

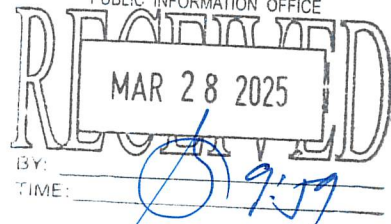


Republic of the Philippines

Supreme Court

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

Manila



EN BANC

SECURITIES AND EXCHANGE  
COMMISSION,

G.R. No. 246027

Petitioner,

Present:

-versus-

1ACCOUNTANTS PARTY-LIST,  
INC., represented by its President,  
CHRISTIAN JAY D. LIM,  
CHRISTIAN JAY D. LIM in his  
personal capacity as CPA,  
FROILAN G. AMPIL, ALLAN M.  
BASARTE, VIRGILIO F.  
AGUNOD, and JONAS P.  
MASCARIÑAS,

GESMUNDO, C.J.,  
LEONEN,\*  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J.,  
DIMAAMPAO,  
MARQUEZ,  
KHO, JR., and  
SINGH,\*\* JJ.

Promulgated:

January 28, 2025

Respondents.

X ----- X

## RESOLUTION

ROSARIO, J.:

The right of the State to regulate the practice of professions takes precedence over the privilege of practicing the same.

\* On official business but left a concurring vote.  
\*\* On leave.

Having earlier granted petitioner Securities and Exchange Commission (SEC)'s Motion for Leave of Court to File Second Motion for Reconsideration<sup>1</sup> (MR) in Our January 30, 2024 Resolution,<sup>2</sup> We now resolve the SEC's second MR<sup>3</sup> of our June 27, 2023 Resolution<sup>4</sup> denying with finality its first MR of our June 21, 2022 Decision<sup>5</sup> denying the Petition for Review on *Certiorari* and affirming the Regional Trial Court (RTC) Decision<sup>6</sup> declaring null and void Rule 68, paragraph 3 of the Implementing Rules and Regulations (IRR) of Republic Act No. 8799 or the Securities Regulation Code (SRC), as amended, and SEC Memorandum Circular (MC) No. 13, Series of 2009 (collectively, "the assailed regulations") for being contrary to Republic Act No. 9298 or the Philippine Accountancy Act of 2004 (Accountancy Act), unconstitutional, and *ultra vires* insofar as they required the accreditation of certified public accountants (CPAs) acting as external auditors of corporations issuing registered securities and possessing secondary licenses ("covered entities").

In its second MR, the SEC avers that the assailed regulations carry out the State's policy of promoting the development of the capital market, protecting investors, ensuring full and fair disclosure about securities, and minimizing, if not completely eliminating, insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market. Hence, any doubt or conflict in the interpretation of the SRC and its IRR must be resolved in a manner that will carry out the foregoing policy and principles.<sup>7</sup>

The SEC contends that the accreditation of external auditors does not curtail the practice of accountancy since it is optional on the part of CPAs. With accreditation, relevant stakeholders are assured that crucial functions and services in the community are performed and provided only by competent and reliable professionals, which generates trust and confidence in the quality of the infrastructure. Further, several laws manifest the State's policy of allowing regulators of the financial sector to accredit external auditors.<sup>8</sup>

To facilitate the implementation of the legislative intent regarding the accreditation of external auditors in the financial sector, the SEC, the Bangko Sentral ng Pilipinas (BSP), the Insurance Commission (IC), and the Philippine Deposit Insurance Corporation (PDIC) (collectively, "financial sector regulators") and the Professional Regulatory Board of Accountancy (BOA)

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<sup>1</sup> *Rollo*, pp. 725–737.

<sup>2</sup> *Id.* at 781–782.

<sup>3</sup> *Id.* at 738–780.

<sup>4</sup> *Id.* at 715–716.

<sup>5</sup> *Id.* at 577–591.

<sup>6</sup> *Id.* at 58–62. The March 20, 2018 Decision in Civil Case No. R-DVO-15-02294-SC was penned by Presiding Judge Mario C. Duaves of Branch 15, Regional Trial Court, Davao City.

<sup>7</sup> *Id.* at 738–739.

<sup>8</sup> *Id.* at 741–744.

entered a Memorandum of Agreement (MOA) on the Implementation of the Centralized System for Accreditation/Selection of External Auditors in the Financial Sector. According to the SEC, it would be absurd if it could not accredit external auditors when the BSP, IC, and PDIC wield such authority for the very same purpose, even more so since the SEC presently undertakes the accreditation process for the BSP, IC, and PDIC. The accreditation process of external auditors undertaken by the financial sector regulators is different but complementary to the licensure process of the BOA. While licensure deals with compliance with the minimum standards set by law, accreditation focuses on continuous improvement strategies and achievement of optimal quality standards. While licensure aims to determine whether a candidate possesses the eligibility and competency requirements prescribed by law, accreditation aims to ensure quality and adherence to international standards and best practices. Hence, accreditation is not intended to supplant the BOA's licensure process but to match the competence of external auditors with the specific requirements of a regulated industry.<sup>9</sup>

