Republic of the Philippines
Supreme Court
Manila

EN BANC

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*	**G.R. No. 210314**
	Present:
- *versus* -	GESMUNDO, *C.J.,* PERLAS-BERNABE,* LEONEN, CAGUIOA, HERNANDO, CARANDANG,* LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M. V.,* GAERLAN, ROSARIO, LOPEZ, J. Y., and DIMAAMPAO, *JJ.*
THE COMMISSION ON AUDIT, *Respondent.*	Promulgated: October 12, 2021

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DECISION

HERNANDO, *J.*:

This Petition for *Certiorari*[1] assails the Decision No. 2012-154[2] dated September 27, 2012 and the Resolution No. 2013-214[3] dated December 3, 2013 rendered by the respondent Commission on Audit (COA).

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* On Official Leave.
1 *Rollo*, pp. 3-47.
2 Id. at 48-52.
3 Id. at 53-56.

Here, we resolve the question of whether the petitioner Bangko Sentral ng Pilipinas (BSP) is allowed to deduct any reserve from its net profits to be remitted to the government.

The BSP theorizes that it may, pursuant to Section 43 of Republic Act No. (RA) 7653,[4] otherwise known as the New Central Bank Act, to wit:

> SECTION 43. *Computation of Profits and Losses.* — Within the first thirty (30) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. **In the calculation of net profits, the *Bangko Sentral* shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.** (Emphasis supplied)

The COA, on the other hand, disagrees, citing Section 2(d) in relation to Section 3 of RA 7656, entitled *An Act Requiring Government-Owned Or - Controlled Corporations To Declare Dividends Under Certain Conditions To The National Government, And For Other Purposes*:[5]

> SECTION. 2. *Definition of Terms.* – As used in this Act, the term:
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> x x x x
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> (d) **"Net earnings"** shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, **but in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings.**
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> SECTION. 3. *Dividends.* – **All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or - controlled corporations whose profit distribution is provided by their respective charters or by special law,** but shall exclude those enumerated in Section 4 hereof: *Provided,* That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund. (Emphasis supplied)

While the case was pending before this Court, the Congress amended Section 43 of RA 7653[6] on February 14, 2019, *viz.*:

> SEC. 43. *Computation of Profits and Losses.* — Within the first sixty (60) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. **Notwithstanding any provision of law to the contrary, the net profit of the *Bangko Sentral* shall be determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and such allowances and provisions for contingencies or other purposes as the Monetary Board may determine**

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4 Approved on June 14, 1993.
5 Approved on November 9, 1998.
6 Republic Act No. 11211, Amending Republic Act No. 7653 (The New Central Bank Act).

in accordance with prudent financial management and effective central banking operations. (Emphasis supplied)

Antecedents:

On July 27, 2006, the COA's Office of the General Counsel — Legal and Adjudication Sector issued Opinion No. 2006-031,[7] stating that the proper basis for the BSP's dividend declaration is its net earnings **undiminished by any reserves for whatever purpose**, pursuant to Section 2(d) of RA 7656, and not Section 43 of RA 7653, which allows the BSP to deduct reserves from its net earnings.[8] According to the Office, Section 2(d) of RA 7656 repealed Section 43 of RA 7653.[9] Notably, Opinion No. 2006-031 was issued after the post-audit of the BSP's dividend payment for the year 2003 showed that the BSP incurred an understatement in dividends resulting from its deduction of reserves from its net earnings.[10]

Pursuant to Opinion No. 2006-031, the COA issued **Audit Observation Memorandum (AOM) No. RMS-2006-02**[11] stating that the BSP incurred an understatement of ₱2.101 billion in dividends paid to the government for the period of 2003 to 2005[12] due to the deduction from its net income of reserves for property insurance and rehabilitation of the Security Plant Complex.[13]

In its January 3, 2007 Letter,[14] the BSP disputed this AOM on the ground that RA 7656, a general law, cannot repeal RA 7653, a special law.[15]

In its July 3, 2007 Memorandum,[16] the COA maintained that Section 2(d) of RA 7656 impliedly repealed Section 43 of RA 7653.[17] It reasoned that although RA 7653 is the special law applicable to the BSP, the applicable law for the computation of net earnings to be remitted to the government is Section 2(d) of RA 7656 under the principle that a specific provision of a general statute prevails and repeals a general provision of a special law.[18] Pursuant to this memorandum, the COA issued another AOM, **FSAT-DP-AO-2007-02**,[19] which revised the total underpayment of dividends to the government to ₱7.147

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7 *Rollo*, p. 97-98.
8 Id.
9 Id. at 98.
10 Id. at 97.
11 Id. at 99-100.
12 Id. at 100.
13 Id. at 99.
14 Id. at 101.
15 Id.
16 Id. at 102-107.
17 Id. at 104-106.
18 Id. at 105.
19 Id. at 108-110.

billion.[20] This AOM extended the coverage of the prior AOM from 2003 to 2005, to 2006.[21]

The BSP sent two more letters[22] disagreeing with the COA, which were treated as an appeal.

On March 23, 2010, the COA rendered Decision No. 2010-042[23] holding that Section 2(d) of RA 7656 impliedly repealed Section 43 of RA 7653.[24] Citing *Bagatsing v. Ramirez*,[25] the COA ruled that while a special law generally prevails over a general law, in case of conflict between a general provision of a special law and a particular provision of a general law, the latter prevails.[26] On the basis of such legal finding, the COA directed the issuance of a Notice of Charge to enforce the collection of the understated dividends covered by the previous AOMs, *i.e.* for 2003 to 2006.[27]

The dispositive portion of Decision No. 2010-042 reads:

> **WHEREFORE**, foregoing premises considered, COA-OGC-LAS Opinion No. 2006-031 and OGC Memorandum dated July 27, 2006 and July 3, 2007, respectively, are hereby **AFFIRMED. Accordingly, the Supervising Auditor – BSP is hereby directed to issue the necessary Notice of Charge to enforce the collection of the understated dividend from the BSP.**[28] (Emphasis supplied)

Aggrieved, the BSP filed a motion for reconsideration, which was denied by the COA on January 25, 2011 through Resolution No. 2011-007.[29] In the said resolution, the COA recognized the settlement between the respective heads of the COA, the Department of Finance (DOF), and the BSP for the dividends covered by the period of 2003 to 2006, which pegged the amount of payable dividends at ₱9.312 billion.[30] However, aside from recognizing the settlement for 2003 to 2006, the COA also declared that for 2007 onwards, the BSP may not deduct reserves from its net earnings for 2007 onwards, in line with its ruling that there was an implied repeal of Section 43 of RA 7653:

> This Commission agrees only insofar as the unremitted amount stated in AOM Nos. RMS-2006-02 and FSAT-DP-AO-2007-02 are concerned, but not as to the bases of the findings stated therein. It is maintained that said AOMs and the assailed COA Decision No. 2010-042 shall stand.

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20 Id. at 109.
21 Id.
22 Id. at 111-118, 119-136.
23 Id. at 60-67.
24 Id. at 63-66.
25 165 Phil. 909, 915-916 (1976).
26 *Rollo*, pp. 64.
27 Id. at 66-67.
28 Id.
29 Id. at 68-82.
30 Id. at 80.

> **Thus, for subsequent years, that is, for the years 2007 onwards, the BSP must compute the net earnings for purposes of dividends to be remitted to the NG undiminished by any reserve for whatever purpose.** Additionally, only those allowed in Section 34, NIRC, shall be deducted from its gross income consistent with the view that R.A. No. 7653 was partly repealed by R.A. No. 7656.
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> **WHEREFORE**, in view of the foregoing considerations, this Commission hereby **AFFIRMS** Decision No. 2010-042 dated March 23, 2010. **Accordingly, no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG.** However, for the years 2003 to 2006, this Commission interposes no objection to the agreement between the BSP and the DOF, in the presence of the DBM Secretary and the Senate Chairman of the Committee on Finance, that the BSP shall remit the NG dividends in the amount of only ₱9.312 billion, subject to the submission of the duly signed Agreement of the parties concerned to form part of the record of the herein case.[31] (Emphasis supplied)

On January 27, 2011, the BSP, the COA and the DOF formally executed a Memorandum of Agreement[32] (MOA) reflecting their prior agreement to settle the amount of payable dividends for the period of 2003 to 2006.[33] Accordingly, the BSP remitted the amount of ₱9.312 billion to the government on January 31, 2011.[34] In the MOA, the parties also agreed to "diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and the account settlement[s] consistent with the above agreements between BSP and DOF and with due regard to the BSP's unique functions and responsibilities as central monetary authority of the country[.]"[35]

In its July 15, 2011 Letter,[36] the COA informed the BSP that Resolution No. 2011-007 already attained finality since the BSP no longer filed an appeal.[37] Hence, from 2007 onwards "no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the [National Government]."[38]

On September 27, 2012, the COA rendered the assailed Decision, upholding its previous rulings and disallowing any reserve to be deducted from the BSP's net earnings.[39] It held that since the ruling in Resolution No. 2011-007 that the BSP may not deduct reserves from its net earnings from 2007 onwards has already attained finality, it will be the "concrete precedent" for all future cases. The dispositive portion reads:

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31 Id at 80-81.
32 Id. at 139-140.
33 Id. at 139.
34 Id. at 143-144.
35 Id. at 140.
36 Id. at 141-142.
37 Id. at 141.
38 Id.
39 Id. at 48-52.

> **WHEREFORE**, the foregoing premises considered, this Commission reiterates its ruling in COA [Resolution] No. 2011-007 dated January 25, 2011. Accordingly, this Commission rules with **FINALITY** that no reserve for whatever purpose shall be deducted from the BSP's net earnings/income in the computation of dividends to be remitted to the NG. The Supervising Auditor, BSP, is hereby directed to ensure that the herein ruling is implemented by the BSP.[40]

The BSP moved for reconsideration, but the COA denied the motion on December 3, 2013 through the assailed Resolution, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing premises considered, this Commission finds no cogent reason to reverse or modify the assailed decision; hence the instant Motion for Reconsideration is hereby DENIED, and COA Decision No. 2012-154 dated September 27, 2012 is hereby **AFFIRMED WITH FINALITY.**[41]

Thus, this petition, where the BSP raises the following arguments: (1) that the MOA, which supposedly adopted the BSP's own computation of dividend declaration from 2007 onwards, superseded Decision No. 2010-042 and Resolution No. 2011-007;[42] (2) that the COA has no power to interpret provisions of law with finality;[43] (3) that the COA, with grave abuse of discretion, failed to consider the BSP's independence as the central monetary authority, and its nature as an administrative agency entrusted to enforce RA 7653, with primary authority to interpret its own charter, and with implied power to provide for allowances, reserves and restricted retained earnings;[44] (4) that Section 2(d) of RA 7656 did not impliedly repeal Sections 43 and 44 of RA 7653, and that RA 7653, being the special law, governs in the computation of dividends, and not RA 7653, a general law;[45] (5) that the COA's manner of computing dividends is inconsistent and vague since its ruling that the BSP may deduct reserves for bad or doubtful accounts **after** remittance of dividends to the government contradicts its implied repeal ruling;[46] and (6) that RA 7656 does not apply during the 25-year transitory period under Section 132 (b) of RA 7653.[47]

In its Comment,[48] the COA raises the following counter arguments: (1) that Decision No. 2010-042 and Resolution No. 2011-007 have attained finality and thus could no longer be assailed through a petition for *certiorari*;[49] (2) that

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[40] Id. at 51.
[41] Id. at 55.
[42] Id. at 11-14.
[43] Id. at 14-16.
[44] Id. at 16-30.
[45] Id. at 30-35.
[46] Id. at 36-38.
[47] Id. at 38-39.
[48] Id. at 231-251.
[49] Id. at 235.

the MOA did not supersede Decision No. 2010-042 and Resolution No. 2011-007 with respect to 2007 onwards since it only settled the computation of dividends for the period of 2003 to 2006;[50] (3) that in case of conflict between a general provision of a special law and a particular provision of a general law, the latter should prevail;[51] (4) that the BSP does not have the implied power to maintain as much reserve as may be necessary since it is prohibited by Section 2(d) of RA 7656;[52] and (5) that the COA's manner of computing dividends is not inconsistent and vague.[53]

In its Reply,[54] the BSP maintains that the COA's computation of dividends for the period of 2003 to 2006, not having been subject to judicial review, remains a mere advisory opinion and cannot be applied as controlling doctrine for succeeding years.[55]

Further, the BSP points out that the COA may not insist on making Decision No. 2010-042 a concrete precedent for future dividends without violating the undertaking of the parties in the MOA to "diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and the account settlement x x x[.]"[56]

Issue

Did the COA commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Decision and Resolution?

Our Ruling

The petition is meritorious.

The COA committed grave abuse of discretion when it held in the assailed Decision and Resolution that Resolution No. 2011-007, in its entirety, had already attained finality and is thus the concrete precedent for future dividend payments of the BSP.

