Republic of the Philippines
Supreme Court
Manila

EN BANC

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

-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,
Respondents.

G.R. No. 246027

Present:

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

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RESOLUTION

ROSARIO, *J.*:

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

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* 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[1] (MR) in Our January 30, 2024 Resolution,[2] We now resolve the SEC's second MR[3] of our June 27, 2023 Resolution[4] denying with finality its first MR of our June 21, 2022 Decision[5] denying the Petition for Review on *Certiorari* and affirming the Regional Trial Court (RTC) Decision[6] 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.[7]

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.[8]

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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1 *Rollo*, pp. 725–737.
2 *Id.* at 781–782.
3 *Id.* at 738–780.
4 *Id.* at 715–716.
5 *Id.* at 577–591.
6 *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.
7 *Id.* at 738–739.
8 *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.[9]

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.[10]

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.[11] 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.[12]

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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9 *Id.* at 756–759.
10 *Id.* at 762–767.
11 *Id.* at 770.
12 *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.[13]

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[14] 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.[15] 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,[16] 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.[17] 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.[18]

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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13 *Id.* at 761.
14 *Id.* at 783–800.
15 *Id.* at 784.
16 *Id.* at 788.
17 *Id.* at 790.
18 *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[19] 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:
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> (d) **Regulate, investigate or supervise the activities of persons to ensure compliance;**
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> . . . .
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> (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.**
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> . . . .
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> **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

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[19] 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**
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> . . . .
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> **3. QUALIFICATIONS AND REPORTS OF INDEPENDENT AUDITORS**
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> **A. Audit of Financial Statements by Independent Auditors**
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> 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[.]
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> **B. Additional Requirements for Independent Auditors of SEC-Regulated Entities and Other Entities**
>
> (i) **Accreditation Categories**
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> 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[20] of the Organization for Economic Cooperation and Development (OECD), Principles of Securities Regulation[21] of the International Organization of Securities Commissions (IOSCO), and Core Principles for Independent Audit Regulators[22] 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

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20 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)

21 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.

22 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"[23] and to "issue, amend, and rescind such rules and regulations and orders necessary or appropriate" to effect the provisions and purposes of the SRC.[24] 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."[25] 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.*,[26] 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

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23 SECURITIES CODE (2000), sec. 5(n).
24 SECURITIES CODE (2000), sec. 72.
25 REV. CORP. CODE (2019), sec. 179 (p).
26 872 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.[27] 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.[28]

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,[29] 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

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27 *Id.* at 1110–1111.

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

29 Batas Pambansa Blg. 68 (1980).

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[30] and 877[31] (which were consolidated with other bills to form House Bill No. 8374[32]) and House Bill No. 8374, is *a propos*:

House Bills Nos. 528 and 877	**House Bill No. 8374**
SECTION 73. ... "Sec. [141] 180. ... *REPORTORIAL REQUIREMENTS* 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. *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: 1. Annual financial statements audited by an independent certified public accountant: *Provided*, 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."[33]

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

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

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.[34]

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.[35]

c. Republic Act No. 6938, as amended by Republic Act No. 9520 or the Philippine Cooperative Code of 2008, limits the conduct

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[34] 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)

[35] 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.[36]

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.[37]

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*,[38] 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

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36 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)

37 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 Accredit 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)

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

"without the need of securing another license from the BOC."[39] 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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[39] 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,[40] the practice of a profession is not a right but a privilege burdened by conditions.[41] 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.[42]

The only right expressly granted by the Customs Brokers Act and the Accountancy Act is the right to automatic registration of customs brokers[43] and CPAs,[44] 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.[45] 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.[46]

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

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40 Republic Act No. 8981 (2000), sec. 9(g), PRC Modernization Act of 2000.
41 *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].
42 *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).
43 Republic Act No. 9280 (2004), sec. 33, Customs Brokers Act of 2004.
44 Republic Act No. 9298 (2004), sec. 27, Philippine Accountancy Act of 2004.
45 *People v. Vera*, 65 Phil. 56, 112–113 (1937) [Per J. Laurel, En Banc].
46 *Santiago v. Commission on Elections*, 336 Phil. 848, 897–898 (1997) [Per J. Davide, Jr., *En Banc*].

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

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

See Dissent
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

Pls see Dissent
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

EN BANC

G.R. No. 246027 – SECURITIES AND EXCHANGE COMMISSION, Petitioner, **v. 1ACCOUNTANTS PARTY-LIST, INC., represented by its President, CHRISTIAN JAY D. LIM, CHRISTIAN JAY D. LIM in his capacity as CPA, FROILAN G. AMPIL, ALLAN M. BASARTE, VIRGILIO F. AGUNOD, and JONAS P. MASCARIÑAS,** Respondents.

Promulgated:

January 28, 2025

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DISSENTING OPINION

CAGUIOA, *J.*:

In this present second Motion for Reconsideration of petitioner Securities and Exchange Commission (SEC), the *ponencia* reconsiders its Decision[1] dated June 21, 2022 (main decision). The *ponencia* now declares as valid Rule 68, paragraph 3 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 8799 or the Securities Regulation Code (SRC), as amended, and SEC Memorandum Circular No. 13, s. 2009, thereby holding that the SEC is authorized to require the accreditation of Certified Public Accountants (CPAs) acting as external auditors of corporations issuing registered securities and possessing secondary licenses (otherwise referred to as covered entities).