While the SRC and the Old Corporation Code were seemingly silent on the SEC's specific authority to accredit external auditors, it posits that a specific provision therefor is unnecessary because the Legislature had long recognized that its accreditation of external auditors is incidental to the performance of its mandate as the primary regulator of corporations in the country. The SRC empowers the SEC to regulate, investigate or supervise the activities of persons, which includes both juridical and natural persons. Otherwise, the SEC will have no means to hold unscrupulous individuals accountable under the SRC. The SEC points to instances in the past where external auditors were complicit in schemes to defraud the public, such as the Priority Development Assistance Fund (PDAF) scam in 2013. Thus, to safeguard public interests, the SEC has been requiring certain foundation companies to engage the services of SEC-accredited external auditors. Similarly, one of the major factors that contributed to the downfall of preneed companies at one point was the failure of regulations concerning audits.<sup>10</sup>

In auditing financial statements, external auditors act as the SEC's gatekeepers. Therefore, the SEC asserts that it is authorized to supervise the activities of external auditors.<sup>11</sup> Further, as a member of various international associations of organizations of financial regulators, the SEC is expected to protect investors from misleading, manipulative, or fraudulent practices. Thus, it becomes imperative for the SEC to establish an effective oversight mechanism over external auditors through the process of accreditation.<sup>12</sup>

Finally, the SEC avers that the assailed regulations only apply to less than 3% of registered corporations. Out of over 600,000 registered

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<sup>9</sup> *Id.* at 756–759.

<sup>10</sup> *Id.* at 762–767.

<sup>11</sup> *Id.* at 770.

<sup>12</sup> *Id.* at 774–775

corporations, only around 17,000 are required to engage the services of SEC-accredited external auditors. Those who do not wish to apply for accreditation can still be engaged by the remaining 97%, which belies the claim that said regulations restrain CPAs from practicing their profession.<sup>13</sup>

Respondents 1Accountants Party-List, Inc., represented by its President, Christian Jay D. Lim, Christian Jay D. Lim in his personal capacity as a certified public accountant, Froilan G. Ampil, Allan M. Basarte, Virgilio F. Agunod, and Jonas P. Mascariñas (1Accountants Party-List, et al.), on the other hand, retort in their Comment<sup>14</sup> that through the Accountancy Act, the Legislature has delegated the supervision, control and regulation of the accountancy profession solely to the BOA, and that the SEC went beyond its mandate by acting as a co-regulator when it issued the assailed regulations. At any rate, neither the SRC nor the Corporation Code allows petitioner to impose an additional licensing requirement in the form of mandatory accreditation of CPAs engaged as external auditors.<sup>15</sup> 1Accountants Party-List, et al. posit that the SEC's authority under the SRC does not go beyond the letter of the law to the extent that the exercise thereof encroaches into the authority of other agencies,<sup>16</sup> and that the powers granted by the SRC flow from the SEC's jurisdiction over corporations, and cannot be made to apply to individual CPAs.<sup>17</sup> Finally, 1Accountants Party-List, et al. posit that since it is the management of the reporting entity that is made responsible for the preparation and fair presentation of financial statements under the Statement of Management's Responsibility for Financial Statements in Rule 68, paragraph 2(b) of the SRC IRR, as amended, the assailed mandatory accreditation should have been imposed on the preparers of the financial statements or the corporate chief financial officers, not upon external auditors.<sup>18</sup>

After careful consideration of the arguments of the parties and taking into consideration the far-reaching implications of the assailed Decision, the Court finds it necessary to reverse its previous finding that petitioner is not authorized to require accreditation of external auditors of covered entities.

*The SEC is authorized to exercise not only express powers but also those which may be implied from or which are necessary or incidental to carry out of such express powers to achieve the objectives and purposes of the law*

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<sup>13</sup> *Id.* at 761.

<sup>14</sup> *Id.* at 783–800.

<sup>15</sup> *Id.* at 784.

<sup>16</sup> *Id.* at 788.

<sup>17</sup> *Id.* at 790.

<sup>18</sup> *Id.* at 791.

While the Accountancy Act created the BOA, under the supervision and administrative control of the Professional Regulation Commission (PRC), to regulate the practice of accountancy, neither the law nor the policy<sup>19</sup> of the State limit the establishment of regulatory measures through the BOA or the PRC. Thus, other government agencies like the SEC are not precluded from participating in the task of implementing the policy of the State for as long as the express or implied powers granted to them by law allow them to do so.

In this regard, the Sections 5 and 72 of the SRC lay down the powers and functions of the SEC as follows:

**Section 5. Powers and Functions of the Commission.**— 5.1. **The commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:**

....