I. The COA is empowered to rule on a question of law as part of its duty to audit and examine government entities. Nevertheless, the issue on implied

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50 Id. at 239.
51 Id. at 243.
52 Id. at 245-247.
53 Id. at 247-249.
54 Id. at 257-263.
55 Id. at 257-258.
56 Id. at 259.

repeal of Section 43 of RA 7653 is moot and academic.

A. The COA has the power to resolve questions of law in the exercise of its audit jurisdiction. However, its rulings do not create legal precedent nor preclude judicial review.

The COA argues that its ruling in Resolution No. 2011-007 was properly within its jurisdiction to make as it may resolve questions of law under its rules of procedure.[57] Since its ruling had already attained finality, it insists that such decision may no longer be modified.[58]

It is true that the COA is empowered to resolve questions of law. Its 2009 Revised Rules of Procedure states that the COA may resolve "novel, controversial, complicated or difficult questions of law relating to government accounting and auditing."[59] This is in line with its constitutional powers under Section 2, Article IX-D of the Constitution:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

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[57] Id. at 235-236.
[58] Id. at 236.
[59] COA's 2009 Revised Rules of Procedure, Rule II, Sec. 1 (d).

In *Oriondo v. Commission on Audit*[60] *(Oriondo),* the Court recognized the COA's competence to rule on a question of law as part of its duty to audit and examine government entities under the Constitution, the Administrative Code,[61] and the Government Auditing Code.[62] In that case, the Court held that the COA generally has audit jurisdiction over public entities,[63] and that the determination of whether an entity is the proper subject of its audit jurisdiction is a necessary part of the Commission's constitutional mandate to examine and audit the government as well as non-government entities that receive subsidies from it.[64] To insist otherwise, according to the Court, would impede the COA's exercise of its powers and functions.[65]

Here, the COA's determination of whether the BSP had an underdeclaration of dividends for the years 2003 to 2006 necessitated the resolution of a question of law, *i.e.* whether Section 2(d) of RA 7656 impliedly repealed Section 43 of RA 7653 (and is thus the proper basis for computation of the BSP's dividend declarations). Hence, as we ruled in *Oriondo*, the COA has the power and duty to rule on a question of law as a necessary part of its constitutional mandate to examine and audit government entities.

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60 G.R. No. 211293, June 4, 2019, 903 SCRA 71.

61 ADMINISTRATIVE CODE, Book V, Title I, Subtitle B, Chapter 4, Sec. 11 reads:
SECTION 11. General Jurisdiction. — (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

62 GOVERNMENT AUDITING CODE, Sec. 26 reads:
SECTION 26. General Jurisdiction. — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

63 *Oriondo v. Commission on Audit,* supra note 60 at 99, citing *Fernando v. Commission on Audit,* G.R. Nos. 237938 & 237944-45, December 4, 2018, 888 SCRA 200, 210-211.

64 Id.

65 Id.

However, the COA's power to resolve questions of law relating to government auditing and accounting is not without limitations. **First, the COA's rulings on questions of law may be the subject of judicial review by the courts.** Section 1, Article VIII of the Constitution states that "judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law." Such power belongs exclusively to courts as part of the separation of powers among the three branches of government.[66] Judicial power includes the duty of the courts to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,[67] of which the COA is undoubtedly a part.

To be sure, and as succinctly noted by my esteemed colleague, Senior Associate Justice Marvic Leonen, this Court's power to review judgments, orders and decisions of the COA may be invoked only if petitioner avails of the remedy provided by law—here, by filing a petition for *certiorari* within the 30-day reglementary period and in the manner provided under the relevant laws, regulations and Rules of Court.[68] If the proper remedy is not availed of and the ruling becomes final,[69] execution will issue as a matter of right.[70]

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[66] *Lopez v. Roxas*, 124 Phil. 162, 172-173 (1966).

[67] CONSTITUTION, Article VIII, Sec. 1.

[68] CONSTITUTION, Article IX-A, Sec. 7 reads:
SECTION 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.** (Emphasis supplied)
ADMINISTRATIVE CODE, Book II, Chapter 5, Sec. 28 reads:
SECTION 28. *Decisions by the Constitutional Commissions.*— Each Commission shall decide, by a majority vote of all its Members, any case or matter brought before it within sixty (60) days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof.** (Emphasis supplied)
COA's 2009 Revised Rules of Procedure, Rule XII, Sec. 1 reads:
SECTION 1. *Petition for Certiorari.* - **Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.**
When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency. (Emphasis supplied)
See also Rule 64 of the Rules of Civil Procedure.

[69] See COA's 2009 Revised Rules of Procedure, Rule X, Sec. 9, which reads:
SECTION 9. *Finality of Decisions or Resolutions.* - A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

[70] COA's 2009 Revised Rules of Procedure, Rule XIII, Sec. 1 reads:
SECTION 1. *Execution of Decision.* — Execution shall issue upon a decision that finally disposes of the case. **Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected.** (Emphasis supplied)

Further, findings of administrative agencies, especially one which is constitutionally-created, are generally accorded respect and finality, not only on the basis of the separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Thus, even assuming the proper remedy was timely availed of, the COA must have first acted with grave abuse of discretion amounting to lack or excess of jurisdiction before this Court may overturn its ruling.[71]

Nevertheless, it bears emphasis that COA decisions are generally subject to judicial review.

The second limitation on the COA's power to resolve questions of law is that its ruling thereon, even if already final, does not create binding legal precedent that will apply to future cases. The reason is that administrative decisions do not enjoy the same level of recognition as judicial decisions applying or interpreting the laws or the Constitution.[72] These decisions do not have a binding effect similar to *stare decisis*—the doctrine that enjoins adherence to judicial precedents. As we have said in a prior case:

> Article 8 of the Civil Code 26 recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same.[73] (Emphasis supplied, citations omitted)

In that case, we held that the interpretation of a law by the Commissioner of Internal Revenue through an administrative issuance is not conclusive and cannot preclude judicial review, especially when such interpretation is erroneous.[74] **Indeed, in our jurisdiction, only the decisions of the Supreme Court establish jurisprudence or doctrines that form a part of our legal system.**[75]

To recapitulate, while the COA has the power to resolve questions of law, its rulings generally do not preclude judicial review nor create legal precedent.

B. The ruling in Resolution No. 2011-007 as regards the understated dividends for the years 2003 to 2006 has attained finality. However, the ruling as

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71 *City of General Santos v. Commission on Audit*, 733 Phil. 687, 696-697 (2014).
72 *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 931 (1999).
73 Id.
74 Id.
75 *Insular Life Assurance Co., Ltd., Employees Association-NATU v. Insular Life Assurance Co., Ltd.*, 147 Phil. 194, 229 (1971), citing *Vda. de Miranda v. Imperial*, 77 Phil. 1066, 1073 (1947).

regards the dividends for 2007 onwards failed to attain the same finality because the ruling thereon is void.

The doctrine of finality or immutability of judgment provides that when a decision has attained finality, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact and law.[76] This applies not only to decisions of courts, but also to those of administrative bodies exercising quasi-judicial functions.[77] The doctrine is grounded on the public policy that at the risk of occasional errors, litigation should end at some definite date fixed by law.[78] However, it admits of exceptions: (1) the correction of clerical errors; (2) *nunc pro tunc* entries that cause no prejudice to any party; (3) **void judgments**; and (4) whenever circumstances transpire after the finality of the decision that render its execution unjust and inequitable.[79]

Here, it is undisputed that the BSP failed to avail the proper remedy to prevent Resolution No. 2011-007 from becoming final and executory. Thus, the ruling, in its entirety, would normally have attained finality. Indeed, Resolution No. 2011-007 did attain finality insofar as it concerned the ruling on the underdeclaration of the dividends for the years 2003 to 2006. If not for the MOA entered into by the DOF and the BSP which compromised on the amount that must be paid by the BSP for those years, the BSP would have been bound to follow Resolution No. 2011-007 insofar as it ruled on the dividends for the years 2003 to 2006.

However, the COA's ruling as to 2007 onwards did not attain finality because it is covered by the exception of "void judgments" under the doctrine of finality. The ruling as to 2007 onwards is void since the COA exceeded its jurisdiction in rendering judgment as to transactions which have not yet occurred.

To recall, prior to the issuance of Resolution No. 2011-007, the only actual dispute between the parties was the dividend payments for 2003 to 2006 as covered by the two AOMs. To resolve the dispute, the COA had to determine whether Section 2(d) of RA 7656 had repealed Section 43 of RA 7653. In Decision No. 2010-042, the COA held in the affirmative[80] and accordingly directed the issuance of a Notice of Charge to enforce the collection of the understated dividends covered by the two AOMs.[81]

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[76] *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66,* 659 Phil. 117, 123 (2011).

[77] *Argel v. Singson,* 757 Phil 228, 237 (2015), citing *Aguilar v. Court of Appeals,* 617 Phil. 543, 556-557 (2009).

[78] *Filipro, Inc. v. Permanent Savings & Loan Bank,* 534 Phil. 551, 560 (2006), citing *Ramos v. Combong Jr.,* 510 Phil. 277, 282 (2005).

[79] *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66,* supra note 76 at 123, citing *Villa v. Government Service Insurance System,* 619 Phil. 740, 750 (2009).

[80] *Rollo,* pp. 65-66.

[81] Id. at 67.

Aggrieved, the BSP filed a motion for reconsideration. In resolving such motion, however, the COA not only settled the issue of the dividend payments for the period of 2003 to 2006, but also ruled that for 2007 onwards, the BSP may not deduct reserves from its net earnings consistent with its ruling that there was an implied repeal.[82] It is thus in Resolution No. 2011-007 that the COA first made a determination as to the future dividend payments of the BSP—payments which have not yet been discussed nor disputed prior to the issuance of such resolution.

By ruling on future dividend payments or transactions which have yet to occur or which have not yet been submitted for review, the COA clearly acted in excess of its jurisdiction, making the ruling in such respect void.[83] A void judgment does not attain finality.[84] As noted by Justice Benjamin S. Caguioa, there can be no immutability of judgment as regards rulings on disputed audit observations on transactions which have not even occurred yet and were not part of the dispute between the COA Auditor/s and the BSP when Resolution No. 2011-07 was issued.

In fine, the COA not only committed grave abuse of discretion but acted in excess of its jurisdiction when it held that Resolution No. 2011-007, in its entirety, had become final and is thus the "concrete precedent" for all future dividend payments of the BSP. To stress, Resolution No. 2011-007 is null and void insofar the pronouncement as to 2007 onwards is concerned. Accordingly, the assailed Decision and Resolution are likewise void insofar as they reiterated the COA's sweeping pronouncement over future dividend payments.

C. The Court will resolve the case on the merits under the exceptions to the doctrine of mootness.

As astutely observed by my esteemed colleague, Justice Estela M. Perlas-Bernabe, the determination of whether Section 2(d) of RA 7656 repealed Section 43 of RA 7653 is already moot and academic considering that there is no longer an issue as to the dividend payments for 2003 to 2006, and considering further that there is no actual controversy as to the dividend payments for 2007 onwards. Nevertheless, because the issue is capable of

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[82] Id. at 80-81.

[83] Jurisdiction is the power and authority of the court to hear, try, and decide a case (*St. Mary's Academy of Caloocan City, Inc. v. Henares*, G.R. No. 230138, January 13, 2021, citing *Asia International Auctioneers v. Parayno*, 565 Phil. 255, 265 (2007)). To acquire jurisdiction over the issue, the issue must be raised in the pleadings (*Reyes v. Diaz*, 73 Phil. 484, 487 (1941)). A judgment rendered in excess of jurisdiction is a void judgment (*See Imperial v. Armes*, 804 Phil. 439, 459 (2017), citing *Guevarra v. Sandiganbayan*, 494 Phil 378, 388 (2005)). The actions of a court outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final (*Gonzales v. Solid Cement Corp.*, 697 Phil. 619, 630 (2012)).

[84] See *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66*, supra note 76, at 123, citing *Villa v. Government Service Insurance System*, 619 Phil. 740, 750 (2009) for the exceptions on the doctrine of finality.

repetition yet evading review, and for the guidance of the bench, the bar, and the public, we will proceed to make such determination.[85]

II. Section 2(d) in relation to Section 3 of RA 7656 did *not* repeal Section 43 of RA 7653.

When confronted with apparently conflicting statutes, the courts should endeavor to harmonize and reconcile them instead of declaring the outright invalidity of one against the other because they are equally the handiwork of the same legislature.[86] The legislature is presumed to know the existing laws on the subject and would express a repeal if one is intended.[87] Indeed, all doubts must be resolved against the implied repeal of a statute and every statute must be interpreted and harmonized with other laws to form a uniform system of jurisprudence:

> Well-settled is the rule that repeals of laws by implication are not favored, and that courts must generally assume their congruent application. **The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn.** The rule is expressed in the maxim, *interpretare et concordare leqibus est optimus interpretendi*, *i.e.*, **every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence**. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. **Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.**[88]

Thus, repeals by implication are not favored unless manifestly intended by Congress, or unless it is convincingly and unambiguously demonstrated that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist. [89]

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[85] See *Calida v. Trillanes IV*, G.R. No. 240873, September 3, 2019, citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 853 (2006), where the Court recognized the following exceptions to the mootness principle: "*first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, **when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public**; and *fourth*, **the case is capable of repetition yet evading review**." (Emphasis supplied, citations omitted).