With due respect, I disagree with this complete turnabout. I maintain my concurrence in the main decision and submit that Rule 68, paragraph 3 of the IRR of R.A. No. 8799, as amended, and SEC Memorandum Circular No. 13, s. 2009 are null and void.

The *ponencia* posits that under Section 5(n) of the SRC, 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, the express powers granted to it in order to achieve the objectives and purposes of the law. Section 72 also provides in part that the SEC 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 the SRC. The *ponencia* then reads these provisions together with Section 5(d) of the SRC, which provides the SEC with the power to regulate, investigate or supervise the activities of persons to ensure compliance.

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[1] *Securities and Exchange Commission v. 1Accountants Party-List Inc.*, 923 Phil. 590 (2022) [Per J. Rosario, *En Banc*].

The *ponencia* further cites R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCC) to support the above position. According to the *ponencia*, Section 179(p) of the RCC similarly grants the SEC the power to exercise such other powers provided by law or those which may be necessary or incidental to carrying out the powers expressly granted to it. As well, to promote corporate governance and protect minority investors, Section 179(d) of the RCC allegedly empowers the SEC to issue rules and regulations consistent with international best practices.

To be sure, the doctrine of necessary implication provides that what is implied in a statute is as much a part thereof as that which is expressed.[2] This is in recognition of the fact that no statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation and there may be so-called gaps in the law that develop as it is enforced.[3] The premise, therefore, is that there must be a gap or omission that justifies the operation of the doctrine to begin with. **In this case, however, *there is actually no gap or omission to speak of*, as in fact, the accreditation of individual CPAs, which includes external auditors of covered entities, is expressly vested by R.A. No. 9298 or the Philippine Accountancy Act of 2004 to the Professional Regulatory Board of Accountancy (BOA) and the Professional Regulation Commission of the Philippines (PRC).**[4] As likewise observed by the *ponencia*, the accreditation by the SEC is merely complementary or is just an additional layer of supervision and regulation to that of the BOA's in order to comply with the more stringent requirements demanded of regulated entities.[5]

The above laudable objectives of the SEC, notwithstanding, the SEC cannot validly claim to be vested with a supposed implied power to accredit external auditors of covered entities in light of the fact that the power to accredit CPAs resides in another agency. The ruling in *Gatchalian v. Urrutia*,[6] by analogy, is instructive. In ruling whether the power of the vice-mayor to appoint officials and employees of the *sangguniang panlungsod* carries with it the power to discipline the same officials and employees, the Court elaborated in this wise:

> Urrutia invokes the doctrine of implication in relation to Section 456(a)(2) of the Local Government Code of 1991, stating that the vice-

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2 *See Department of Environment and Natural Resources (DENR) v. United Planners Consultants, Inc. (UPCI)*, 754 Phil. 513, 530 (2015) [Per J. Perlas-Bernabe, First Division].

3 *Id.*

4 Republic Act No. 9298 (2004), sec. 31, provides:

> **SEC. 31.** ***Accreditation to Practice Public Accountancy.*** – Certified public accountants, firms and partnerships of certified public accountants, engaged in the practice of public accountancy, including partners and staff members thereof, shall register with the Commission and the Board, such registration to be renewed every three (3) years, *Provided*, That subject to the approval of the Commission, the Board shall promulgate rules and regulations for the implementation of registration requirements including the fees and penalties for violation thereof. (Emphasis in the original)

5 *Ponencia*, p. 8.

6 921 Phil. 97 (2022) [Per J. Hernando, Second Division].

> mayor's power to appoint officials and employees of the *sangguniang panlungsod* carries with it the power to discipline the same officials and employees, absent any contrary statutory provision. This doctrine was also used as basis by the CSC and CA for its rulings. Section 456(a)(2) reads:
>
> Section 456. *Powers, Duties and Compensation.*
>
> (a) The city vice-mayor shall:
>
> x x x x
>
> (2) Subject to civil service law, rules and regulations, appoint all officials and employees of the *sangguniang panlungsod*, except those whose manner of appointment is specifically provided in this Code;
>
> x x x x
>
> . . . .
>
> Second, *the Court highlights that there is an exception to the doctrine of implication expressed in the phrase "absent any contrary statutory provision." The power to remove is impliedly included in the power to appoint* ***except when such power to remove is expressly vested by law in an office or authority*** *other than the appointing power. In short, the general rule is that power to appoint carries with it the power to discipline.* ***The exception is when the power to discipline or to remove is expressly vested in another office or authority.*** The exception applies to the case at bar.
>
> There is a clear contrary statutory provision expressed in Section 8(b)(1)(jj) of RA 8526 or the Charter of Valenzuela City.[7] (Emphasis supplied, citations omitted).

The *ponencia* further points out, however, that the requirement that the financial statements of certain entities should be audited by SEC-accredited CPAs is justified, since the RCC allows the SEC to issue rules in relation to corporate reportorial requirements. According to the *ponencia*, while the general rule in Section 177 of the RCC is that the auditor of the annual financial statement of a corporation only needs to be an independent CPA, the addition of the phrase "[*e*]*xcept as otherwise provided in this Code or in the rules issued by the Commission*"[8] manifests the Legislature's intent to allow the SEC to formulate exceptions to such general rule, such as requiring the independent CPA to also be SEC-accredited.