**(d) Regulate, investigate or supervise the activities of persons to ensure compliance;**

....

**(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.**

....

**Section 72. Rules and Regulations; Effectivity.** — 72.1. This Code shall be self-executory. **To effect the provisions and purposes of this Code, the Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate,** including rules and regulations defining accounting, technical, and trade terms used in this Code[.] (Emphasis supplied)

In order to ensure compliance, Section 5(d) of the SRC empowers the SEC to “regulate, investigate or supervise the activities of persons.” Since the law does not distinguish between natural and juridical persons, the SEC is not precluded from regulating or supervising the activities of natural persons such as individual auditors insofar as the auditing of the annual financial statement (AFS) of covered entities is concerned. Further, Section 72 authorizes the SEC

<sup>19</sup> Republic Act No. 9298 (2004), sec. 2 states: Sec. 2. *Declaration of Policy.* - The State recognizes the importance of accountants in nation building and development. Hence, it shall develop and nurture competent, virtuous, productive and well rounded professional accountants whose standard of practice and service shall be excellent, qualitative, world class and globally competitive through inviolable, honest, effective, and credible licensure examinations and through **regulatory measures**, programs and activities that foster their professional growth and development. (Emphasis supplied)

to issue such rules and regulations to effect not only the provisions of the SRC but also its purposes as declared in Section 2 thereof, to wit:

Section. 2. *Declaration of State Policy.* – The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, **protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.** (Emphasis supplied)

Under Rule 68 of the SRC IRR, as amended, the accreditation requirement applies only to CPAs who are independent auditors of the financial statements of covered entities, thus showing that it is not a regulation on the accountancy profession *per se* but on the specific activity of auditing. The relevant portion of Rule 68 states:

#### GENERAL FINANCIAL REPORTING REQUIREMENTS

....

### 3. QUALIFICATIONS AND REPORTS OF INDEPENDENT AUDITORS

#### A. Audit of Financial Statements by Independent Auditors

All registered corporations covered by this Rule shall have *independent auditors* who are duly registered and licensed with the [BOA] of the [PRC] in accordance with the rules and regulations of said professional regulatory bodies[.]

#### B. Additional Requirements for Independent Auditors of SEC-Regulated Entities and Other Entities

##### (i) Accreditation Categories

The accreditation of *independent auditors* serves as a quality control mechanism or quality assurance review by the Commission on the work of the accredited external auditors.

The following entities shall have *independent auditors* accredited by the Commission under the appropriate category[.] (Emphasis supplied)

Similarly, SEC MC No. 13, s. 2009 requires accreditation only for CPAs engaged to perform statutory audit of the financial statements of covered entities and not CPAs engaged to perform non-audit work, to wit:

**Section. 4. Scope and Limitations of Accreditation**

- 4.1 Only an external auditor and his auditing firm (if applicable) who is accredited by the Commission shall be engaged by corporations covered by this Circular *for the statutory audit of their financial statements*. (Emphasis supplied)

To illustrate, CPAs engaged merely for bookkeeping or other non-audit services related to the accounting records or financial statements of a covered entity are not required to be accredited by the SEC. However, CPAs engaged to perform statutory audit of the AFS of a covered entity are required to be accredited. The fact that CPAs may still work for a covered entity without undergoing accreditation as long as they are not engaged to perform an independent audit of its AFS shows that it is not the accountancy profession that is regulated by the SEC but only the activity of statutory audit of financial statements. This is bolstered by the statement in Rule 68, paragraph 3(B)(i) of the SRC IRR, as amended, that “accreditation of independent auditors serves as a quality control mechanism or quality assurance review by the Commission *on the work* of the accredited external auditors.”

Interestingly, in their Comment, 1Accountants Party-List, et al. aver that since external auditors are not responsible for preparing the AFS, accreditation may rather serve its purpose if the same is instead required of CPAs who prepare such statements and not of CPAs who audit them. Respondents seemingly entertain the idea that petitioner is not entirely unjustified in requiring accreditation, but that it is imposing the same on the wrong CPAs. However, we fail to see the logic in requiring accreditation of the CPAs who prepare the AFS instead of the external auditors since it is the latter who are deemed the gatekeepers. As the ones responsible for examining the AFS and expressing their opinion thereon, external auditors are expected to possess a more profound understanding of the intricacies of financial statements than those from whom they originate and thus, must be held to a higher standard. This, of course, holds all the more true with respect to external auditors of covered entities.

Aside from the powers granted by the SRC, Section 5 of the same law states that the SEC shall also have the powers and functions provided by the Corporation Code. Republic Act No. 11232 or the Revised Corporation Code (RCC) grants the SEC the following powers:

**Section. 179. Powers, Functions, and Jurisdiction of the Commission.** – The Commission shall have the power and authority to:

....

- (d) Promote corporate governance and the protection of minority investors, through, among others, the issuance of rules and regulations consistent with international best practices;

✓



.....