[86] *Akbayan-Youth v. COMELEC*, 407 Phil. 618, 639 (2001), citing *Agpalo, Statutory Construction*, pp. 265-266, Fourth Edition, 1998 and *Gordon v. Veridaino II*, 249 Phil. 172 (1976).

[87] *Bank of Commerce v. Planters Development Bank*, 695 Phil. 627, 650 (2012), citing *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 440 Phil. 188, 199 (2002).

[88] *Gonzales III v. Office of the President of the Phils.*, 694 Phil. 52, 87 (2012), citing *Hagad v. Gozo-Dadole*, 321 Phil. 604, 613-614 (1995).

[89] *Bank of Commerce v. Planters Development Bank*, supra note 87, at 650, citing *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 440 Phil. 188, 199 (2002).

Repeal by implication takes place when (a) the **provisions in the two acts on the same subject matter are irreconcilably contradictory,** in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one, or (b) when the later act covers the whole subject of the earlier one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law.[90] As regards the first instance, no irreconcilable conflict could reasonably exist between two statutes if the statutes concerned do not cover the same subject matter in the first place.

As applied, to determine whether Section 2(d) of RA 7656 repealed Section 43 of RA 7653 or the BSP Charter, it is necessary to ascertain whether the BSP is within the coverage of RA 7656. In the event that the BSP is indeed outside the coverage of RA 7656, then there could be no irreconcilable conflict between the two provisions resulting in an implied repeal.

After a judicious examination of the applicable laws and jurisprudence, we find and so hold that the BSP is outside the coverage of RA 7656. Thus, Section 2(d) of RA 7656 did not repeal Section 43 of RA 7653.

A. The BSP is not covered by RA 7656 because it is not a government-owned or -controlled corporation as defined under Section 2(b) of RA 7656.

To recall, RA 7656 requires all government-owned or -controlled corporations (GOCCs) to remit at least 50% of their earnings to the national government, *viz*:

> SECTION 3. *Dividends*. — All **government-owned or -controlled corporations** shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: *Provided*, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund. (Emphasis supplied)

In turn, a GOCC is defined under Section 2(b) of RA 7656 as follows:

> (b) "Government-owned or controlled corporations" refers to corporations organized as a stock or non-stock corporation vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least fifty one percent (51%) of its capital stock. This term shall also include financial institutions, owned or controlled by the National

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[90] Id., at 650, citing *Mecano v. Commission on Audit*, 290-A Phil. 272, 280 (1992).

> Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges.

As observed from the wording of Section 2(b), and as confirmed by legislative records,[91] the definition of a GOCC in RA 7656 is a substantial reproduction of the definition found in the Administrative Code:

> (13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided,* That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.[92]

In the 2006 case of *Manila International Airport Authority v. Court of Appeals,*[93] the Court had the occasion to interpret and apply the foregoing definition in the Administrative Code when it was confronted with the question of whether Manila International Airport Authority (MIAA) is a GOCC and is thus not exempt from real estate tax.[94] In resolving the issue, the Court explained that a GOCC must be organized as a stock or non-stock corporation, as expressly stated in the definition.[95] It further explained that under the Corporation Code, to be classified as a stock corporation, an entity must have capital stock divided into shares and must be authorized to distribute dividends and allotments of surplus and profits to its stockholders.[96] On the other hand, to be classified as a non-stock corporation, it must have members and must not distribute any part of its income to said members.[97] Since MIAA is not

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91 Transcript of Session Proceedings (TSP), S. N. 1168, September 1, 1993, p. 18. When asked about the definition of GOCC during the interpellation, sponsor Senator Herrera responded, "we used the Administrative Code, Mr. President."

92 ADMINISTRATIVE CODE, Introductory Provisions, Sec. 2 (13).

93 *Manila International Airport Authority v. Court of Appeals,* 528 Phil. 181-309 (2006).

94 Id. at 209. *See MIAA v. City of Pasay,* 602 Phil. 160, 176-178 (2009), where the Court reaffirmed its determination that MIAA is not a GOCC.

95 Id. at 210.

96 Id. at 211. The Court used the definition of a stock corporation under Section 3 of Batas Pambansa Bilang 68 or the old Corporation Code, which partly states that "[c]orporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations." Section 3 of RA 11232 or the Revised Corporation Code (approved on February 20, 2019) substantially reproduces this definition, *viz*: "[st]ock corporations are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held."

97 Id. at 211-212. The Court relied on the definition of a non-stock corporation under Section 87 of the old Corporation Code, which partly states that "a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers," and its purposes under Section 88, which partly states that "[n]on-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof." The two provisions were substantially retained in Sections 86 and 87, respectively, of the Revised Corporation Code.

organized as a stock or non-stock corporation, the Court held that it is not a GOCC:

> There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is **not** a government-owned or controlled corporation. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:
>
> SEC. 2. *General Terms Defined.*— ...
>
> (13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation**, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: ....(Emphasis supplied)

A government-owned or controlled corporation must be "**organized as a stock or non-stock corporation.**" MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**. MIAA has no stockholders or voting shares. Section 10 of the MIAA Charter provides:

> SECTION 10. *Capital.*— The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of:
>
> (a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable[,] which may be contributed by the National Government or transferred by it from any of its agencies, the valuation of which shall be determined jointly with the Department of Budget and Management and the Commission on Audit on the date of such contribution or transfer after making due allowances for depreciation and other deductions taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties;
>
> (b) That the amount of P605 million as of December 31, 1986 representing about seventy [percent] (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E.O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act.

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

> Section 3 of the Corporation Code defines a stock corporation as one whose "**capital stock is divided into shares and ...authorized to distribute to the holders of such shares dividends ....**" MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.
>
> MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.
>
> Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.
>
> Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation.[98] x x x (Citations omitted)

Applying the parameters in *Manila International Airport Authority v. Court of Appeals,* the Court has since disqualified many entities from being classified as GOCCs, including the Philippine Fisheries Development Authority,[99] the Philippine Ports Authority,[100] the Government Service Insurance System,[101] the Philippine Reclamation Authority,[102] the Manila Economic & Cultural Office,[103] the Mactan-Cebu International Airport Authority,[104] the Bases Conversion and Development Authority,[105] the

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98 Id. at 209-212.

99 *Philippine Fisheries Development Authority v. Court of Appeals,* 555 Phil. 661, 667-669 (2007). See *Philippine Fisheries Development Authority v. Court of Appeals,* 560 Phil. 738, 748-750 (2007) and *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals,* 653 Phil. 328, 335-336 (2010).

100 *Spouses Curata v. Philippine Ports Authority,* 608 Phil. 9, 87 (2009).

101 *Government Service Insurance System v. City Treasurer of the City of Manila,* 623 Phil. 964, 978-979 (2009).

102 *Republic v. City of Parañaque,* 691 Phil. 476, 483-490 (2012).

103 *Funa v. Manila Economic & Cultural Office,* 726 Phil. 63, 88-98 (2014). The Court held that while the Manila Economic and Cultural Office was organized as a non-stock corporation, it is not a GOCC since it is not owned by the government.

104 *Mactan-Cebu International Airport Authority (MCIAA) v. City of Lapu-Lapu and Pacaldo,* 759 Phil. 296, 349-350 (2015).

105 *Bases Conversion and Development Authority v. Commissioner of Internal Revenue,* G.R. No. 205925, June 20, 2018.

Executive Committee of the Metro Manila Film Festival,[106] and the Light Rail Transit Authority.[107]

After applying the same parameters, we find that the BSP does not qualify as a GOCC as defined under the Administrative Code and RA 7656.

First, the BSP is not organized as a stock corporation. The capitalization of the BSP is provided under Section 2 of RA 7653, as amended by RA 11211:

> SEC. 2. *Creation of the Bangko Sentral.* — There is hereby established an independent central monetary authority, which shall be a body corporate known as the *Bangko Sentral ng Pilipinas*, hereafter referred to as the *Bangko Sentral*.
>
> "The capital of the *Bangko Sentral* shall be Two hundred billion pesos (P200,000,000,000), to be fully subscribed by the Government of the Republic of the Philippines, hereafter referred to as the Government: *Provided*, That the increase in capitalization shall be funded solely from the declared dividends of the *Bangko Sentral* in favor of the National Government. For this purpose, any and all declared dividends of the *Bangko Sentral* in favor of the National Government shall be deposited in a special account in the General Fund, and earmarked for the payment of *Bangko Sentral's* increase in capitalization. Such payment shall be released and disbursed immediately and shall continue until the increase in capitalization has been fully paid."[108]

Thus, while the BSP has capital under Section 2 of the BSP Charter, it does not have capital stock or share capital. Further, its capital is not divided into shares of stocks. There are no stockholders or voting shares. Hence, the BSP cannot be classified as a stock corporation.

Second, the BSP is not a non-stock corporation. It does not have members. Even assuming that the government may be considered as the sole member of the BSP, this will not make the BSP a non-stock corporation because the BSP Charter mandates it to remit 50% of its net profits to the National Treasury,[109] in conflict with the provision that non-stock corporations do not distribute any part of their income to their members.[110]

Further, unlike non-stock corporations which are "organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof,"[111] the BSP was

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[106] *Fernando v. Commission on Audit*, G.R. Nos. 237938 & 237944-45, December 4, 2018.
[107] *Light Rail Transit Authority v. Quezon City*, G.R. No. 221626, October 9, 2019.
[108] RA 7656, Sec. 2, as amended by RA 11211, Sec. 1.
[109] RA 7653, Sec. 44.
[110] RA 11232, Sec. 86 states that "a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers x x x."
[111] RA 11232, Sec. 87.

created to provide policy directions in the areas of money, banking, and credit.[112]

Neither can the BSP be considered a "financial institution owned or controlled by the National Government," which is expressly included in the definition of a GOCC in Section 2(b) of RA 7656.[113] In the Revised Implementing Rules and Regulations of RA 7656, said entity is defined as follows:

> f. "Financial Institutions Owned or Controlled by the National Government" refer to financial institutions or corporations in which the National Government directly or indirectly owns majority of the capital stock, and which are either: (1) registered with or directly supervised by the BSP; or are (2) collecting or transacting funds or contributions from the public and thereafter, placing them in financial instruments or assets such as deposits, loans, bonds and equity including, but not limited to, the Government Service Insurance System and the Social Security System.

First, while the BSP has capital that is fully subscribed by the government under Section 2 of its charter, it does not have capital stock. Second, it cannot be classified in either of the two categories mentioned above because (1) it supervises the institutions under the first category,[114] and (2) it does not collect funds or contributions from the public like the Government Service Insurance System and the Social Security System under the second category.[115]

In fine, following the definition of a GOCC under the law and in line with settled jurisprudence, the BSP does not qualify as a GOCC as defined under RA 7656. Incidentally, this was also the impression of the Court in *Manila International Airport Authority v. Court of Appeals*.[116]

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[112] CONSTITUTION, Art. XII, Sec. 20; RA 7653, Sec. 3 as amended by RA 11211, Sec. 2.

[113] The last sentence of Sec. 2(b) states:
This term shall also include financial institutions, owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges.

[114] RA 7653, as amended by RA 11211, Sec. 3, par. 1 states:
SECTION 3. *Responsibility and Primary Objective.* — The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. **It shall have supervision over the operations of banks and exercise such regulatory and examination powers as provided in this Act and other pertinent laws over the quasi-banking operations of non-bank financial institutions.** As may be determined by the Monetary Board, it shall likewise exercise regulatory and examination powers over money service businesses, credit granting businesses, and payment system operators. The Monetary Board is hereby empowered to authorize entities or persons to engage in money service businesses. (Emphasis supplied)

[115] It is settled in jurisprudence that the contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws (*Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 & 185941, January 21, 2020, citing *Alvarez v. Guingona, Jr.*, 322 Phil. 774, 786 (1996)). Here, we find no reason to reject or not to rely on the definition given by the Department of Finance through the implementing rules and regulations.

[116] *Manila International Airport Authority v. Court of Appeals*, supra note 93, at 213. The Court said:
Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and ***Bangko Sentral ng Pilipinas***. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock

B. The records of the Constitutional Commission and the legislative deliberations on RA 7653 reveal the intent to exclude the BSP from the general category of GOCCs.

The creation of a central monetary authority is mandated by the Constitution.[117] Under Section 20, Article XII thereof, the Congress shall establish an **independent** central monetary authority that shall provide policy direction in the areas of money, banking, and credit:

> SECTION 20. The Congress shall establish an **independent central monetary authority**, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.
>
> Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority. (Emphasis supplied)

Pursuant to this provision, the BSP was created under RA 7653. Section 1 of the BSP Charter reiterates the independence of the BSP, as well as its accountability,[118] in the discharge of its responsibilities concerning money, banking, and credit:

> SECTION 1. *Declaration of Policy.* — The State shall maintain a central monetary authority that shall function and operate as an **independent** and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy. (Emphasis supplied)

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corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities. (Emphasis supplied)

[117] CONSTITUTION, Art. XII, Sec. 20.