Again, I respectfully beg to differ.

Section 177 of the RCC reads in part:

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7 *Id.* at 106–108.

8 Emphasis supplied.

> SEC. 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: *Provided*, That if the total assets or total liabilities of the corporation are less than Six hundred thousand pesos (P600,000.00), the financial statements shall be certified under oath by the corporation's treasurer or chief financial officer; and
>
> (b) A general information sheet. (Emphasis supplied)

Clearly, the phrase "[*e*]*xcept as otherwise provided in this Code or in the rules issued by the Commission*"[9] precedes and modifies the phrase "*every corporation, domestic or foreign, doing business in the Philippines shall submit to the Commission.*"[10] What it simply means, therefore, is that as a general rule, every corporation, whether domestic or foreign but doing business in the Philippines, is obliged to submit annual financial statements and a general information sheet to the SEC. However, as an exception, the RCC or the SEC may exempt a corporation from this submission requirement.

Quite tellingly, as the *ponencia* itself discusses,[11] the precursor bills of the RCC, House Bills Nos. 528 and 877, suggested that Section 177 be amended to include that the annual financial statements to be submitted by corporations be audited by an independent CPA who is accredited by the BOA and who possesses such other accreditation as the Commission may require. **This last phrase, however, was ostensibly not carried over or adopted in the final bill, House Bill No. 8374.**

Similarly, the Senate version, Senate Bill No. 1280, originally provided in its Committee Report version that the annual financial statements to be submitted by corporations be audited by an independent CPA accredited by the Commission.[12] **However, as with its counterpart before the House of Representatives the requirement of accreditation by the Commission was also left out in the final version of the bill.**[13]

Hence, what has been finally crafted in Section 177 of the RCC, as shown earlier, is only a requirement that the annual financial statements be audited by an independent CPA—**and nothing more.**

What is abundantly clear from the foregoing legislative history of Section 177 of the RCC is that the Legislature deliberately did not include an accreditation by the SEC as an additional requirement for an independent

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9 Republic Act No. 11232 (2019), sec. 177. (Emphasis supplied)
10 *Id.*
11 *Ponencia*, p. 11.
12 Senate Bill No. 1280 (2016), 17th Congress, 1st Session, sec. 66.
13 Senate Bill No. 1280 (2018), 17th Congress, 3rd Session, sec.178(1).

CPA who audits a corporation's annual financial statement. The Legislature contemplated it when it crafted the amendment of then Section 141 of the former Corporation Code. It could have facilely retained the draft of an additional requirement in Section 177 of the RCC, but it clearly did not do so. The only logical conclusion from this is that the Legislature did not intend to require independent CPAs to be SEC-accredited as well.

Given the language of Section 177 of RCC, therefore, it does not matter if there are current pieces of legislation governing the banking and insurance industries, cooperatives, and tax agents that allow various regulators to accredit external auditors.[14] The fact still remains that no piece of legislation allows the same at present, insofar as external auditors of covered entities are concerned. The Court cannot simply impute into the RCC and the SRC a requirement that the Legislature obviously chose not to incorporate.

Verily, Rule 68, paragraph 3 of the IRR of the SRC and SEC Memorandum Circular No. 13, s. 2009, which both require the accreditation by the SEC of CPAs acting as external auditors of covered entities, are null and void for being *ultra vires*. While the authority of the SEC to issue these assailed issuances to carry out the express legislative purpose of the SRC, or to effect its operation and enforcement is recognized,[15] it is imperative that the administrative issuances it issues must not subvert the SRC or be contrary to any other existing statutes.[16] Well-settled is the rule that the power of administrative agencies is confined to implementing the law or putting it into effect. It can neither extend the law and amend a legislative enactment, **nor even engraft additional non-contradictory requirements** not contemplated by the Legislature.[17] Thus, here, that Rule 68, paragraph 3 of the IRR of the SRC and SEC Memorandum Circular No. 13, s. 2009 are intended to aid the SEC in realizing its mandate only begs the question.[18] The purpose, no matter how commendable, should not detract from the fact that the assailed issuances have enlarged the provisions of the law it administers and enforces.[19] Simply put, the best intentions of the SEC in

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14 *Ponencia*, pp. 12–13.

15 *See Lokin, Jr. v. COMELEC*, 635 Phil. 372, 392 (2010) [Per J. Bersamin, *En Banc*].

16 *Id.*

17 *Id.* at 392, 394.

18 *See Genuino v. De Lima*, 829 Phil. 691, 728 (2018) [Per J. Reyes, Jr., *En Banc*], where the Court stated:

> The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted. Without a clear mandate of an existing law, an administrative issuance is *ultra vires*.
>
> Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.
>
> That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. (Citation omitted)

19 *Id.*

promulgating the assailed issuances cannot be denied, but this end will not justify the means.[20]

Moreover, I disagree with the *ponencia*'s new finding that *Airlift Asia Customs Brokerage, Inc. v. Court of Appeals*[21] (*Airlift Asia*) is not on all fours with the present case after all. In reversing its finding in the main decision and ruling that the case does not apply, the *ponencia* thus held:

> 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 "without the need of securing another license from the BOC." 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.
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> 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

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20 *Id.*

21 739 Phil. 718 (2014) [Per J. Brion, Second Division].