(o) **Formulate and enforce standards, guidelines, policies, rules and regulations to carry out the provisions of this Code; and**

(p) **Exercise such other powers provided by law or those which may be necessary or incidental to carrying out the powers expressly granted to the Commission.** (Emphasis supplied)

To promote corporate governance and protect minority investors, Section 179(d) of the RCC empowers the SEC to issue rules and regulations consistent with international best practices such as those laid down in the Principles of Corporate Governance<sup>20</sup> of the Organization for Economic Cooperation and Development (OECD), Principles of Securities Regulation<sup>21</sup> of the International Organization of Securities Commissions (IOSCO), and Core Principles for Independent Audit Regulators<sup>22</sup> of the International Forum of Independent Audit Regulators (IFIAR), among others. Unlike in non-covered entities where it is sufficient that the external auditor be independent, the audit of covered entities requires that the CPA not only be independent but also competent and qualified in accordance with international auditing, ethical and independence standards. In other words, while the BOA, as the main regulatory agency for the practice of accountancy, ensures that the minimum standards for the practice of the profession in the Philippines are met, which standards are presumed adequate for the audit of non-covered entities, the audit of covered entities certainly requires more than the minimum. The SEC accreditation serves this purpose by complementing rather than replacing the regulatory measures put in place by the BOA. While the BOA bears the primary role of supervising the registration, licensure and practice of accountancy in the Philippines, nothing in the law precludes an additional layer of supervision and regulation to comply with the more stringent requirements demanded of regulated entities. In requiring

<sup>20</sup> Organization for Economic Cooperation and Development, *G20/OECD Principles of Corporate Governance*, September 11, 2023, available at <https://www.oecd-ilibrary.org/docserver/ed750b30-en.pdf> (last accessed on July 23, 2024). Paragraph IV.C provides that “**An annual external audit should be conducted by an independent, competent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards** in order to provide reasonable assurance to the board and shareholders on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework... Further, a system of audit oversight and audit regulation plays an important role in enhancing auditor independence and audit quality. Consistent with the Core Principles of the International Forum of Independent Audit Regulators (IFIAR), the designation of an audit regulator, **independent from the profession**, and who, at a minimum, conducts recurring inspections of auditors undertaking audits of public interest entities, contributes to ensuring high quality audits that serve the public interest.” p. 32. (Emphasis supplied)

<sup>21</sup> International Organization of Securities Commissions, *Objectives and Principles of Securities Regulation*, May 2017, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf> (last accessed on July 23, 2024). IOSCO Principles 19, 20 and 21 on securities regulation provide that auditors should be subject to adequate levels of oversight, independent of the issuing entity they audit, and audit standards should be of high and internationally acceptable quality. p. 9.

<sup>22</sup> International Forum of Independent Audit Regulators, *Core Principles for Independent Audit Regulators*, April 27, 2022, available at <https://www.ifiar.org/?wpdmdl=14848> (last accessed on July 23, 2024). Under Principle 1, “**Audit regulators should have a clear regulatory mandate to work in the public interest, including that of investors, rather than the interests of the audit profession or audited entities by seeking to enhance audit quality.** The responsibilities and powers of audit regulators should, at a minimum, require **independent oversight of the audits of public interest entities**, an area where self-regulation by the audit profession is no longer acceptable.” (Emphasis supplied)



accreditation of external auditors of regulated entities, the SEC by no means removes or diminishes the BOA's power to supervise the registration, licensure and practice of accountancy as such auditors always remain subject to the Board's power of supervision.

Finally, while the power to accredit external auditors is not expressly granted to the SEC, Section 5(n) of the SRC and Section 179(p) of the RCC explicitly provide that its powers are not limited to those expressly granted but also include those powers which may be implied from, or which are necessary or incidental to the carrying out of such express powers to achieve the objectives and purposes of said laws. It cannot be denied that the power to accredit external auditors of regulated entities can be reasonably implied from the SEC's express power to regulate or supervise the activities of persons to ensure compliance, or at the very least, is necessary or incidental to carrying out such express power to achieve the objectives and purposes of the SRC and RCC. Otherwise stated, an express grant of authority is not a condition *sine qua non* for the SEC to impose an accreditation requirement.

The dissenting opinion posits that since the accreditation of individual CPAs, which includes external auditors of covered entities, is expressly vested by the Accountancy Act, then there is no gap or omission in the law which would justify the operation of the doctrine of necessary implication. However, the *ponencia* did not even have to rely on said doctrine because the SRC itself empowers the SEC to "[e]xercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws"<sup>23</sup> and to "issue, amend, and rescind such rules and regulations and orders necessary or appropriate" to effect the provisions and purposes of the SRC.<sup>24</sup> Similarly, the Revised Corporation Code (RCC) empowers it to "[e]xercise such other powers provided by law or those which may be necessary or incidental to carrying out the powers expressly granted to the Commission."<sup>25</sup> Since the SEC's implied power to accredit external auditors of covered entities does not stem from the doctrine of necessary implication but from the very wordings of the SRC and RCC, there is no need to point to any specific gap or omission in the law. One only needs to inquire whether the power sought to be exercised may be implied from or is necessary or incidental to carrying out the SEC's express powers to achieve the objectives and purposes of these laws.