[118] During the deliberations, it was emphasized that while the BSP is independent, it is also an accountable body corporate. Thus, the Congress saw fit to institute mechanisms of checks and balances to ensure the BSP's accountability, among them the requirement that the appointment of the Governor of the BSP shall be subject to confirmation by the Commission on Appointments (IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 642, 648 (May 19, 1993); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 687 (May 24, 1993); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 746 (May 27, 1993); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 972 (June 4, 1993)).

Notably, the predecessor of the BSP, the Central Bank, did not enjoy the same independence. Unlike Section 20, Article XII of the 1987 Constitution, the text of Section 14, Article XV of the 1973 Constitution does not contain the word "independent."[119] Similarly, RA 265[120] or the Central Bank Charter does not contain the same qualification. A reading of the records of the Constitutional Commission and the congressional deliberations reveals that the grant of further independence to the BSP, and the express inclusion of "independence" in the Constitution and its charter, was in response to the political pressure and influence previously exerted by the government on the Central Bank, which led to disastrous economic consequences.[121] Thus, the framers intended the word "independent" to mean independence from the government, especially from the Executive department, in providing policy direction in the areas of money, banking, and credit,[122] *viz*:

> THE VICE-PRESIDENT: Let us have the last interpellator.
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> MR. MAAMBONG: Mr. Vice-President, I ask that Commissioner Natividad be recognized.
>
> THE VICE-PRESIDENT: Commissioner Natividad is recognized.
>
> MR. NATIVIDAD: Thank you.
>
> I refer to Section 10, page 4, which says:
>
> The Congress shall establish an independent central monetary authority, the majority of whose governing board shall come from the private sector, which shall provide policy direction in the areas of money, banking, and credit.
>
> If this is an independent major governmental activity, why do we want that it should have a majority coming from the private sector. If we do this, shall we not lose control of monetary and fiscal policies? The government may lose control of monetary and fiscal policies because we use the word "independent" and then say "majority of the members of the governing board shall come from the private sector." Is this not a formula for losing control of monetary and fiscal policies of the government?

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[119] SECTION 14. The Batasang Pambansa shall establish a central monetary authority which shall provide policy direction in the areas of money, banking, and credit. It shall have supervisory authority over the operations of banks and exercise such regulatory authority as may be provided by law over the operations of finance companies and other institutions performing similar functions. Until the Batasang Pambansa shall otherwise provide, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

[120] Approved on June 15, 1948.

[121] III RECORD NO. 055, CONSTITUTIONAL COMMISSION 268 (August 13, 1986); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 685 (May 24, 1993).

[122] III RECORD NO. 055, CONSTITUTIONAL COMMISSION 267 (August 13, 1986); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 645 (May 19, 1993); IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 688 (May 24, 1993); *see also* IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 942-943 (June 3, 1993).

> MR. VILLEGAS: **No, this is a formula intended to prevent what happened in the last regime when the fiscal authorities sided with the executive branch and were systematically in control of monetary policy. This can lead to disastrous consequences. When the fiscal and the monetary authorities of a specific economy are combined, then there can be a lot of irresponsibility. So, this word "independent" refers to the executive branch.**[123] (Emphasis supplied)
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> x x x x
>
> **Senator Maceda.** Would it be correct to say at this point in time, as a general statement, **the reason we are discussing this bill here today is that the Central Bank has allowed itself to be interfered with politically, has allowed itself to be run by the political leadership and that, certainly, its monetary policies were adopted not on the basis of long-term financial stability, but on the basis of political expediency or political considerations?**
>
> **Senator Roco.** There may have been instances, as being mentioned by the Gentleman, Mr. President. **So that is historically an accurate statement.**[124] (Emphasis supplied)
>
> x x x x
>
> **Senator Roco.** x x x
>
> Mr. President... **The Monetary Authority is expected to be independent of the President and the Congress in providing "policy directions in the areas of money, banking and credit."** Until otherwise provided, the present Central Bank shall perform these functions.
>
> Thus, Mr. President, when we read the full constitutional mandate, **Congress is mandated to leave the monetary policy to the new Central Monetary Authority or the Bangko Sentral**, as we call it in this bill, or to the old Central bank as it exists today.[125] (Emphasis supplied)

To ensure the independence of the BSP, Section 20, Article XII expressly requires the majority of the BSP's governing board to come from the private sector, and not from the government[126]—a requirement not found in the 1973 Constitution,[127] and which digresses from the composition of the past Central Bank.[128]

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[123] III RECORD NO. 055, CONSTITUTIONAL COMMISSION 268 (August 13, 1986).
[124] IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 685 (May 24, 1993).
[125] IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 645 (May 19, 1993).
[126] See IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 641-642 (May 19, 1993).
[127] CONSTITUTION, (1973), Article XV, Sec. 14 states:
SECTION 14. The Batasang Pambansa shall establish a central monetary authority which shall provide policy direction in the areas of money, banking, and credit. It shall have supervisory authority over the operations of banks and exercise such regulatory authority as may be provided by law over the operations of finance companies and other institutions performing similar functions. Until the Batasang Pambansa shall otherwise provide, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.
[128] See RA 265, Sec. 5, as amended by Executive Order No. 16 (May 9, 1986), Sec. 1, which reads:
SECTION 1. Section 5 of R.A. No. 265, as amended, is hereby further amended as follows:

Significantly, the independence of the BSP necessarily entailed its exclusion from the "general category of government-owned and controlled corporations"[129] which are under the control of the Executive department,[130] *viz:*

> MR. ZIALCITA. x x x
>
> Let me start by saying first of all, in terms of the format, the new Central Bank draft bill basically reproduces the old C.B. Charter and incorporates the amendments that were already done earlier in House Bill... I forgot the number, and that we would like to add. So, let me just go over these changes. And there are actually about twelve of them, but let me just highlight the more important ones.
>
> **First of all, there is a new section entitled, Declaration of Policy. This is intended to emphasize the independence of the Central Bank, and at the same time remove the Central Monetary Authority from the general category of government-owned and controlled corporations.**[131] (Emphasis supplied)
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> x x x x
>
> MR. FUA. I was asking this question – if the central monetary authority is to be independent, you will, of course, refer to the exclusiveness of its operations as far as money matters are concerned, banking system is concerned and credit system is concerned for the government. And all the other government agencies including the rules and regulations promulgated for the operations of some of its instrumentalities or corporations, if there are corporations under that department, would not apply to the central monetary authority? And that as a matter of fact, any other law passed by Congress

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"Sec. 5. *Composition of the Monetary Board.* — The powers and functions of the Central Bank shall be exercised by a Monetary Board, which shall be composed of seven members, as follows:
(a) The Governor, who shall be the Chairman of the Monetary Board. The Governor shall be appointed for a term of six years by the President of the Philippines. Whenever the Governor is unable to attend a meeting of the Board, the Senior Deputy Governor shall act as Chairman;
(b) The Minister of Finance. Whenever the Minister of Finance is unable to attend a meeting of the Board, he shall designate a deputy to attend as his alternate;
(c) The Director General of the National Economic and Development Authority. Whenever the Director General is unable to attend a meeting of the Board, he shall designate a deputy director general of the Authority to attend as his alternate;
(d) The Chairman of the Board of Investments. Whenever the Chairman of the Board of Investments is unable to attend a meeting of the Board, he shall designate a governor of the Board of Investments to attend as his alternate;
(e) The Minister of the Budget. Whenever the Minister of the Budget is unable to attend a meeting of the Board, he shall designate a deputy to attend as his alternate;
(f) In lieu of any officials named in sub-section (c) or (d) above, such head of any other financial or economic agency or department of the Government as the President of the Philippines may determine;
(g) Two part-time members from the private sector, to be appointed for terms of four years by the President: *Provided, however*, That the first member appointed under the provisions of this sub-section shall have terms of office of two and four years respectively.
In making appointments to the Monetary Board, the President of the Philippines shall base his selection on the integrity, experience and expertise of the appointee."

[129] Hearing of the Joint Committees on Banks & Economic Affairs, p. 10, October 8, 1992.

[130] IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 753 (May 27, 1993); Hearing of the Joint Committees on Banks & Economic Affairs, p. 10, October 8, 1992; TSP, H. N. 7037, March 2, 1993, pp. 115-117; see also TSP H. N. 7037, March 1, 1993, pp. 121-22.

[131] Hearing of the Joint Committees on Banks & Economic Affairs, p. 10, October 8, 1992.

relative to regulations and rules governing government corporations or governing agencies shall not apply to the central monetary authority simply because under this bill you want to create an independent and exclusive central monetary authority?

MR. JAVIER (E.) Well, Your Honor, here in the Declaration of Policy, it does not mean that the central monetary authority shall be above the law or it should no longer be accountable to any other agency. It can be accountable to Congress. It can be accountable to courts. **But, Your Honor, since the Constitution provides that we should establish an independent Central Monetary Authority, then we have to treat this as separate from other government-owned or controlled corporations which are now under the control of the Executive Department. That's the meaning of this provision, Your Honor. Now, most of these government-owned or controlled corporations are under the Office of the President or they are attached to departments and these departments are also under the Office of the President. That's the meaning of this provision, that the Central Monetary Authority or the Bangko Sentral ng Pilipinas will not be in the same manner or treated in the same manners as a government-owned or controlled corporation. Meaning, that it should not be under the Executive Department and it should not be interfered with by other government agencies.** But it does not mean that the Central Monetary Authority should be above the law. There is nothing in this bill which exempts the Central Monetary from the coverage of the law.[132] (Emphasis supplied)

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Senator Roco. The term "government-owned or controlled corporations," Mr. President, is defined under several laws. Therefore, they apply depending on which law the Gentleman is referring to.

In the view of the Committee – and this is my own preference, Mr. President – the Central Bank is not a normal government-owned or -controlled corporation, in the sense it is used in the Investments law, in the sense it is used in the MDC Charter. It is different, although, evidently speaking it is a public corporation in the Administrative Law, since it is a mandated Charter by the Constitution. **We might say, it is a semi-constitutional body, because we are required to create it. It is a corporation we are creating by special law. So, it is not quite the same as GOCCs or government-owned corporations.**

The studies indicate definitions. But if our intention is to be followed, Mr. President, we leave it to the courts later on to define the in-between. **As far as this Committee's intention was concerned, it was the intention to create *sui generis* in the Central Bank. It is owned by the government, but not quite government-owned or -controlled corporation as defined now by various law.**[133] (Emphasis supplied)

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[132] TSP, H. N. 7037, March 2, 1993, pp. 115-117.

[133] IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 753 (May 27, 1993).

Thus, the legislative intent has always been to set apart the BSP from the GOCCs under the control of the executive department.

Concededly, the reference in Section 1 of RA 7653[134] to the BSP as a "government-owned corporation" may be taken as basis for the BSP's inclusion in the GOCCs covered by RA 7656. This was alluded to by Justice Dante O. Tinga in his Dissenting Opinion in *Manila International Airport Authority v. Court of Appeals,* where he drew attention to the inconsistency between the wording of the provision ("government-owned corporation") and the majority's view that the BSP is not a GOCC.[135]

However, when Section 1 is read in its entirety, it is clear that the phrase "while being a government-owned corporation" merely recognizes the fact that the BSP is owned by the government, that its capital is fully subscribed by the latter. Indeed, the central point of Section 1 is to express the State policy to maintain an independent and accountable central monetary authority—not to provide for the BSP's legal status—hence the title, "Declaration of Policy." As stated in the legislative records, **the BSP "is owned by the government, but not quite government-owned or -controlled corporation as defined now by various law."**[136]

C. The subsequent legislations support the conclusion that the BSP is not a GOCC within the purview of RA 7656.

After RA 7656 was promulgated in 1993, two relevant laws have since been passed.

First, RA 10149 or the GOCC Governance Act of 2011.[137] This law created the Governance Commission for GOCCs—the central advisory, monitoring, and oversight body with authority to regulate GOCCs.[138] The law was enacted in recognition of the potential of GOCCs to serve as significant tools for economic development, and pursuant to the State policy to actively exercise its ownership rights in GOCCs and to promote growth:

> SECTION 2. *Declaration of Policy.* — The State recognizes the potential of government-owned or -controlled corporations (GOCCs) as significant tools for economic development. It is thus the policy of the State

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[134] SECTION 1. *Declaration of Policy.* — The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a **government-owned corporation**, shall enjoy fiscal and administrative autonomy. (Emphasis supplied)

[135] Dissenting Opinion, Justice Dante O. Tinga, *Manila International Airport Authority v. Court of Appeals,* supra note 93, at 306-308.

[136] IV RECORD, SENATE 9TH CONGRESS 1ST SESSION 753 (May 27, 1993). Emphasis supplied.

[137] Approved on June 6, 2011.

[138] RA 10149, Sec. 5.

> to actively exercise its ownership rights in GOCCs and to promote growth by ensuring that operations are consistent with national development policies and programs.

Significantly, the GOCC Governance Act expressly excludes the BSP in its coverage.[139] This exclusion strengthens the view that the BSP was meant to be set apart and not classified together with GOCCs.