> customs brokers cannot be reasonably compared with SEC accreditation of external auditors.[22] (Citation omitted)

The first two arguments in the *ponencia* have been sufficiently addressed in the earlier discussion that Rule 68, paragraph 3 of the IRR of the SRC and SEC Memorandum Circular No. 13, s. 2009 are *ultra vires*, and the SEC cannot validly claim justification for issuing the same on the basis of the doctrine of necessary implication. The fact that R.A. No. 9298 or the Philippine Accountancy Act of 2004 does not expressly mirror the language of R.A. No. 9280 or the Customs Brokers Act of 2004, i.e., "without the need of securing another license from the BOC,"[23] does not negate the BOA's exclusive authority to accredit CPAs. To reiterate, R.A. No. 9298 expressly vests such authority to the BOA and neither the SRC nor the RCC similarly vests the same to the SEC. As shown earlier, as well, Congress could have included such authority when it amended the RCC in 2019, yet, it ultimately opted not to.

Additionally, the supposed express power of the SEC "to regulate and supervise the activities *of persons* to ensure compliance"[24] under Section 5(d) of the SRC does not necessarily, impliedly, or incidentally, include the power to regulate and supervise the activities of external auditors of covered entities. Following Associate Justice Amy C. Lazaro-Javier's (Justice Lazaro-Javier) accurate observation in her Concurring Opinion in the main decision, Section 5(d) must be read together with the other provisions of the SRC and the related relevant provisions of the RCC. The regulation and supervision of activities of persons adverted to in Section 5(d) should be interpreted to pertain to the regulation of certain activities of the "thinking heads or managers"[25] of corporations or similar bodies that are clearly under the jurisdiction of the SEC. The regulation and supervision of activities provided for in Section 5(d) cannot be interpreted to extend to just about any person and any activity, including CPAs and the practice of accountancy.

Furthermore, the Memorandum of Agreement (MOA) the SEC executed with the BOA, which allows the accreditation of the CPAs with the SEC, does not dispel the conflict between the authority of the BOA and the assailed issuances to accredit CPAs. The fact that the assailed issuances directly contravene R.A. No. 9298 and enlarge the provisions of the SRC should settle the validity of the subject MOA. In other words, the MOA cannot cure the defects of the assailed issuances. More importantly, as declared in the main decision more cogently:

> Petitioner further argues that it executed a MOA with the Board which allows for such accreditation with the SEC. However, We remind petitioner of another legal maxim, "*delegata potestas non potest delegari*"

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22 *Ponencia*, pp. 13–14.

23 *Id.*, *citing* Republic Act No. 9280 (2004), sec. 19.

24 *Id.* at 14. (Emphasis supplied)

25 J. Lazaro-Javier, Concurring Opinion in *Securities and Exchange Commission v. 1Accountants Party-List, Inc.*, *supra* note 1, at 612.

> or what has been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another:
>
> > x x x having **been reposed by law exclusively with the respondent Board**, it has no choice but to exercise the same as mandated by law, i.e., as a collegial body, and **not transfer it elsewhere or discharge said power through the intervening mind of another**. *Delegata potestas non potest delegari* — a delegated power cannot be delegated." . . .
>
> Moreover, a private agreement such as the MOA cannot operate to validate a transgression of a provision of law. Thus, the MOA is void and cannot serve as authorization for the petitioner to make the assailed issuances.[26] (Emphasis in the original, citations omitted)

Finally, it should be of no moment that the assailed issuances affect only a small number of CPAs. The reach of a law or administrative issuance is not determinative of the validity thereof. The fact remains that the assailed issuances here are null and void and have no place, therefore, in the annals of legislation and jurisprudence. Indeed, the right to practice a profession is only a privilege and a mere property right that holds the least weight in the scale of values. This does not mean, however, that the right does not deserve protection at all and must always give way to regulation easily. On this score, the Court's discussion in *Airlift Asia* is illuminating:

> We are unconvinced by the BOC Commissioner's claim that CAO 3-2006's accreditation requirement is not a form of license. A license is a "permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation." Since it is only by complying with CAO 3-2006 that a customs broker can practice his profession before the BOC, the accreditation takes the form of a licensing requirement proscribed by the law. It amounts to an additional burden on PRC-certified customs brokers and curtails their right to practice their profession. Under RA 9280, a successful examinee of the customs brokers examinations acquires a Certificate of Registration, which entitles him **to practice the profession as a customs broker *with all the benefits and privileges appurtenant thereto.***[27] (Emphasis in the original, citations omitted)

Here, the assailed issuances' accreditation requirement is also a form of license since it is only by complying with the same that CPAs can practice their profession as external auditors of corporations issuing registered securities and possessing secondary licenses. This imposes an additional burden on CPAs who are already certified, registered, and accredited by the BOA and the PRC, and curtails their right to practice as an external auditor of said covered entities, which, as aptly noted by Justice Lazaro-Javier, is part and parcel of the practice of accountancy.[28] As with

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26 *Securities and Exchange Commission v. 1Accountants Party-List, Inc.*, *supra* note 1, at 605.