As We declared in *Palanca IV v. RCBC Securities, Inc.*,<sup>26</sup> the SRC and its IRR should be interpreted in such a way that will breathe life into the law and carry out its principles such as self-regulation, promotion of capital market development, protection of investors, ensuring full and fair disclosure on securities, and minimization, if not total elimination, of insider trading and

<sup>23</sup> SECURITIES CODE (2000), sec. 5(n).

<sup>24</sup> SECURITIES CODE (2000), sec. 72.

<sup>25</sup> REV. CORP. CODE (2019), sec. 179 (p).

<sup>26</sup> 872 Phil. 1086 (2020) [Per J. Reyes, Jr., Second Division].

other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors.<sup>27</sup> Indeed, We have recognized that even if the law does not expressly authorize the performance of an act, there are instances when such authority may be implied and must be liberally construed, consistent with the principle that where the end is required the appropriate means are given.<sup>28</sup>

***SEC accreditation is justified insofar as the law allows the SEC to issue rules in relation to corporate reportorial requirements***

Under the Old Corporation Code,<sup>29</sup> which was the law prevailing at the time the RTC rendered its Decision declaring the assailed regulations null and void, **any** independent CPA may certify the AFS of corporations, to wit:

**Section. 141. Annual report of corporations.** Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by **any** independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. (Emphasis supplied)

Hence, under the old law, while the SEC may require “such other requirements” aside from the AFS for purposes of the annual report of corporations, it did not qualify who could certify such AFS as the only requirement being that the certifier be **any** independent CPA. However, only a few days after the RTC promulgated its assailed February 20, 2019 Order denying petitioner’s MR, the RCC took effect, Section 177(a) of which reads:

**Section. 177. Reportorial Requirements of Corporations. – Except as otherwise provided in this Code or in the rules issued by the Commission, every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission:**

(a) Annual financial statements audited by an **independent certified public accountant**[.] (Emphasis supplied)

While the general rule in Section 177 is that the auditor of the AFS of a corporation need only be an independent CPA, the addition of the phrase “Except as otherwise provided in this Code or in the rules issued by the Commission” manifests the Legislature’s intent to allow the SEC to formulate exceptions to such general rule. One such exception formulated by the SEC is when the entity is covered by the assailed regulations, in which case, the

<sup>27</sup> *Id.* at 1110–1111.

<sup>28</sup> *Gomez v. Palomar*, 134 Phil. 771, 786 (1968) [Per J. Castro, *En Banc*].

<sup>29</sup> Batas Pambansa Blg. 68 (1980).

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external auditor of such entity’s AFS, aside from being an independent CPA, must also be accredited by the SEC. In fact, the legislative history of Section 177 reveals the Legislature’s desire to allow for such other accreditation as the SEC may require. A review of pertinent provisions of the RCC’s precursor bills, House Bills Nos. 528<sup>30</sup> and 877<sup>31</sup> (which were consolidated with other bills to form House Bill No. 8374<sup>32</sup>) and House Bill No. 8374, is *a propos*:

House Bills Nos. 528 and 877	House Bill No. 8374
SECTION 73. ...  “Sec. [141] 180. ... <i>REPORTORIAL REQUIREMENTS</i> of corporations. – EXCEPT AS OTHERWISE PROVIDED IN THIS CODE, every corporation, domestic or foreign, [lawfully] doing business in the Philippines shall submit to the Commission, ... :  ....  1. ANNUAL FINANCIAL STATEMENTS DULY AUDITED BY THE CORPORATION’S INTERNAL AUDITOR AND BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WHO IS ACCREDITED BY THE BOARD OF ACCOUNTANCY AND WHO POSSESSES SUCH OTHER ACCREDITATION AS THE COMMISSION MAY REQUIRE[.] (Emphasis supplied)	SEC. 177. <i>Reportorial requirements of corporations.</i> - Except as otherwise provided in this Code <b>or in the rules issued by the Commission</b> , every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission:  1. Annual financial statements audited by an independent certified public accountant: <i>Provided</i> , That if the total assets or total liabilities of the corporation are less than [PHP 600,000.00] the financial statements shall be certified under oath by the corporation’s treasurer or chief financial officer[.] (Emphasis supplied)

House Bills Nos. 528 and 877 provide that the independent CPA who audits the AFS should be one “*who is accredited by the Board of Accountancy and who possesses such other accreditation as the Commission may require.*” Further, Senate Bill No. 2180 requires the submission of AFS audited by an independent CPA “accredited by the Commission.”<sup>33</sup>