Second, RA 11211 was enacted in 2019 and amended several provisions of RA 7653. Notably, among those amended was Section 43, which reiterated the BSP's power to maintain reserves:

> SEC. 43. *Computation of Profits and Losses.* — Within the first sixty (60) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. **Notwithstanding any provision of law to the contrary, the net profit of the *Bangko Sentral* shall be determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations.** (Emphasis supplied)

To us, this amendment to RA 7653 confirms the intent of Congress to allow the BSP to maintain reserves in its operations.

In fine, there is no implied repeal in this case because in the first place, the BSP is not covered by the application of RA 7656. The BSP is not a GOCC as defined under RA 7656 and the Administrative Code, and as gathered from the legislative intent of the Constitutional Commission and Congress. Thus, it is the BSP Charter, and not RA 7656 (which applies only to GOCCs), that governs the computation of the BSP's net earnings.

WHEREFORE, the Petition is **PARTLY GRANTED**. The Decision No. 2012-154 dated September 27, 2012 and Resolution No. 2013-214 dated December 3, 2013 are hereby **SET ASIDE** for being rendered by the Commission on Audit with grave abuse of discretion amounting to lack or excess of jurisdiction. Further, the ruling in Resolution No. 2011-007 that "no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the National Government" is declared **VOID**. No pronouncement as to costs.

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[139] RA 10149, Sec. 4 states:
SECTION 4. *Coverage.* — This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, **but excluding the Bangko Sentral ng Pilipinas**, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

On official leave
Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

with separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

Please see concurring opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On Official Leave
ROSMARI D. CARANDANG
Associate Justice

with separate concurring opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

With Separate Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

On Official Leave
MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision 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. 210314 – BANGKO SENTRAL NG PILIPINAS, *Petitioner*, ***v.*** **THE COMMISSION ON AUDIT,** *Respondent.*

Promulgated:

October 12, 2021

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

This case originated from the issuance of Opinion No. 2006-031[1] dated July 27, 2006 and Memorandum[2] dated July 3, 2007 by the Commission on Audit (COA), both opining that "the [Bangko Sentral ng Pilipinas (BSP)] is covered by the provisions of [Republic Act No. (RA)] **7656** [(entitled "An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends Under Certain Conditions to the National Government, and for Other Purposes")] notwithstanding [Section 43 of] the BSP's own charter,"[3] *i.e.*, **RA 7653**,[4] and thus, "the proper basis for [its] dividend declaration shall be its net earnings **undiminished by any reserves** for whatever purpose."[5]

For reference, Section 43 of the BSP Charter provides that "**[i]n the calculation of net profits, [BSP] shall make adequate allowance or establish adequate reserves for bad and doubtful accounts**:"

> Section 43. *Computation of Profits and Losses.* – Within the first thirty (30) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. **In the calculation of net profits, the *Bangko Sentral* shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.** (Emphasis supplied)

In contrast, Section 2 (d) of RA 7656 provides for a definition of "net earnings," which states that "**in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings**," *viz.*:

> SEC. 2. *Definition of Terms.* – As used in this Act, the term:
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> x x x x

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1 *Rollo*, pp. 97-98.
2 Id. at 102-107.
3 Id. at 97.
4 Entitled "THE NEW CENTRAL BANK ACT," approved on June 14, 1993.
5 Id. at 97 and 102. See also COA Resolution No. 2011-007; id. at. 68-69.

> (d) "Net earnings" shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, **but <u>in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings</u>**. (Emphasis supplied)

In relation to the foregoing, Section 3 of RA 7656 provides that "[a]ll government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government;" this rule "shall also apply to **those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law**," *viz.*:

> SEC. 3. *Dividends.* – **All government-owned or -controlled corporations** shall declare and remit at least fifty percent (50%) of their annual **net earnings** as cash, stock or property dividends to the National Government. This section shall also **apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law**, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund. (Emphasis supplied)

The above-stated COA opinions then became the basis for the COA's issuance of Audit Observation Memoranda (AOM) Nos. RMS-2006-02[6] dated November 16, 2006 and FSAT-DP-AO-2007-02[7] dated March 27, 2008 (subject AOMs) against BSP. As shown by the records, the subject AOMs only pertain to the **total underpayment of dividends paid to the [National Government (NG)] from <u>2003 to 2006</u> in the aggregate amount of ₱7.147 billion.**[8]

In response to the subject AOMs, BSP wrote letters to the COA assailing their contents. In particular, in a letter dated May 9, 2008, BSP asserted the primacy of its charter (*i.e.*, RA 7653) over RA 7656, arguing that a general law cannot repeal a special law and as such, it is allowed to make reserves in the calculation of its net profits. Consequently, it requested that the subject AOMs be reversed and set aside.[9]

In Decision No. 2010-42[10] dated March 23, 2010, the COA **affirmed** the findings of the originally issued Opinion No. 2006-031 dated July 27, 2006 and Memorandum dated July 3, 2007, and by extension – the subject AOMs. Holding that a particular provision of a general law prevails over a

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6 Id. at 99-100.
7 Id. at 108-110.
8 See id. at 69.
9 See id.
10 Id. at 60-67. Signed by Chairman Reynaldo A. Villar with Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

general provision of a special law, it ruled that Section 43 of the BSP Charter was **impliedly repealed** by Section 2 (d) in relation to Section 3 of RA 7656. Accordingly, the COA directed **the issuance of a Notice of Charge to enforce the collection of the understated dividends from BSP.**[11]

Aggrieved, BSP moved for reconsideration of the COA Decision.

In **Resolution No. 2011-007**[12] **dated January 25, 2011**, the COA **maintained** its earlier opinion on implied repeal. However, in response to the controversy as to the proper amount of **the unpaid dividends for the period 2003 to 2006**, the COA recognized the **supervening compromise agreement** entered into between the respective heads of the COA, the Department of Finance (on behalf of the NG), the Department of Budget and Management, and the Senate Committee on Finance, on the one hand, and BSP, on the other, covering the unpaid dividends for said period, *viz.*:

> Finally, BSP Governor [Amando M. Tetangco, Jr.], in his letter dated August 24, 2010, claims that the issues concerning the computation of dividends due the NG had been the subject of a discussion on August 23, 2010 among himself as BSP Governor, Chairman Reynaldo A. Villar of this Commission, Senator Franklin Drilon as Chairman of the Senate Committee on Finance, Secretary Cesar V. Purisima of the Department of Finance (DOF) and Secretary Florencio Abad of the Department of Budget and Management (DBM). x x x
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> x x x x
>
> At any rate, in view of the agreement between the creditor-agency (DOF) representing the NG and the debtor-agency (BSP), this **Commission is inclined to consider the amount of P9.312 billion as the amount resulting from the compromise over the unpaid dividends due the NG for the years 2003 to 2006**. x x x
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> x x x x
>
> x x x By virtue of this power, the amount of P9.312 billion that BSP acknowledges to be still accruing to the NG and which it intends to remit thereto, and which the DOF accepts as its receivable from the BSP, is deemed by this Commission to be the adjusted amount for settlement subsisting between the agencies.
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> x x x x[13] (Emphasis and underscoring supplied)

Hence, the COA deemed the compromise agreement as the **final closure** to the issue regarding the unremitted amounts covered by the subject AOMs, as well as the assailed Decision No. 2010-42:

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11 Id. at 66-67.
12 Id. at 68-82.
13 Id. at 71-80.

> 4. The concurrence of this Commission in the foregoing will put a **final closure** to AOM Nos. RMS-2006-02 dated November 16, 2006 and FSAT-DP-AO-2007-02 dated March 27, 2008 and the assailed COA Decision No. 2010-042 dated March 23, 2010.[14] (Emphasis and underscoring supplied)

This notwithstanding, it appears from the very same Resolution No. 2011-007 dated January 25, 2011 that the **COA went a step further and extended the underlying basis of the subject AOMs and the assailed Decision No. 2010-42, *i.e.*, the implied repeal of the BSP Charter, to the years 2007 and onwards**, *viz.*:

> **This Commission agrees only insofar as the unremitted amount stated in AOM Nos. RMS-2006-02 and FSAT-DP-AO-2007-02 are concerned, but not as to the bases of the findings stated therein.** It is maintained that said AOMs and the assailed COA Decision No. 2010-042 shall stand.
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> Thus, for subsequent years, that is, **for the years 2007 onwards, the BSP must compute the net earnings for purposes of dividends to be remitted to the NG undiminished by any reserve for whatever purpose**.
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> x x x x
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> WHEREFORE, in view of the foregoing considerations, this Commission hereby AFFIRMS **Decision No. 2010-042 dated March 23, 2010**. ***Accordingly, no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG*. However, for the years 2003 to 2006, this commission interposes no objection to the agreement between the BSP and the DOF, in the presence of the DBM Secretary and the Senate Chairman of the Committee on Finance, that the BSP shall remit the NG dividends in the amount of only ₱9.312 billion, subject to the submission of the duly signed Agreement of the parties concerned to form part of the record of the herein case.**[15] (Emphases and underscoring supplied)

As BSP failed to avail of its proper remedies to question COA Resolution No. 2011-007 dated January 25, 2011 (e.g., by invoking the Court's jurisdiction) – *particularly with regard to the broad and sweeping pronouncement concerning the years 2007 and onwards* – the same was considered as **final and executory** by the COA; this was declared by the COA in the herein assailed rulings, *i.e.*, Decision No. 2012-154[16] dated September 27, 2012 and Decision No. 2013-214[17] dated December 3, 2013, which were issued in response to a new set of recourses (*i.e.*, appeal and motion for reconsideration) filed by BSP questioning COA Resolution No. 2011-007

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14 Id. at 80.

15 Id. at 80-81.

16 Id. at 48-52. Signed by Chairperson Ma. Gracia M. Pulido Tan with Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

17 Id. at 53-56. Signed by Chairperson Ma. Gracia M. Pulido Tan with Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

dated January 25, 2011. According to the COA, it had already **conclusively settled the issue on the computation of dividends that BSP should remit to the national government for the years 2007 and onwards, which ruling should be treated as concrete basis for future dividends**, *viz.*:

Decision No. 2012-154 dated September 27, 2012

> The issue to be resolved is whether or not COA Decision No. 2011-007 became final and executory as regards dividends for the years 2007 and onwards that BSP should remit to the NG.
>
> x x x x
>
> **An analysis of the afore-quoted COA Decision shows that it has conclusively settled the issue on the computation of the dividends that the BSP should remit to the NG, which is that based on Section 2(d) of R.A. No. 7656. On the other hand, the MOA merely states that the amount of dividends the BSP may actually remit to the NG for the years 2007 and onwards may still be subject to negotiation and compromise.**
>
> x x x **It must be stressed that the MOA merely allows the parties to come up with mutually acceptable compromise in the future and, therefore, it does not serve as a legal straight jacket permanently tying the hands of COA.**
>
> **Hence, contrary to the BSP General Counsel's assertion, the COA ruling that "no reserve for whatever purpose shall be allowed to be deducted from the BSP's net earnings/income in the computation of dividends to be remitted to the NG" is the concrete precedent for future dividends since it has statutory basis.**[18] (Emphases and underscoring supplied)

Decision No. 2013-214 dated December 3, 2013

> BSP prays that this Commission set aside COA Decision No. 2012-154 and declare that the manner of computing the BSP's dividends to the national Government for Calendar Year 2007 and onward has not been settled conclusively.
>
> x x x x
>
> In the MOA, on the other hand, this Commission interposed no objection to the agreement between the BSP and the DOF that the former shall remit to the National Government dividends in the amount of only P9.312 billion for the years 2003 to 2006. **But the same does not preclude the COA from exercise its authority from years 2007 and onwards.** x x x[19] (Emphasis supplied)

However, as will be explained below, the COA's pronouncements are patently erroneous. Hence, the assailed rulings were correctly set aside on *certiorari*.

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[18] Id. at 49-51.

[19] Id. at 54-56.

The COA cannot establish binding precedent even if its rulings have attained finality.

At the onset, it bears emphasizing that only the Court, as the final arbiter of laws, can establish judicial doctrine. Article 8 of the Civil Code states:

> Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

Thus, decisions of the COA which involve the resolution of legal questions do not carry the same import as that of a judicial decision when it comes to precedent setting – ***even if they have attained finality.*** Therefore, although the COA declared with finality in Resolution No. 2011-007 that "[a]ccordingly, x x x no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG[,]"[20] the same cannot be deemed binding precedent in future cases. Indeed, in this jurisdiction, it is well-settled that only the Supreme Court can establish binding precedent through judicial decisions which carry the controlling interpretation of the law of the land.

COA Resolution No. 2011-007 should only be deemed final with respect to the amounts covered by the subject AOMs and COA Decision No. 2010-42, i.e., BSP's unremitted dividends for the years 2003 to 2006 in the amount of ₱9.312 billion only – and not for the years 2007 and onwards.

As earlier intimated, the COA committed a patent error by ruling, in its Resolution No. 2011-007, on the matter of BSP's dividends for the years 2007 and onwards.