27 *Airlift Asia Customs Brokerage, Inc. v. Court of Appeals*, *supra* note 21, at 730.

28 *See* J. Lazaro-Javier, Concurring Opinion in *Securities and Exchange Commission v. 1Accountants Party-List, Inc.*, *supra* note 1, at 611 .

Airlift Asia, as well, R.A. No. 9298 likewise provides that successful examinees of the licensure examinations for accountants acquire a Certificate of Registration, which entitles them to practice the profession with all the benefits and privileges appurtenant thereto.[29] For the practice of public accountancy, in particular, CPAs must also be a holder of a certificate of accreditation and R.A. No. 9298 expressly vests the authority to issue the same to the BOA and the PRC.[30]

In view of the foregoing, I maintain my vote to declare Rule 68, paragraph 3, of the IRR of R.A. No. 8799, as amended, and SEC Memorandum Circular No. 13, s. 2009 null and void.

For the ponente's consideration.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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29 Republic Act No. 9298 (2004), sec. 20, states:

> **SEC. 20.** ***Issuance of Certificates of Registration and Professional Identification Card.*** – A certificate of registration shall be issued to examinees who pass the licensure examination subject to payment of fees prescribed by the Commission. The Certificate of Registration shall bear the signature of the chairperson of the Commission and the chairman and members of the Board, stamped with the official seal of the Commission and of the Board, indicating that the person named therein is entitled to the practice of the profession with all the privileges appurtenant thereto. The said certificate shall remain in full force and effect until withdrawn, suspended or revoked in accordance with this Act. (Emphasis in the original)

30 Republic Act No. 9298 (2004), secs. 28, 31, *viz.*:

> **SEC. 28.** ***Limitation of the Practice of Public Accountancy.*** – Single practitioners and partnerships organized for the practice of public accountancy shall be registered certified public accountants in the Philippines; *Provided*, That from the effectivity of this Act, a certificate of accreditation shall be issued to certified public accountants in public practice only upon showing, in accordance with rules and regulations promulgated by the Board and approved by the Commission, that such registrant has acquired a minimum of three (3) years meaningful experience in any of the areas of public practice including taxation[.]
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> . . . .
>
> **SEC. 31.** ***Accreditation to Practice Public Accountancy.*** – Certified public accountants, firms and partnerships of certified public accountants engaged in the practice of public accountancy, including partners and staff members thereof, shall register with the Commission and the Board, such registration to be renewed every three (3) years, *Provided*, That subject to the approval of the Commission, the Board shall promulgate rules and regulations for the implementation of registration requirements including the fees and penalties for violation thereof. (Emphasis in the original)

EN BANC

G.R. No. 246027 – Securities and Exchange Commission v. 1Accountants Party-List Inc., rep. 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 F. Mascariñas.

Promulgated: January 28, 2025

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LAZARO-JAVIER *J.*

DISSENT

I respectfully differ from the ruling of the Majority, granting the second motion for reconsideration of the Securities and Exchange Commission (SEC).

I respectfully emphasize that granting a second motion for reconsideration, a prohibited pleading, should be within the parameters of Section 3, Rule 15 of A.M. No. 10-4-20-SC,[1] viz.:

> SEC. 3. *Second motion for reconsideration.* - The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *En Banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.[2]

In *Fortune Life Insurance v. COA*,[3] the Court ruled that a second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous but also patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the moving party.

For liberality could not be extended in second motion for reconsideration as a matter of course. Only matters of life, liberty, honor, or property may warrant the suspension of the rules of the most mandatory character. It is also true that other justifications may be considered, like: (1) the existence of special or

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1 A.M. No. 10-4-20-SC, The Internal Rules of The Supreme Court.
2 *Id.*
3 821 Phil. 159 (2017) [Per CJ Bersamin, *En Banc*].

compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory; and (5) the other party will not be unjustly prejudiced thereby.[4]

More so because the grounds relied upon are mere reiteration of the arguments in the petition or the first motion for reconsideration, albeit worded or expounded differently:

First Motion for Reconsideration	Second Motion for Reconsideration
1. Current legislations manifest the State policy that allows regulators of the financial sector to accredit external auditors; 2. The accreditation process is incidental to petitioner's mandate as the primary regulator of corporations; and 3. The MOA with PRBOA does not constitute an invalid delegation.	1. Petitioner's 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 as a whole. Current pieces of legislation manifest the State's policy of allowing regulators of the financial sector to accredit external auditors. 2. To facilitate the implementation of the legislative intent regarding the accreditation of external auditors in the financial sector, petitioner, the BSP, and the IC adopted a 3. "One- Stop Shop" that streamlined the accreditation process for said regulators. 4. The accreditation process of external auditors undertaken by financial sector regulators is different-but complementary-to the licensure process in the BOA. 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. 5. The assailed regulations only apply to 2.76% of registered corporations. Out of 621,804 registered corporations, only 17,173 are required to engage the services of SEC-accredited external auditors. Those who do not wish to apply for accreditation can still be

4 *Id. citing, Ginete v. Court of Appeals*, 357 Phil. 36 (1998) [Per J. Romero, Third Division].

	engaged by the remaining 97.24% of or 604,631 registered corporations, which belies the conclusion that the Assailed Regulations restrain CPAs from practicing their profession. 6. Petitioner accredits external auditors to promote public interests. There have been past instances where external auditors were complicit in schemes to defraud the public, such as the PDAF scam in 2013. 7. While the SRC and the Old Corporation Code were seemingly silent on petitioner's specific authority to accredit external auditors, a specific provision therefore 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. 8. In the conduct of the audit of the audited financial statements, external auditors are acting as petitioner's gatekeepers. It follows, therefore, that petitioner has the authority to supervise-which may include accreditation of-these external auditors.