The dissent argues that since said phrases were ostensibly not carried over to the final versions of the House and Senate bills, the only logical conclusion is that the Legislature did not intend to require independent CPAs to be SEC-accredited as well. However, the fact that the Congress appended to the phrase “*Except as otherwise provided in this Code*” the phrase “*or in the rules issued by the Commission*” shows that it still granted the SEC the leeway to issue rules requiring such other accreditation. Rather than require SEC accreditation for external auditors of all corporations, the Legislature saw it fit to leave this to the technical expertise of the SEC which may, in its

<sup>30</sup> House Bill No. 528 (2016), 17<sup>th</sup> Cong., 1<sup>st</sup> Session.  
<sup>31</sup> House Bill No. 877 (2016), 17<sup>th</sup> Cong., 1<sup>st</sup> Session.  
<sup>32</sup> House Bill No. 8374 (2018), 17<sup>th</sup> Cong., 3<sup>rd</sup> Session.  
<sup>33</sup> Senate Bill No. 1280 (2016), 17<sup>th</sup> Cong., 1<sup>st</sup> Session, sec. 66.

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wisdom, require accreditation only for auditors of certain entities, which indeed it has done, or even not at all. After all, it is the SEC that will be dealing with all the financial statements and other reports submitted by corporations and not the Legislature.

Contrary to the dissent's interpretation that the proviso "*Except as otherwise provided in this Code or in the rules issued by the Commission*" qualifies only the phrase "*every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission,*" said proviso also pertains to the enumeration of items to be submitted to the SEC in Section 177 of the RCC since the phrase "*Except as otherwise provided in this Code or in the rules issued by the Commission, every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission*" is not an independent clause and is only completed by the enumeration that follows. Thus, the SEC rules may further qualify who may audit financial statements or even require submission of other reports not enumerated in Section 177.

***Several laws manifest the State's  
policy of authorizing financial sector  
regulators to accredit auditors***

As observed by petitioners, current pieces of legislation manifest the State's policy of allowing various regulators to accredit external auditors, viz:

- a. Republic Act No. 8791 or the General Banking Law of 2000 provides that the BSP Monetary Board may require a bank, quasi-bank, or trust entity to engage the services of an auditor chosen from a list of CPAs acceptable to the Monetary Board.<sup>34</sup>
- b. Presidential Decree No. 612, as amended by Republic Act No. 10607 or the Insurance Code, requires supervised persons and entities to engage only the services of external auditors accredited by the Insurance Commissioner.<sup>35</sup>
- c. Republic Act No. 6938, as amended by Republic Act No. 9520 or the Philippine Cooperative Code of 2008, limits the conduct

<sup>34</sup> Republic Act No. 8791, sec. 58 states: Sec. 58. *Independent Auditor.* – The Monetary Board may require a bank, quasi-bank or trust entity to engage the services of an **independent auditor** to be chosen by the bank, quasi-bank or trust entity concerned **from a list of certified public accountants acceptable to the Monetary Board.** (Emphasis supplied)

<sup>35</sup> Presidential Decree No. 612, as amended by Republic Act No. 10607, sec. 347 states. Sec. 347. ...

....  
No external auditor shall be engaged by supervised persons or entities unless it has been issued an **accreditation certificate by the Commissioner.** The accreditation certificate shall be valid until December 31 of the third year from issuance unless it is revoked or suspended. The Commissioner shall issue rules and regulations to govern the accreditation of the external auditor and the revocation or suspension of the accreditation. (Emphasis supplied)

of financial and social audit to those who are accredited by the Cooperative Development Authority.<sup>36</sup>

- d. Republic Act No. 8424 or the National Internal Revenue Code of 1997 authorizes the Commissioner of Internal Revenue to accredit and register tax agents with respect to their practice and representation before the Bureau of Internal Revenue.<sup>37</sup>

Hence, the SEC's accreditation of external auditors, whether it stems from an express or implied power, is a logical extension of existing regulatory practices aimed at promoting consistency, efficiency, and financial integrity across different sectors. Centralizing the accreditation process under the auspices of the SEC will enhance regulatory oversight, streamline compliance requirements, and reinforce investor protection within the securities market ecosystem. If other financial sector regulators have the express authority to accredit external auditors within their respective domains, it is certainly not unreasonable to read the law as granting, at the very least, an implied authority to the SEC to likewise accredit external auditors within its domain.

***Airlift Asia is not on all fours with this case and must be distinguished***

True, in *Airlift Asia Customs Brokerage, Inc. v. Court of Appeals*,<sup>38</sup> We nullified a Customs Administrative Order (CAO) requiring the accreditation of customs brokers intending to practice before the Bureau of Customs (BOC) because it amounted to an additional licensing requirement that restricted the practice of their profession. However, this case must be distinguished from *Airlift Asia*.