To expound, in judicial proceedings, elementary is the rule that "courts of justice have no jurisdiction or power to decide a question not in issue."[21] As such, "a judgment must conform to and be supported by both the pleadings and the evidence, and that it be in accordance with the theory of the action on which the pleadings were framed and the [issues upon which the] case was

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20. Id. at 51.
21. See *Orinday v. Delos Santos*, G.R. No. 247807, December 7, 2020, citing *Pe v. Intermediate Appellate Court*, 272-A Phil. 94, 102 (1991).

tried."[22] On this score, case law holds that "the jurisdiction of a court or quasi-judicial or administrative organ is determined by the issues raised by the parties[.]"[23] Thus, a quasi-judicial tribunal should exercise the authority conferred to it by law within the proper confines of the issues of a given case.

To recount, the controversy in this case originated from the issuance by the COA of Opinion No. 2006-031 dated July 27, 2006 and Memorandum dated July 3, 2007, as well as the subject AOMs. Based on the records, it is not disputed that **all of these issuances relate to BSP's unremitted dividends for the years 2003 to 2006**. In fact, COA Resolution No. 2011-007 itself states that the compromise agreement entered into between the NG and BSP concerning the years 2003 to 2006 was already a "final closure" of the subject AOMs, *viz.*:

> By virtue of this power, the amount of P9.312 billion that BSP acknowledges to be still accruing to the NG and which it intends to remit thereto, and which the DOF accepts as its receivable from the BSP, is deemed by this Commission to be the adjusted amount for settlement subsisting between the agencies.
>
> 4. The concurrence of this Commission in the foregoing will put a **final closure** to **AOM Nos. RMS-2006-02 dated November 16, 2006 and FSAT-DP-AO-2007-02 dated March 27, 2008 and the assailed COA Decision No. 2010-042** dated March 23, 2010.[24] (Emphasis and underscoring supplied)

It therefore appears that the **only issue raised before the COA by BSP was the unremitted dividends for the years 2003 to 2006.** Hence, the COA exceeded its jurisdiction in pronouncing judgment over the unremitted dividends for the years 2007 and onwards as the same was not put at issue before it. As a result, COA Resolution No. 2011-007 should be deemed null and void insofar as the latter pronouncement is concerned. Being partly void, the finality doctrine does not bar BSP from assailing the same before the Court. As recognized by jurisprudence, "a void judgment never acquires finality."[25]

Moreover, the COA exceeded its jurisdiction by making a broad and categorical ruling over future transactions which have not even occurred. On this score, I echo the observations of Associate Justice Alfredo Benjamin S. Caguioa, to wit:

> ***However,*** there can be no immutability of judgment as regards rulings on disputed audit observations on transactions **which have *not* even occurred yet and were *not* part of the dispute between the COA Auditor/s and the BSP when Resolution No. 2011-07 was issued.** To be clear, COA had not issued any AOM declaring understatements of dividends for the years

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22 See id., citing *Bank of the Philippine Islands v. ALS Management and Development Corporation*, 471 Phil. 544, 563 (2004).

23 *Associated Labor Union v. Judge Borromeo*, 135 Phil. 122, 135 (1968).

24 *Rollo*, p. 80.

25 *Reforzado v. Spouses Lopez*, 627 Phil. 294, 300 (2010).

> 2007 onwards; consequently, BSP could not have raised any defenses against the application of Resolution No. 2011-07 to future dividends.
>
> To emphasize, COA was effectively ruling upon future dividends which were not submitted to it for review. It was already executing audit observations which had not yet been issued.[26] (Emphasis supplied)

Accordingly, it is my view that the application of the finality doctrine in this case should only cover the settlement of the unremitted dividends for the period covering 2003 to 2006. As such, the COA gravely abused its discretion in holding that its Resolution No. 2011-007 had become final in full; thus, the same should be partly nullified insofar as its broad and sweeping pronouncement for future transactions outside of the unremitted dividends for the years 2003 to 2006 is concerned.

Even on the underlying merits, no implied repeal of the BSP Charter may be appreciated in this case.

Since the controversy surrounding: (1) the unremitted dividends for the years 2003 to 2006 is already deemed final due to the settlement of the parties; and (2) those from 2007 and onwards are issues that should not have been threshed out by the COA for the reasons above-explained, it thus appears unnecessary to delve into the issue of whether or not Section 43 of the BSP Charter was impliedly repealed by RA 7656. Perceptibly, this is because the Court could already dispose of the present matter by merely affirming the COA's declaration of finality with respect to the unremitted dividends for the years 2003 to 2006. Thus, as ruled by the *ponencia*, the said issue on implied repeal is moot and academic.

Nevertheless, it is discerned that the issue on implied repeal necessitates resolution in order to guide the bench, the bar, and the public, and in addition, is capable of repetition yet evading review, both of which are exceptions to the mootness doctrine.

Well-settled under jurisprudence is the rule that implied repeals are disfavored. "In order to effect a repeal by implication, the latter statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed."[27] Notably, such categorical inference is necessary since "[a] [r]epeal by implication proceeds on the premise that x x x [there was] an intention on the part of the legislature to abrogate a prior act on the subject x x x. Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law

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[26] See Associate Justice Caguioa's Separate Opinion, pp. 2-3.

[27] *Javier v. Commission on Elections*, 777 Phil. 700, 726 (2016).

was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment."[28]

Guided by the foregoing precepts, it cannot be said that Section 2 (d) in relation to Section 3 of RA 7656 had impliedly repealed Section 43 of the BSP Charter. While Section 1[29] of the BSP Charter explicitly characterizes the latter as a government-owned corporation, and as such, ostensibly covered by RA 7656, it bears highlighting that BSP – being constitutionally recognized as an ***independent*** central monetary authority charged with the essential state function of providing policy direction in the areas of money, banking, and credit – **has been traditionally regarded as a special kind of government-owned corporation.** As the *ponencia* correctly observed, this special characterization may be gathered from constitutional deliberations, the legislative deliberations on the BSP Charter, and subsequent legislation (*e.g.*, RA 10149) – all of which attest to BSP's exceptional nature as compared to ordinary GOCCs.[30] ***Viewed in this peculiar context, it is thus highly doubtful that Congress intended BSP to fall within the coverage of RA 7656, which, by its nature, is general legislation intended to govern the ordinary class of GOCCs.***

The foregoing conclusion is bolstered by the fact that Congress subsequently passed RA 11211[31] which confirmed BSP's power to deduct reserves from its earnings for enumerated purposes, *viz.*:

> Section 23. Section 43 of the same Act is hereby amended as follows:
>
> "Sec. 43. *Computation of Profits and Losses.* – Within the first sixty (60) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. Notwithstanding any provision of law to the contrary, **the net profit of the *Bangko Sentral* shall be determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations.**"
>
> Section 24. A new section entitled Section 43-A is hereby included in the same Act to read as follows:

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28 *Mecano v. Commission on Audit*, 290-A Phil. 272, 280 (1992), citing *Posadas v. National City Bank*, 296 U.S. 497, 80 L. Ed. 351 (1935).

29 Section 1. *Declaration of Policy.* - The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, **while being a government-owned corporation**, shall enjoy fiscal and administrative autonomy.

30 See *ponencia*, pp. 21-26.

31 Entitled "AN ACT AMENDING REPUBLIC ACT NUMBER 7653, OTHERWISE KNOWN AS 'THE NEW CENTRAL BANK ACT', AND FOR OTHER PURPOSES," approved on February 14, 2019.

> "Sec. 43-A. *Bangko Sentral Reserve Fund.* – **The *Bangko Sentral* shall establish a reserve fund,** whenever it has income or positive surplus, to mitigate future risks such as, but not limited to, the impacts of foreign exchange and price fluctuations, and to address other contingencies inherent in carrying out the *Bangko Sentral*-mandated functions as central monetary authority. The reserve fund shall consist of fluctuation reserve, contingency reserve and such other reserves as the Monetary Board deems prudent or necessary." (Emphases and underscoring supplied)

Hence, with the rule disfavoring implied repeals in mind, an implied repeal should not be appreciated in this case.

In fine, I concur with the *ponencia* that the petition should be **PARTLY GRANTED** and that the assailed Commission on Audit (COA) rulings should be **SET ASIDE** insofar as they declare COA Resolution No. 2011-007 final with respect to the issue of the Bangko Sentral ng Pilipinas' (BSP) unremitted dividends for the years 2007 and onwards. Furthermore, COA Resolution No. 2011-007 should be declared **VOID** insofar as it holds that "for the years 2007 [and] onwards, the BSP must compute the net earnings for purposes of dividends to be remitted to the NG undiminished by any reserve for whatever purpose" for the reasons herein stated.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

EN BANC

G.R. No. 210314 — BANGKO SENTRAL NG PILIPINAS, *Petitioner,* **v. COMMISSION ON AUDIT,** *Respondent.*

Promulgated:
October 12, 2021

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SEPARATE OPINION

LEONEN, *J.*:

This matter involves a Petition on Certiorari[1] filed under Rule 65 of the Rules of Court assailing the Commission on Audit's Decision[2] and Resolution.[3]

On November 16, 2006, the Commission on Audit issued against Bangko Sentral ng Pilipinas (Bangko Sentral) an Audit Observation Memorandum[4] finding that for the years 2003 to 2005, Bangko Sentral had an understatement of dividends remitted to the government amounting to ₱2,101,000,000.00.

The Commission on Audit noted that in computing its dividends for those years, Bangko Sentral deducted reserves from its net income.[5] The Commission on Audit found that this is contrary to Section 2(d) of Republic Act No. 7656,[6] which states that government-owned and controlled corporations should base their dividend declarations on their net earnings,

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1 *Rollo*, pp. 3–45.

2 Id. at 48–52. The September 27, 2012 Decision in No. 2012-154 was penned by Ma. Gracia M. Pulido Tan and attested by Commission Secretariat Fortunata M. Rubico of the Commission on Audit, Quezon City.

3 Id. at 53–56. The December 3, 2013 Resolution in No. 2013-214 was penned by Ma. Gracia M. Pulido Tan and attested by Commission Secretariat Fortunata M. Rubico of the Commission on Audit, Quezon City.

4 Id. at 108–136.

5 *Ponencia*, p. 3.

6 Republic Act No. 7656 (1993), secs. 2(d) and 3 provide:
SECTION 2. *Definition of Terms.* — As used in this Act, the term: ... (d) "Net earnings" shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, but in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings.
SECTION 3. *Dividends.* — All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated iu Section 4 hereof: *Provided*, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

without deductions for any reserves for whatever purpose.[7] It maintained that Section 43 of Republic Act No. 7653,[8] or the New Central Bank Act, does not apply as it has been impliedly repealed by the former provision.[9]

Bangko Sentral contested the Audit Observation Memorandum, insisting that Republic Act No. 7656 did not repeal Republic Act No. 7653.[10]

After several exchanges on the matter, the Commission on Audit issued its March 23, 2010 Decision,[11] ruling with finality that no reserves should be deducted from Bangko Sentral's net earnings when computing the dividends for remittance to the National Government.[12] It found that Section 2(d) of Republic Act No. 7656 is a particular provision of a general law, and thus prevails over Section 43 of Republic Act No. 7653, which is a general provision of a special law. The Commission on Audit denied reconsideration in its January 25, 2011 Resolution.[13] The dispositive portion reads:

> WHEREFORE, in view of the foregoing considerations, this Commission hereby AFFIRMS Decision No. 2010- 042 dated March 23, 2010. Accordingly, no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG. However, for the years 2003 to 2006, this Commission interposes no objection to the agreement between the BSP and the DOF, in the presence of the DBM Secretary and the Senate Chairman of the Committee on Finance, that the BSP shall remit to the NG dividends in the amount of only ₱9.312 billion, subject to the submission of the duly signed Agreement of the parties concerned to form part of the record of the herein case.[14]

On January 27, 2011, Bangko Sentral, Commission on Audit, and Department of Finance entered into a Memorandum of Agreement[15] where they settled the amount of dividends due from Bangko Sentral for the period of 2003 to 2006. Four days later, Bangko Sentral remitted ₱9,312,000,000.00.[16]

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7 *Ponencia*, p. 3.

8 Republic Act No. 7653 (1993), sec. 43 provides:
SECTION 43. *Computation of Profits and Losses.* — Within the first thirty (30) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. In the calculation of net profits, the *Bangko Sentral* shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.

9 *Ponencia*, p. 3.

10 Id.

11 *Rollo*, pp. 60–67. The Decision in No. 2010-042 was penned by Reynaldo A. Villar and attested by Commission Secretariat Fortunata M. Rubico of the Commission on Audit, Quezon City.

12 Id. at 4.

13 Id. *See rollo*, pp. 68–81. The Resolution in No. 2011-007 was penned by Reynaldo A. Villar and attested by Commission Secretariat Fortunata M. Rubico of the Commission on Audit, Quezon City.

14 *Rollo*, p. 81.

15 Id. at 139–140.

16 *Ponencia*, p. 5.