These arguments have all been discussed in the main decision. Rule 68, paragraph 3 of the Implementing Rules and Regulations of the Securities Regulation Code and SEC MC No. 13-2009 were declared void as it they did not carry the SEC accreditation of Certified Public Accountants (CPAs) acting as external auditors of corporations issuing registered securities. It amounts to a license which curtails the right of CPAs to practice accountancy, as only the Professional Regulatory Board of Accountancy (PRBOA) has the power to supervise said profession. More, the Memorandum of Agreement (MOA) between the SEC and PRBOA which allows accreditation of CPAs is likewise void as delegated power cannot be further delegated.

Neither does Section 177 of the Revised Corporation Code on reportorial requirements for corporation (which the SEC did not even point out) tip the scale in favor of the SEC, viz.:

> SEC. 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**: Provided, That if the total assets or total liabilities of the corporation are less than Six hundred thousand pesos (P600,000.00), the financial statements shall be certified under oath by the corporation's treasurer or chief financial officer; and
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> . . .

Respectfully, the phrase "*or in the rules issued by the Commission*" cannot be interpreted as a source of SEC power enough to blanketly remove the power of supervision by the PRBOA reportorial requirements for the practice of accountancy. SEC must still point to a grant of jurisdiction to justify its requirement of accreditation. This phrase alone does not empower the SEC to regulate the practice of accountancy.

The SEC simply did not meet the threshold criteria to further relitigate these issues nor did it allege any compelling reason for the Court to allow the second motion for reconsideration in accordance with Section 3, Rule 15 of A.M. No. 10-4-20-SC.

Indeed, regulation of the practice of accountancy is statute-based. Congress creates or identifies the public office to which it delegates this power. The practice of accountancy is unlike the practice of law where the *Constitution* has textually committed to the Supreme Court the power of regulation. This case was thus resolved not by referring to the *Constitution*. Rather, the relevant starting points are the statutes that make more or less probably invalid the SEC's regulation of that specific practice of accountancy assailed by respondents.

Surely, the SEC cannot impose this accreditation requirement and impose penalties for non-compliance:

1. **It is contrary to the instructions of Congress.** Through Republic Act No. 9298, the *Philippine Accountancy Act of 2004*, Congress created and empowered PRBOA "[t]o supervise the registration, licensure and practice of accountancy in the Philippines." The performance of the duties of an external auditor of corporations issuing registered securities and possessing secondary licenses is part and parcel of the practice of accountancy under said law. Thus, PRBOA, as a result of its power to regulate the practice of accountancy, that is empowered to supervise, register and license those who can act as external auditors of all corporations including those issuing registered securities and possessing secondary licenses. Per Republic Act No. 9298, PRBOA is the gatekeeper for the supply of authorized external auditors.

2. **SEC is duplicating the powers of PRBOA.** The assailed SEC issuances requiring the added accreditation of CPAs, or those already

supervised, registered, and licensed by the PRBOA, before they could act as external auditors of the subject corporations are akin to supervising, registering, and licensing persons to exercise such duties, and by virtue of the definition of the practice of accountancy, are a form of regulating the practice of this facet of accountancy itself, thus, duplicating the powers of PRBOA. SEC can require accreditation only if empowered by Congress. Otherwise, the added accreditation by SEC is superfluous, and its regulation of this aspect of accountancy is usurpation of authority.

3. **What has been delegated cannot be further delegated.** True, Republic Act No. 9298 does not expressly vest exclusive regulatory power in the PRBOA over the practice of accountancy. But Republic Act No. 9298 does not have to. For what has once been delegated by Congress can no longer be further delegated by the original delegate to another – *potestas delegata non delegare potest*.[5] This legal doctrine is based upon the ethical principle that the delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of their own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.[6] This rule admits of recognized exceptions:

    a. Delegation of tariff powers to the President under Section 28(2) of Article VI of the *Constitution*;
    b. Delegation of emergency powers to the President under Section 23(2) of Article VI of the *Constitution*;
    c. Delegation to the people at large;
    d. Delegation to local governments; and,
    e. Delegation to administrative agencies of rule-making power.[7]

But none of these has been invoked, much less apply here.

The legal doctrine does not apply either where Congress itself authorized further delegation by PRBOA as expressed by or necessarily implied from the statute. Unfortunately, nothing in Republic Act No. 9298 gives such directive expressly or even by necessary implication. Verily, PRBOA is not authorized to delegate or share this power to or with others. More, the grant to PRBOA of the power to regulate the practice of accountancy is *deemed exclusive*.

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5 *United States v. Barrias*, 11 Phil 327 (1908) [Per J. Tracey].
6 *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 416 (2009) [Per J. Tinga, *En Banc*].
7 *Id.* at 417–418.