First, unlike the Accountancy Act, the Customs Brokers Act of 2004 expressly provides that those who pass the licensure examination shall be allowed to practice the customs broker profession in any collection district

<sup>36</sup> Republic Act No. 6938, as amended by Republic Act No. 9520, art. 80 states: Art 80. *Annual Audit.* – Cooperatives registered under this Code shall be subject to an annual financial, performance and social audit. The financial audit shall be conducted by an external auditor who satisfies all the following qualifications:

(1) He[/she] is independent of the cooperative or any of its subsidiary that he[/she] is auditing; and  
(2) He[/she] is a member in good standing of the Philippine Institute of Certified Public Accountants (PICPA) and is accredited by both the Board and Accountancy and the Authority.

The social audit shall be conducted by an independent social auditor accredited by the Authority. (Emphasis supplied)

<sup>37</sup> Republic Act No. 8424 (1997), sec. 6(G) states: Sec. 6. *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.* –

....  
(G) *Authority to Accredite and Register Tax Agents.* - The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns, statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers. (Emphasis supplied)

<sup>38</sup> 739 Phil. 718 (2014) [Per J. Brion, Second Division].

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“without the need of securing another license from the BOC.”<sup>39</sup> Hence, the subject CAO in *Airlift Asia* contravened an express provision of law whereas the assailed regulations here did not contravene any express provision of law.

Second, We held in *Airlift Asia* that the mandate of the BOC Commissioner to enforce tariff laws and prevent smuggling does not necessarily include the power to regulate and supervise the customs broker profession. Here, the express power of the SEC to regulate and supervise the activities of persons to ensure compliance necessarily, if not impliedly or incidentally, includes the power to regulate and supervise the activities of external auditors of covered entities.

Third, while the SEC’s power to issue rules may be considered a general power as compared to the specific power granted by the Accountancy Act to the BOA to promulgate rules involving the regulation of the practice of accountancy, the rule of statutory construction that general rule-making power gives way to the specific grant of power applies only in instances of conflict between the two. Respondents have not shown any conflict between the SEC’s accreditation of external auditors and the BOA’s specific power to supervise their practice. *Au contraire*, the fact that the country’s financial sector regulators were able to ink a multilateral MOA with the BOA on the accreditation of external auditors, aimed at promoting ease of doing business and adherence to internationally recognized standards in auditing, is a clear indication that there is no conflict between the general power of the SEC and the specific power of the BOA, the former being complementary to the latter.

Finally, unlike in *Airlift Asia* where we observed that a large part of a customs broker’s work involves practice before the BOC, thus, compelling practically all customs brokers to comply with the accreditation requirement for them to practice their profession, it could not be said that a large part of a CPA’s work involves practice before the covered entities. In fact, as aptly observed by petitioner, the assailed regulations apply to less than 3% of registered corporations and those who do not wish to apply for accreditation can still be engaged by the remaining 97%. CPAs are not even prevented from working for entities covered by the assailed regulations for as long as they are not engaged to do statutory audit of financial statements. Hence, BOC accreditation of customs brokers cannot be reasonably compared with SEC accreditation of external auditors.

*The practice of accountancy being a mere privilege, no right is curtailed by the accreditation of external auditors*

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<sup>39</sup> Republic Act No. 9280 (2004), sec. 19.

While the Court in *Airlift Asia* declared that the BOC accreditation of customs brokers curtails their “right” to practice their profession since it takes the form of an additional licensing requirement proscribed by the Customs Brokers Act, the word “right” as used in that context must be understood to mean “license.” While the professional license itself is a property right insofar as the licensee cannot be deprived thereof without due process,<sup>40</sup> the practice of a profession is not a right but a privilege burdened by conditions.<sup>41</sup> The power to grant a privilege to one is inconsistent with the possession on the part of another of an absolute right to exercise such privilege.<sup>42</sup>

The only right expressly granted by the Customs Brokers Act and the Accountancy Act is the right to automatic registration of customs brokers<sup>43</sup> and CPAs,<sup>44</sup> respectively, who are registered at the time said laws took effect. There being no right to practice accountancy, there could be no curtailment of such right to speak of. Thus, any additional burden imposed by the accreditation requirement on CPAs who wish to audit the AFS of covered entities is not a curtailment of a right but a condition on a mere privilege.

***The MOA between the BOA and financial sector regulators does not constitute an undue delegation of legislative power***

The maxim *delegata potestas non potest delegari* means that delegated power cannot be further delegated. To rephrase Locke, since the people have already delegated to the Legislature the power to make laws, the Legislature cannot further delegate this power to any other body or authority.<sup>45</sup> The recognized exceptions to this rule are (1) Delegation of tariff powers to the President under Article VI, Section 28(2) of the Constitution; (2) Delegation of emergency powers to the President under Article VI, Section 23(2) of the Constitution; (3) Delegation to the people at large; (4) Delegation to local governments; and (5) Delegation to administrative bodies.<sup>46</sup>

Having ruled that the SEC is justified by its express and implied powers in accrediting external auditors of certain entities, and that such powers are not in conflict with those of the BOA, it necessarily follows that the MOA executed between the BOA and the financial sector regulators does not constitute an undue delegation of legislative power. The BOA did not thereby delegate to petitioner the power to regulate the profession of accountancy

<sup>40</sup> Republic Act No. 8981 (2000), sec. 9(g), PRC Modernization Act of 2000.