On July 15, 2011, the Commission on Audit informed Bangko Sentral that its January 25, 2011 Resolution became final, since Bangko Sentral did not file an appeal. Thus, beginning in 2007, reserves may not be deducted from Bangko Sentral's net earnings in computing the dividends to be remitted to the National Government.[17]

On September 7, 2012, the Commission on Audit rendered the assailed decision where it found that its January 25, 2011 Resolution had become final and executory and, thus, no reserves may be deducted from Bangko Sentral's net earnings.[18] In its assailed December 3, 2013 Resolution, the Commission on Audit denied Bangko Sentral's motion.[19]

Questioning this ruling, Bangko Sentral filed this Petition.

The *ponencia* partly granted the Petition and set aside public respondent Commission on Audit's September 7, 2012 Decision and December 3, 2013 Resolution.[20]

It found that while Commission on Audit has the authority to rule on a question of law relating to its duty to audit and examine government entities, its rulings do not create legal precedent and are still subject to judicial review.[21]

It also held that while the Commission on Audit's January 25, 2011 Resolution has become final and executory,[22] this ruling is void as of the period beginning in 2007 onwards because Commission on Audit exceeded its jurisdiction in rendering judgment as to transactions which have not yet occurred and have not been submitted for review.[23] Thus, for the period of 2007 onwards, the ruling is void and could not have attained finality.[24]

Furthermore, while the *ponencia* acknowledged the mootness of the issue of whether or not Section 2(d) of Republic Act No. 7656 has repealed Section 43 of Republic Act No. 7653, it still resolved the issue because it is capable of repetition yet evading review.[25]

It found that Section 2(d) of Republic Act No. 7656 did not repeal Section 43 of Republic Act No. 7653 because petitioner Bangko Sentral is not

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17 Id.
18 Id.
19 Id.
20 *Ponencia*, p. 12.
21 Id. at 7–8 and 10–11.
22 Id. at 12.
23 Id. at 13.
24 Id.
25 Id. at 14.

a government-owned or controlled corporation covered under Section 2(b) of Republic Act No. 7656.[26] It also held that the Constitutional Commission's records and the legislative deliberations on Republic Act No. 7653 show an intention to establish petitioner as independent and autonomous from the control of the Executive Department, and to exclude it from being classified as a government-owned and controlled corporation.[27] Further, the *ponencia* established that this is also supported by subsequent legislations, including Republic Act No. 10149 and Republic Act No. 11211.[28]

I write this opinion to raise a few points.

I

I maintain that the Commission on Audit's January 25, 2011 Resolution has become final and executory.

The computation of dividend remittances is part of the Commission on Audit's mandate to "settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government."[29] The Commission on Audit also has the jurisdiction to resolve novel, controversial, complicated, or difficult questions of law on government accounting and auditing.[30]

In *Oriondo v. Commission on Audit*,[31] this Court recognized the Commission on Audit's competency to rule on a question of law as part of its duty to audit and examine government entities:

> Therefore, it is absurd for petitioners to challenge the competency of the Commission on Audit to determine whether or not an entity is a government-owned or controlled corporation. Jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong," and the determination of whether or not an entity is the proper subject of its audit jurisdiction is a necessary part of the Commission's constitutional mandate to examine and audit the government as well as non-government entities that receive subsidies from it. To insist on petitioners' argument would be to impede the Commission on Audit's exercise of its powers and functions.

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26 Id. at 16.
27 Id. at 21 and 26.
28 Id. at 26–27.
29 CONST., art. IX-D, sec. 2(m).
30 *See* CONST., art. IX-D, sec. 2(m); Executive Order No. 292 (1987), Book V, Title I, Subtitle B, Chapter 4; Revised Rules of Procedure of the Commission on Audit (1997), sec. 1, Rule 2.
31 *Oriondo v. Commission on Audit*, G.R. No. 211293, June 4, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65254> [Per J. Leonen, En Banc].

To question the Commission on Audit's decision, Article IX-A, Section 7 of the Constitution provides that the ruling "may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."[32] Sections 28 and 35 of the Administrative Code also provides:

> SECTION 28. *Decisions by the Constitutional Commissions.*— Each Commission shall decide, by a majority vote of all its Members, any case or matter brought before it within sixty (60) days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof.*
>
> . . . .
>
> SECTION 35. *Appeal from Decision of the Commission. — Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof in the manner provided by law and the Rules of Court.* When the decision, order or ruling adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.[33]

However, if the case is not elevated, the Commission on Audit's decision becomes final and executory. Section 36 of the Administrative Code states:[34]

> SECTION 36. *Finality of Decision of the Commission or Any Auditor.* — A decision of the Commission or of any Auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

Once the ruling is final and executory, execution issues as a matter of right:

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32 CONST., art. IX-A, sec. 7.

33 ADM. CODE, secs. 28 and 35. *See* also Revised Rules of Procedure of the Commission on Audit (1997), sec. 1, Rule 1, which provides:
SECTION 1. *Petition for Certiorari.* — Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules.
When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of the agency.

34 *See* also Revised Rules of Procedure of the Commission on Audit (1997), sec. 12, which provides:
SECTION 12. *Finality of Decisions or Resolutions.* — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

> SECTION 1. *Execution of Decision.*— Execution shall issue upon a decision that finally disposes of the case. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected. [35]

Accordingly, a final and executory judgment may no longer be reviewed. As this Court held in *Vios v. Pantangco, Jr.*[36]:

> It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.
>
> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. . . . the Supreme Court reiterated that the doctrine of immutability of final judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would "be even more intolerable than the wrong and injustice it is designed to correct."[37]

Further, in *Mocorro, Jr. v. Ramirez*:[38]

> A definitive final judgment, however erroneous, is no longer subject to change or revision.
>
> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are

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35 Revised Rules of Procedure of the Commission on Audit (1997), Rule XII.

36 597 Phil. 705 (2009) [Per J. Brion, Second Division].

37 Id. Citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIS v. Coca-Cola Bottlers, Philippines, Inc.*, 502 Phil. 748, 754–755 (2005) [Per J. Chico-Nazario, Second Division]. *See* also *Aliviado v. Procter & Gamble Phils., Inc.*, 665 Phil. 542 (2011) [Per J. Del Castillo, First Division] and *One Shipping Corp. v. Peñafiel*, 751 Phil. 204 (2015) [Per J. Peralta, Third Division].

38 *Mocorro, Jr. v. Ramirez*, 582 Phil. 357 (2008) [Per J. Velasco, Jr., Second Division].

> ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.[39]

Here, the assailed decision and resolution simply affirmed the finality of the Commission on Audit's ruling in its January 25, 2011 Resolution.[40] It noted that petitioner did not file a petition to question the January 25, 2011 Resolution. As a result, its ruling in the dispositive portion is final and executory. Thus, "no reserve for whatever purpose shall be allowed to be deducted from [petitioner's] net earnings/income in the computation of dividends to be remitted to the NG."[41]

Petitioner explained that it no longer questioned the January 25, 2011 Resolution because it assumed that the ruling only covered the years 2003 to 2006. Furthermore, the Memorandum of Agreement states that the parties will "diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments."[42]

However, the dispositive portion of the January 25, 2011 Resolution clearly differentiates between its ruling on the dividend computation and the agreement on the amount due from petitioner for the years 2003 to 2006:

> WHEREFORE, in view of the foregoing considerations, this Commission hereby AFFIRMS Decision No. 2010- 042 dated March 23, 2010. Accordingly, no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG. *However, for the years 2003 to 2006, this Commission interposes no objection to the agreement between the BSP and the DOF, in the presence of the DBM Secretary and the Senate Chairman of the Committee on Finance, that the BSP shall remit to the NG dividends in the amount of only ₱9.312 billion, subject to the submission of the duly signed Agreement of the parties concerned to form part of the record of the herein case.*[43]

Furthermore, the scope of the Memorandum of Agreement is clearly limited to the years 2003 to 2006 and, thus, cannot be taken to mean its terms have superseded the ruling in the January 25, 2011 Resolution. It reads:

> The BSP hereby expresses its willingness to declare and remit to the National Government additional dividends for calendar years 2003 to 2006 in the amount of P9.312 billion on the basis of the computation and dividend rate provided for in sections for 43 and 132(b) of R.A. No. 7653;

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39 Id. at 366–367.
40 *Rollo*, pp. 48–52 and 53–56.
41 Id. at 51.
42 Id. at 49.
43 Id. at 81.

> In view of the BSP's unique functions and responsibilities as the central monetary authority, the DOF hereby expresses its willingness to accept the additional dividends above referred to, and hereby concurs and tenders no objection to the method of computation adopted under aforesaid sections of R.A. No. 7653, and upon receipt of said dividends, thereby considers any obligations of the BSP to remit dividends for aforesaid years already finally closed, paid and fully settled;
>
> The COA, on account of the acceptance with the National Government, the duly constituted beneficiary of the dividends, as stated in the immediately preceding paragraph, offers no objection to the (i) remittance by the BSP of additional dividends to the National Government amounting to P9.312 billion and (ii) agreement between DOF and BSP to consider any and all dividend obligations of BSP in favor of the National Government for the aforesaid years to be finally closed, paid and fully settled;
>
> All the parties herein undertake to diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and account settlements consistent with above agreements between BSP and DOF and with due regard to the BSP's unique functions and responsibilities as central monetary authority of the country[.][44]

The undertaking to "work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and account settlements"[45] is simply consistent with the Commission on Audit's authority to compromise claims.[46]

Here, petitioner failed to file a petition for certiorari to question the January 25, 2011 Resolution, and neither did the Memorandum of Agreement's terms supersede it. Thus, the January 25, 2011 Resolution has become final and executory.

I find that the Commission on Audit did not gravely abuse its discretion when it issued its September 7, 2012 Decision and December 3, 2013 affirming the finality of its ruling in its January 25, 2011 Resolution.[47]

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44 Id. at 139–140.

45 Id. at 140.

46 *See* ADM. CODE, sec. 20, which provides:
SECTION 20. *Power to Compromise Claims.* — (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress; and
(2) The Commission may, in the interest of the Government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (overage or shortage) in the remittances to, and disbursements of, the National Treasury, subject to the rules and regulations as it may prescribe.

47 *Ponencia*, p. 7.

II

Nonetheless, I opine that Section 3 of Republic Act No. 7656 should not have been made to apply to petitioner.

As defined and covered by Republic Act No. 7656, the Bangko Sentral is not an ordinary government-owned and controlled corporation or financial institution. Its functions are provided for under the Constitution itself. Article XII, Section 20 of the Constitution mandates it to provide "policy direction in areas of money, banking and credit," supervise the operations of banks, and regulate the operations of finance companies and similar institutions:

> SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.
>
> Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

Currently, the Bangko Sentral is governed by Republic Act No. 7653, as amended by Republic Act No. 11211. Prior to the latter amendment in 2019, the Congress had already explicitly stated that the Bangko Sentral enjoys *fiscal and administrative autonomy*:

> SECTION 1. *Declaration of Policy.* — The State shall maintain a central monetary authority that shall function and operate as an *independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit.* In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation, shall *enjoy fiscal and administrative autonomy.*[48]

The reason behind the fiscal and administrative autonomy of the Bangko Sentral may be deduced from its responsibilities and primary objective:

> SECTION 3. *Responsibility and Primary Objective.* — The Bangko Sentral shall provide policy directions in the areas of money, banking, and

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[48] Republic Act No. 7653 (1993), sec. 1. Prior to amendment by Republic Act No. 1121.

> credit. It shall have supervision over the operations of banks and exercise such regulatory and examination powers as provided in this Act and other pertinent laws over the quasi-banking operations of non-bank financial institutions. As may be determined by the Monetary Board, it shall likewise exercise regulatory and examination powers over money service businesses, credit granting businesses, and payment system operators. The Monetary Board is hereby empowered to authorize entities or persons to engage in money service businesses. The primary objective of the Bangko Sentral is to *maintain price stability conducive to a balanced and sustainable growth of the economy and employment.* It shall also promote and maintain monetary stability and the convertibility of the peso.
>
> The Bangko Sentral shall promote financial stability and closely work with the National Government, including, but not limited to, the Department of Finance, Securities and Exchange Commission, the Insurance Commission, and the Philippine Deposit Insurance Corporation. The Bangko Sentral shall oversee the payment and settlement systems in the Philippines, including critical financial market infrastructures, in order to promote sound and prudent practices consistent with the maintenance of financial stability. In the attainment of its objectives, the Bangko Sentral shall promote broad and convenient access to high quality financial services and consider the interest of the general public.[49]

The autonomy of the Bangko Sentral is necessary because no other motivation, political or otherwise, may influence how it exercises its functions. Its insulation from political influences is necessary to attain its primary objective of price stability. Conversely, interfering with the policies of the Bangko Sentral may result in serious difficulties for our economy.

The Bangko Sentral regulates banks and controls the money supply, or the quantity of money that is available in the economy. In relation to these two functions, the Bangko Sentral also loans money to banks, and is the lender of last resort for banks in need of it. Its power to control the money supply necessarily affects the price level of goods and the demand for money. Thus, its role in the economy is undeniable. The policies of the Bangko Sentral affect inflation, production, and employment.[50]

Here, the contentious provision is Section 43 of Republic Act No. 7653, which states:

> SECTION 43. *Computation of Profits and Losses.* — Within the first thirty (30) days following the end of each year, the *Bangko Sentral* shall determine its net profits or losses. In the calculation of net profits, the *Bangko Sentral* shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.

