.

The logbook shall be under the custody of the Clerk of Court wherein the filing of applications for inspection orders and other particulars thereof shall be docketed and entered within twenty-four (24) hours after issuance of the inspection order or denial of the application therefor. All the subsequent proceedings concerning the inspection order, including the return on the inspection order, shall be faithfully recorded in the separate logbook.

Section 15. *Effect of violation.* — Any person or entity who fails or refuses to comply with an inspection order or any provision of this Rule shall be cited for contempt of court, which procedures shall be governed by Rule 71 of the Rules of Civil Procedure, insofar as they are applicable.

Section 16. *Inspection order not a bar to other measures.* — The availment of an inspection order under this Rule shall not prevent the PCC from exercising its powers under existing laws and rules, including applying for search warrants under relevant rules. Nothing in this Rule shall be read as suspending the need of a warrant that may be required by Article III, Section 2 and 3(a) of the Constitution and the Rule on Search Warrants, when applicable.

Section 17. *Limited use of information collected.* — The information collected pursuant to the inspection order shall be used only in administrative proceedings for violations under the Philippine Competition Act and other competition laws.

Section 18. *Effectivity.* — This Rule shall take effect on November 16, 2019 following its publication in the Official Gazette or in two (2) newspapers of national circulation.

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ANNEX "A" – SAMPLE INSPECTION ORDER

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Application for an Inspection Order
under Section 12(g) of the Philippine
Competition Act*

Inspection Order No.

**NAME OF THE DULY AUTHORIZED OFFICER
for The Philippine Competition Commission (PCC),
Applicant.**

INSPECTION ORDER

To the PCC officers, deputies, and agents:

Greetings:

It appearing to the satisfaction of the undersigned after examining *(name of applicant), (his/her witness/es), (and/or sworn statements, if applicable)* that there is reasonable ground to suspect that the information to be examined, copied, photographed, recorded, and/or printed, which relates to any matter relevant to the investigation, is kept, found, stored, or accessible at the *(business premises and other offices, land and vehicles, as used by the entity)* to be inspected, an Inspection Order is hereby **ISSUED**, in accordance with the provisions of A.M. No. _____, entitled "Rule on Administrative Search and Inspection under the Philippine Competition Act," in order to prevent the removal, concealment, tampering with, or destruction of the information.

WHEREFORE, by virtue of the Inspection Order, you are hereby **AUTHORIZED** to search and inspect the *(name/description of the business premises and other offices, land and vehicles, as used by the entity sought to be inspected)* and examine, copy, photograph, record, and/or print *(description of the information)*, seal and secure the premises, as well as conduct the allowable activities to obtain the information under the "Rule on Administrative Search and Inspection under the Philippine Competition Act."

(Name of entity) is hereby ordered to designate representative/s who shall assist the PCC officers, deputies and agents in carrying out the inspection order. Such designated individual/s shall be required to:

- (a) Cooperate and provide PCC officers, deputies, and agents with all reasonable facilities and assistance for the conduct of the inspection; and
- (b) Certify information copied, photographed, recorded, and/or printed pursuant to this Order.

(Name of designated officer of the court) is hereby appointed as the duly designated officer of the Court who shall be required to be present during the service of this Inspection Order.

The PCC authorized officer is **COMMANDED** to submit a return on the Inspection Order within the period and terms prescribed under the "Rule on Administrative Search and Inspection under the Philippine Competition Act."

Fail not under penalty of law.

Witness my hand this ___ day of ___, in the City of _____, Philippines.

Signed.

NAME OF ISSUING JUDGE



ANNEX “B” – SAMPLE VERIFIED APPLICATION

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Application for an Inspection Order
under Section 12(g) of the Philippine
Competition Act*

Inspection Order No.

**NAME OF THE DULY AUTHORIZED OFFICER
for The Philippine Competition Commission (PCC),
Applicant.**

APPLICATION FOR AN INSPECTION ORDER

The Applicant, (*Name of Applicant*), (*Position*) of the Philippine Competition Commission (PCC), after having been duly sworn, states that there are reasonable grounds to suspect that the following information: (*identify list of information sought to be examined, copied, photographed, recorded, or printed*)

which relate to any matter relevant to the ongoing investigation being conducted by the PCC, are kept, found, stored or accessible in (*identify the premises, other offices, land or vehicles*).

The application is based on the following:

- (1. *Provide information on the entities whose premises shall be inspected;*
2. *Provide a brief description of the investigation;*
3. *State the allegations of facts; and*
4. *State the basis or evidence, [e.g. personal knowledge, based on the applicant’s or witnesses’ training and/or experience, authentic records, verifiable data, or economic analysis].)*

PRAYER

WHEREFORE, the Applicant respectfully prays that this Honorable Court issue an Inspection Order ordering the PCC and any law enforcement agency that may be deputized by the PCC to search and inspect (*premises*)

located at (*address*) to examine, copy, photograph, record, or print above-listed information kept, found, stored or accessed in the said premises.

Other just and equitable reliefs are likewise prayed for.

(Date), Quezon City, Philippines.

Applicant

VERIFICATION

I, (*Name of Applicant*), of legal age, Filipino, with office address at 25/F Vertis North Corporate Center I, North Avenue, Quezon City, 1105, after having been duly sworn in accordance with law, state that I have read and understood the contents of the Application for Inspection Order, which are true and correct of (*my own personal knowledge or based on the applicant's or witnesses' training and/or experience, authentic records, verifiable data, or economic analysis*).

Applicant

Subscribed and sworn to before me this (*Date*).

Notary Public 

ANNEX "C" – SAMPLE VERIFIED RETURN

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Inspection Order under Section 12(g)
of the Philippine Competition Act*

Inspection Order No.

RETURN OF INSPECTION ORDER

The applicant, *(Name of Applicant)* of the Philippine Competition Commission, respectfully returns the original copy of **Inspection Order No. _____**¹ issued by the Honorable Judge *(Name of Judge)*, Branch __, RTC____ and manifest the following:

1. On _____, the Philippine Competition Commission, led by the undersigned, implemented Inspection Order No. _____ at the premises of _____ located at _____.

2. As a result thereof, the following information were copied, photographed, recorded or printed: *(list all information copied, photographed, recorded or printed)*.

3. The inspection was conducted in the presence of *(name)*. A corresponding list of information copied, photographed, recorded or printed was provided to the representative of the entity. In addition, the following actions were taken during the inspection: *(list all actions taken to enforce the inspection order)*

WHEREFORE, the applicant respectfully prays that the return of the original copy of Inspection Order No. _____ and its annexes be accepted.

Other just and equitable reliefs are likewise prayed for.

(Date), Quezon City, Philippines.

Applicant

¹ The original copy of the Inspection Order is attached and made an integral part hereof as Annex "___".

VERIFICATION

I, (*Name of Applicant*), of legal age, Filipino, with office address at 25/F Vertis North Corporate Center I, North Avenue, Quezon City, 1105, after having been duly sworn in accordance with law, state that I have read and understood the contents of the Application for Inspection Order, which are true and correct of my own personal knowledge and/or based on authentic records.


Applicant

Subscribed and sworn to before me this (*Date*).

Notary Public

(adv21)

Very truly yours,


EDGAR O. ARICHETA
Clerk of Court *dlc*