4. **SEC does not have an independent grant of power to regulate the practice of accountancy.** SEC must still point to a grant of jurisdiction to justify its requirement of accreditation. Since PRBOA cannot delegate the power to regulate the practice of accountancy, SEC must be able to show an *independent* grant of power, not one that PRBOA could have delegated, invalidly that is, to it. As observed, SEC failed to show such independent grant of power. Section 5(a) and Section 68 of the SRC and Section 141 of the CC do not empower the SEC over the practice of accountancy. The MOA is similarly inconsequential. Even if it were a party to this MOA with the SEC, BSP, Insurance Commission (IC), the PRBOA cannot delegate its power to regulate any or all of aspects of the practice of accountancy to any other government entity. *Potestas delegata non delegare potest.* Congress entrusted the mandate to PRBOA, which alone must discharge the trust.

In *Philippine Lawyer's Association v. Agrava*,[8] the Director of Patent Office (DPO) pursued a line of arguments similar to what SEC has echoed here.

In *Agrava*, the DPO issued a circular mandating lawyers, engineers and other persons with sufficient scientific and technical training to pre-qualify as patent attorneys by passing the examinations to be administered by the Patent Office. The DPO referred to Section 78 of Republic Act No. 165 as allowing him to promulgate rules and regulations for the conduct of all business in the Patent Office.

The Court nullified this circular. It ruled that the Patent Office must first have a precise, specific and express legislative authority to impose such pre-qualifying examination before requiring it from those wishing to practice before it, viz.:

> Respondent Director concludes that Section 78 of Republic Act No. 165 being similar to the provisions of law just reproduced, then he is authorized to prescribe the rules and regulations requiring that persons desiring to practice before him should submit to and pass an examination. We reproduce said Section 78, Republic Act No. 165, for purposes of comparison:
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> SEC. 78. Rules and regulations. - The Director subject to the approval of the Secretary of Justice, shall promulgate the necessary rules and regulations, not inconsistent with law, for the conduct of all business in the Patent Office.

Section 78 certainly and by far, is different from the provisions of the United States Patent Law as regards authority to hold examinations to determine the qualifications of those allowed to practice before the Patent Office. While the U.S. Patent Law authorizes the Commissioner of Patents to require attorneys to show that they possess the necessary qualifications

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[8] 105 Phil. 173 (1959) [Per J. Montemayor].

and competence to render valuable service to and advise and assist their clients in patent cases, which showing may take the form of a test or examination to be held by the Commissioner, our Patent Law, Section 78, is silent on this important point. **Our attention has not been called to any express provision of our Patent Law, giving such authority to determine the qualifications of persons allowed to practice before the Patent Office.**

> Section 551 of the Revised Administrative Code authorizes every chief of bureau to prescribe forms and make regulations or general orders not inconsistent with law, to secure the harmonious and efficient administration of his branch of the service and to carry into full effect the laws relating to matters within the jurisdiction of his bureau. Section 608 of Republic Act 1937, known as the Tariff and Customs Code of the Philippines, provides that the Commissioner of Customs shall, subject to the approval of the Department Head, makes all rules and regulations necessary to enforce the provisions of said code. Section 338 of the National Internal Revenue Code, Commonwealth Act No. 466 as amended, states that the Secretary of Finance, upon recommendation of the Collector of Internal Revenue, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of the code. **We understand that rules and regulations have been promulgated not only for the Bureau of Customs and Internal Revenue, but also for other bureaus of the Government, to govern the transaction of business in and to enforce the law for said bureaus.**
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> **Were we to allow the Patent Office, in the absence of an express and clear provision of law giving the necessary sanction, to require lawyers to submit to and pass on examination prescribed by it before they are allowed to practice before said Patent Office, then there would be no reason why other bureaus specially the Bureau of Internal Revenue and Customs,** where the business in the same area are more or less complicated, such as the presentation of books of accounts, balance sheets, etc., assessments exemptions, depreciation, these as regards the Bureau of Internal Revenue, and the classification of goods, imposition of customs duties, seizures, confiscation, etc., as regards the Bureau of Customs, **may not also require that any lawyer practising before them or otherwise transacting business with them on behalf of clients, shall first pass an examination to qualify**.
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> In conclusion, **we hold that under the present law, members of the Philippine Bar authorized by this Tribunal to practice law, and in good standing, may practice their profession before the Patent Office**, for the reason that much of the business in said office involves the interpretation and determination of the scope and application of the Patent Law and other laws applicable, as well as the presentation of evidence to establish facts involved; that part of the functions of the Patent director are judicial or quasi-judicial, so much so that appeals from his orders and decisions are, under the law, taken to the Supreme Court.[9] (Emphasis supplied)

In *Airlift Asia Customs Brokerage, Inc., et al. v. Court of Appeals*,[10] the Commissioner of Customs required the accreditation of customs brokers who intend to practice before the Bureau of Customs (BOC) through Customs Administrative Order (CAO) No. 3-2006.

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[9] *Id.*

[10] 739 Phil. 718 (2014) [Per J. Brion, Second Division].