<sup>41</sup> *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].

<sup>42</sup> *People ex Rel. Schwab v. Grant*, 126 N.Y. 473 (1891), cited in *People ex Rel. Fellows v. Early*, 106 App. Div. 269, 94 N.Y.S. 640 (N.Y. App. Div. 1905) and *Matter of Barresi v. Biggs*, 203 App. Div. 2, 196 N.Y.S. 376 (N.Y. App. Div. 1922).

<sup>43</sup> Republic Act No. 9280 (2004), sec. 33, Customs Brokers Act of 2004.

<sup>44</sup> Republic Act No. 9298 (2004), sec. 27, Philippine Accountancy Act of 2004.

<sup>45</sup> *People v. Vera*, 65 Phil. 56, 112–113 (1937) [Per J. Laurel, *En Banc*].

<sup>46</sup> *Santiago v. Commission on Elections*, 336 Phil. 848, 897–898 (1997) [Per J. Davide, Jr., *En Banc*].

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since, as previously discussed, petitioner's accreditation regulates only the activities of persons and not the profession itself.

The main goal of the MOA is to promote the ease of doing business and the adherence to internationally recognized standards in auditing. The SEC and the BOA are both regulatory bodies with specialized knowledge and expertise in their respective domains, the former regulating the corporate sector, and the latter regulating the accountancy profession. By collaborating, they leverage their expertise to ensure the integrity of the financial reporting of covered entities. As long as such collaboration aligns with the policy of the State and does not contravene statute, it is a valid exercise of administrative discretion rather than an undue delegation of legislative power.

**ACCORDINGLY**, petitioner Securities and Exchange Commission's second Motion for Reconsideration is **GRANTED**. The Court's June 21, 2022 Decision and June 27, 2023 Resolution are **REVERSED** and **SET ASIDE**. On the grounds raised in the pleadings, Rule 68, paragraph 3 of the Implementing Rules and Regulations of Republic Act No. 8799, as amended, and Securities and Exchange Commission Memorandum Circular No. 13, series of 2009 are declared **VALID** and **NOT UNCONSTITUTIONAL**.


**SO ORDERED.**

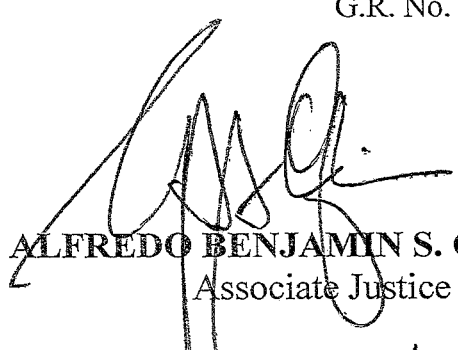
  
**RICARDO R. ROSARIO**  
Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

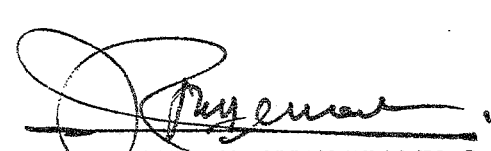
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ON OFFICIAL BUSINESS  
BUT LEFT A CONCURRING VOTE  
**MARVIC MARIO VICTOR F. LEONEN**  
Senior Associate Justice


  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*See Dissent*

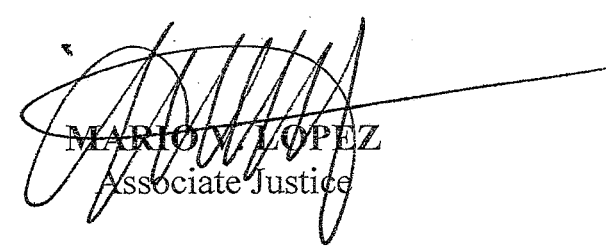
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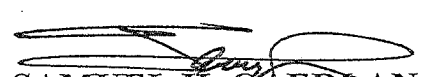
  
**RAMON PAUL L. HERNANDO**  
Associate Justice


  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice


  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**MARIO V. LOPEZ**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

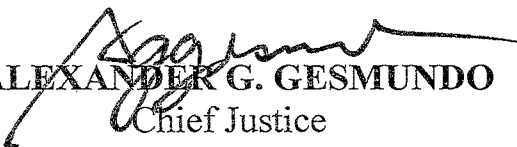
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

ON LEAVE  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

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