In nullifying the CAO, the Court ruled that the CAO amounted to a licensing requirement that restricted the practice of profession of customs brokers, a role which Congress had given to the Professional Regulatory Board for Customs Brokers under Section 5, Republic Act No. 9280, the *Customs Brokers Act of 2004*. Further, the Court also favored the specific provisions of Republic Act No. 9280 over the general grant of power to the Customs Commissioner to enforce the provisions of the *Tariff and Customs Code of the Philippines*:

> Although we cannot deny that **the BOC Commissioner has the mandate to enforce tariff laws and prevent smuggling, these powers do not necessarily include the power to regulate and supervise the customs broker profession** through the issuance of CAO 3-2006.
>
> The **BOC Commissioner's power under Section 608 of the TCCP** is a **general grant of power to promulgate rules and regulations** necessary to enforce the provisions of the TCCP. Under the rules of statutory construction, **this general rule-making power gives way to the specific grant of power to promulgate rules and regulations on the practice of customs brokers profession** to the CSC Commissioner under Section 3409 of the TCCP. Indeed, in the exercise of this specific power, the Board of Examiners (of which the BOC Commissioner serves as ex-officio chairman) was to perform only a recommendatory role. With the repeal of Section 3409 of the TCCP by RA 9280, **this specific rule-making power was transferred to the PRBCB to complement its supervisory and regulatory powers over customs brokers.**[11]

In any event, the Majority posit that the PRBOA 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 in order to comply with the more stringent requirements demanded of regulated entities. The SEC by no means, removes or diminishes the PRBOA's power to supervise the registration, licensure and practice of accountancy as such auditors remain subject to the Board's power of supervision at all times and in any case.

With due respect, I disagree and reiterate that Congress has delegated the power to regulate the practice of accountancy exclusively to the Board of Accountancy. Besides, implied powers are those that can be inferred or are implicit in the wordings of the law or conferred by necessary or fair implication in the enabling act. When a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred by necessary implication. It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions.[12]

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[11] *Id.* at 727.

[12] *Hacienda Bautista, Inc. v. Presidential Agrarian Reform Council*, 686 Phil. 377 (2011) [Per J. Velasco, Jr., *En Banc*].

Necessarily, therefore, there must be first an express grant of power before implied power can be ascertained. Here, the avowed policy of Republic Act No. 9298 is to recognize the importance of accountants in nation-building and development and to foster their professional growth and development through regulatory measures, programs, and activities, viz:

> Section 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 though inviolable, honest, effective, and credible licensure examinations and though regulatory measures, programs and activities that foster their professional growth and development.

Further, the law has the following objectives:

> Section 3. Objectives. - This Act shall provide and govern:
>
> The standardization and regulation of accounting education;
> The examination of registration of certified public accountants; and
> **The supervision, control, and regulation of the practice of accountancy in the Philippines.** (Emphasis supplied)

Verily, the law is clearly intended to be the sole framework by which the practice of accounting shall be governed and regulated. Republic Act No. 9298 is intended to supervise, control, and regulate the practice of accountancy in the Philippines. The doctrine of *lex specialis* of the practice of accounting. The doctrine of *lex specialis derogat generali* is explained in *Department of Health v. Philip Morris Philippines Manufacturing, Inc.*,[13] the Court ordained:

> General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. **In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefore should prevail.**[14] (Emphasis supplied)

So must it be.

The Majority likewise point to the prevailing policies allowing the accreditation of external auditors, thus:

> a) Section 5817 of R.A. 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.

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[13] 757 Phil. 212 (2015) [Per J. Perlas-Benabe, First Division].
[14] *Id.*

b) Section 34718 of Presidential Decree No. 612, as amended by R.A. No. 10607 or the Insurance Code, requires supervised persons and entities to engage only the services of external auditors accredited by the Insurance Commissioner.

c) Article 8019 of R.A. No. 6938, as amended by R.A. No. 9520 or the Philippine Cooperative Code of 2008, limits the conduct of financial and social audit to those who are accredited by the Cooperative Development Authority.

d) Section 6(G)20 of R.A. 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.

Yet, as keenly noted by Justice Caguioa, these provisions expressly granted such powers to the regulatory bodies concerned. There is no similar identical provision in the Corporation Code or the Revised Corporation Code. Though accreditation of external auditors may be considered as a trend and aligns with international best practices, these powers still cannot be considered as impliedly given to the SEC. Just because the Bangko Sentral ng Pilipinas, the Insurance Commissioner, the Cooperative Development Authority, and the Commissioner of Internal Revenue were expressly given accreditation prerogatives does not automatically mean that the SEC should have such prerogative, too.

If the Court recognizes such accreditation prerogative by the SEC, the same would amount to judicial legislation. On this score, *Tanada v. Yulo*[15] teaches:

> Counsel in effect urges us to adopt a liberal construction of the statute. That in this instance, as in the past, we aim to do. But counsel in his memorandum concedes "that the language of the proviso in question is somewhat defective and does not clearly convey the legislative intent", and at the hearing in response to questions was finally forced to admit that what the Government desired was for the court to insert words and phrases in the law in order to supply an intention for the legislature. That we cannot do. **By liberal construction of statutes, courts from the language use, the subject matter, and the purposes of those framing them are able to find their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.**[16] (Emphasis supplied)

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15 G.R. No. L-43575 (1935) [Per J. Malcolm, *En Banc*],
16 *Id.*

In fine, the second motion for reconsideration should be denied not only for being a prohibited pleading but also for utter lack of merit.

AMY C. LAZARO-JAVIER