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49 Republic Act No. 7653 (1993), sec. 3.

50 GREGORY MANKIW, PRINCIPLES OF ECONOMICS, p. 595 (9th ed., 2021).

The provision primarily pertains to petitioner's function of lending money to banks and other financial institutions. The provision contemplates the sound banking practice of setting aside an adequate reserve for bad and doubtful accounts or other purposes. It is meant to cover for those unable to pay back what was lent.

The Commission on Audit contends that this has been impliedly repealed by Section 3, in relation to Section 2(d), of Republic Act No. 7656 which states:

> SECTION 2(d). "Net earnings" shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, but in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings.
>
> SECTION 3. *Dividends*. – All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

Based on this argument, all reserves for whatever purpose shall be included with petitioner's net profits to be remitted to the National Government.

I find, however, that disallowing the deduction of all kinds of reserves from petitioner's net profit prior to its remittance to the National Government is contrary to sound policy. Reserves include the "deposits that banks have received but have not loaned out."[51]

The Bangko Sentral has the power to control the supply of money in the economy. One of the ways by which it does that is by changing its requirements for reserves.[52] Increasing reserve requirements means that banks must retain more reserves and, therefore, can loan out less of each peso that is deposited. As a result, the money supply decreases. Conversely, decreasing reserve requirements increases the money supply.[53] To simplify, if the reserve requirements are interfered with, the money supply is affected.

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51 Id. at 604.
52 Id. at 597.
53 Id. at 604.

Here, if petitioner's reserves are not deducted from its net profits and it is then remitted to the National Government's treasury along with its profits,[54] it will eventually be included as part of the gross domestic product[55] as government expenditure.[56] Thus, the amounts go back into circulation, and it runs contrary to the purpose of controlling the money supply. Necessarily, this affects the monetary policies that petitioner is seeking to implement to meet its objectives.

Thus, I find that disallowing the deduction of all kinds of reserves from the net profit of petitioner prior to its remittance to the National Government is contrary to sound policy. Section 3 of Republic Act No. 7656 should not have been made to apply to the Bangko Sentral.

Nonetheless, I note that this concern has already been addressed, because Section 43 of Republic Act No. 7653 has already been amended by Republic Act No. 11211. It now reads:

> ARTICLE VI - PROFITS, LOSSES, AND SPECIAL ACCOUNTS
>
> SECTION 43. Computation of Profits and Losses. — Within the first sixty (60) days following the end of each year, the Bangko Sentral shall determine its net profits or losses. Notwithstanding any provision of law to the contrary, the net profit of the Bangko Sentral shall be determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations.
>
> SECTION 43-A. Bangko Sentral Reserve Fund. — The Bangko Sentral shall establish a reserve fund, whenever it has income or positive surplus, to mitigate future risks such as, but not limited to, the impacts of foreign exchange and price fluctuations, and to address other contingencies inherent in carrying out the Bangko Sentral-mandated functions as central monetary authority. The reserve fund shall consist of fluctuation reserve, contingency reserve and such other reserves as the Monetary Board deems prudent or necessary.

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[54] Republic Act No. 7563, art. VI, sec. 44 provides:
SECTION 44. *Distribution of Net Profits.* — Within the first sixty (60) days following the end of each fiscal year, the Monetary Board shall determine and carry out the distribution of the net profits, in accordance with the following rule: Fifty percent (50%) of the net profits shall be carried to surplus and the remaining fifty percent (50%) shall revert back to the National Treasury, except as otherwise provided in the transitory provisions of this Act.

[55] *See* GREGORY MANKIW, PRINCIPLES OF ECONOMICS, p. 470 (9th ed., 2021). Gross domestic product is defined as the "market value of all final goods and services provided within a country in a given period of time."

[56] *See* Gross Domestic Product equation $Y = C + I + G + (X - M)$, where:
Y = gross domestic product
C = consumption
I = investment
G = government spending
X – M = net export (export – import)

Thus, Bangko Sentral may now deduct allowances and provisions for contingencies from its net profits in computing its dividend remittance to the National Government.

ACCORDINGLY, I concur in the result.

MARVIC M.V.F. LEONEN
Associate Justice

EN BANC

G.R. No. 210314 – BANGKO SENTRAL NG PILIPINAS, *petitioner, versus* **THE COMMISSION ON AUDIT,** *respondent.*

Promulgated:

October 12, 2021

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

The *ponencia* astutely clarifies two unique and material points — the extent of the Commission on Audit's (COA) constitutionally-guaranteed powers, and the nature of no less than the Bangko Sentral ng Pilipinas (BSP). I agree with the *ponencia*'s treatment of both issues, and I write only to emphasize the importance of how the first matter was disposed of in this case.

Subject of this case is COA's Resolution No. 2011-007, which was a ruling on a disputed Audit Observation Memorandum (AOM) <u>covering *only* dividends remitted by the BSP from 2003 to 2005</u>. In the resolution, the COA ruled that the BSP Charter had been repealed by Republic Act (R.A.) No. 7656,[1] the result of which was that the BSP could not deduct reserves of any nature from its earnings which were to be remitted to the National Government as dividends. The resolution also recognized a Memorandum of Agreement (MOA) entered into among the COA, the Department of Finance (DOF), and the BSP which settled the dividends covered by the AOM, as well as those payable for 2006. In the agreement, the parties undertook to "diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and the account settlement consistent with [the] agreements between BSP and DOF and with due regard to the BSP's unique functions and responsibilities as central monetary authority of the country."[2] Considering that its liabilities had been settled through the MOA, the BSP no longer appealed from the COA's ruling on its dividends from 2003 to 2005.

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1 AN ACT REQUIRING GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS TO DECLARE DIVIDENDS UNDER CERTAIN CONDITIONS TO THE NATIONAL GOVERNMENT, AND FOR OTHER PURPOSES, approved on November 9, 1993.

2 *Rollo*, p. 259.

Despite recognizing the MOA, however, the COA also declared that the BSP may not deduct reserves from its net earnings for 2007 onwards. The COA declared that its ruling on this matter had become final, executory, and immutable because the BSP no longer appealed. The COA also subsequently issued a letter to the BSP dated July 15, 2011, explicitly declaring its Resolution No. 2011-007 as "concrete precedent" for dividends to be issued in 2007 onwards. The same stance was echoed in its assailed Decision dated September 7, 2012, which ultimately prompted the BSP to bring the case before the Court upon a petition for *certiorari*.

Some observations on this matter: *first,* at the time COA's Resolution No. 2011-007 was issued, no AOM or Notice of Disallowance (ND) had been issued against any dividends remitted from 2007 onwards. The COA's assailed Resolution dealt only with dividends from 2003 to 2005, and the MOA settled only the dividends up to 2006. This runs against the usual and proper procedure under the COA's own Rules and, had it been allowed, would have foreclosed any possible future review by the Court of the COA's interpretation of the law governing the use of the BSP's dividends.

To emphasize, the COA was effectively ruling upon future dividends which were not submitted to it for review. It was already executing audit observations which had not yet been issued. This is clear from the *fallo* of the assailed Decision:

> WHEREFORE, the foregoing premises considered, this Commission reiterates its ruling in COA [Resolution] No. 2011-007 dated January 25, 2011. **Accordingly, this Commission rules with FINALITY that no reserve for whatever purpose shall be deducted from the BSP's net earnings/income in the computation of dividends to be remitted to the NG. The Supervising Auditor, BSP, is hereby directed to ensure that the herein ruling is implemented by the BSP.**[3] (Emphasis supplied)

I have no quarrel with the proposition that decisions by the COA on individual disallowances may become final and executory, and hence immutable, if no appeal or motion for reconsideration is timely filed.[4] *However,* there can be no immutability of judgment as regards rulings on disputed audit observations on transactions which have *not* even occurred and were *not* part of the dispute between the COA Auditor/s and the BSP when Resolution No. 2011-007 was issued. Since the COA had not issued any AOM declaring understatements of dividends for the years 2007 onwards, the BSP could not have raised any defenses against the application of Resolution No. 2011-007 to future dividends.

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3 Id. at 51.

4 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule 10, Sec. 9.

Second, the COA declared its own ruling on implied repeal of Section 43 of R.A. No. 7653 (the BSP's Charter) by R.A. No. 7656 unassailable due to finality. Stated differently, the COA declared its own ruling as *the last word on the proper interpretation of the law* governing the use of the BSP's dividends.

If the Court had subscribed to the COA's stance that Resolution No. 2011-007 was already "final and immutable" so that the Court could no longer review the same, the Court would have forever tied the BSP's hands, and making permanent an interpretation of the law made by a tribunal which does not have the final say on judicial questions. As sagaciously explained in the *ponencia*, the COA's decisions are administrative in nature, and do not have a binding effect similar to *stare decisis*. As the court of last resort, it is the Supreme Court's decisions that establish jurisprudence and doctrines which become part of our legal system.[5]

The circumstances of this case are unique, considering that there will be no other instance whereby the Court would be faced with the question of the correct interpretation of the law on the dividends of the BSP. This is because only the BSP would have standing to do so. It is difficult to think that any other litigant could become a party-in-interest to a case involving such a question of law.

While the COA has the power to resolve "novel, controversial, or difficult questions of law relating to government accounting and auditing,"[6] it cannot be allowed to forever evade judicial review of its interpretation by declaring its decisions final and immutable. Hence, the COA's stance on this matter cannot be upheld, lest the Court unwittingly relinquishes a portion of its inherent power and duty.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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5 *The Insular Life Assurance Co., Ltd., Employees Association-NATU v. The Insular Life Assurance Co., Ltd.*, No. L-25291, January 30, 1971, 37 SCRA 244, 279-280.

6 1987 CONSTITUTION, Art. IX-D, Sec. 2.

EN BANC

G.R. No. 210314 ***(Bangko Sentral ng Pilipinas v. Commission on Audit)***

Promulgated:

October 12, 2021

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CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur with the *ponencia* of the learned Justice Ramon Paul L. Hernando.

Antecedents

On July 27, 2006, the Commission on Audit (COA) issued **Opinion No. 2006-0317** holding that the **basis** for the **dividend declaration of the Bangko Sentral ng Pilipinas (BSP)** should be its **net earnings undiminished by any reserves** for whatever purpose, citing **Section 2 (d) of Republic Act No. 7656 (RA 7656)**, entitled *An Act Requiring Government-Owned Or -Controlled Corporations To Declare Dividends Under Certain Conditions To The National Government, And For Other Purposes*:

> SECTION. 2. Definition of Terms. – As used in this Act, the term:
> x x x x (d) **"Net earnings"** shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, **but in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings.**
>
> SECTION. 3. Dividends. – All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. **This section shall also apply to those government-owned or - controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof:** Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

According to the COA, **Section 2 (d) of RA 7656 *impliedly* repealed Section 43 of RA 7653**, otherwise known as the *New Central Bank Act*:

> SECTION 43. Computation of Profits and Losses. — Within the first thirty (30) days following the end of each year, the Bangko Sentral

> shall determine its net profits or losses. **In the calculation of net profits, the Bangko Sentral shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.**

Subsequently, COA issued an **Audit Observation Memorandum (AOM)** stating that BSP incurred an **understatement of ₱2.101B in dividends paid to the National Government (NG) for the period of 2003 to 2005** due to the **deduction from its net income of reserves** for property insurance and rehabilitation of the Security Plant Complex.

On January 3, 2007, **BSP disputed the AOM** on the ground that RA 7656, a general law, **cannot repeal *impliedly*** RA 7653, a special law.

In its **July 3, 2007 Memorandum**, COA maintained that Section 2(d) of RA 7656 impliedly repealed Section 43 of RA 7653. Although RA 7653 is the special law applicable to the BSP, the **alleged applicable law** for the computation of net earnings to be remitted to the government is **Section 2(d) of RA 7656**. COA cited the principle that a specific provision of a general statute prevails and repeals a general provision of a special law. Thereafter, COA issued **another AOM**, which **revised the total underpayment of dividends to the government to ₱7.147B.**

In **two (2) separate letters**, **BSP disputed** COA's interpretation. The COA treated the letters as an appeal.

In its **Decision No. 2010-04221 dated March 23, 2010**, COA reiterated its earlier ruling that Section 2(d) of RA 7656 **impliedly repealed** Section 43 of RA 7653. Citing ***Bagatsing v. Ramirez***, the COA ruled that while a special law generally prevails over a general law, in case of conflict between a general provision of a special law and a particular provision of a general law, the latter prevails.

Meantime, an **agreement** was reached between BSP and Department of Finance (DOF), as witnessed and confirmed by Department of Budget and Management (DBM) and the Senate, that BSP would be remitting net profits for the years 2003 to 2006 in an **amount computed differently from the formula preferred by COA**, that is, the one found in Section 2(d) of RA 7656.

BSP's motion for reconsideration of **Decision No. 2010-04221 dated March 23, 2010** was **denied** in COA's **Resolution No. 2011-007 dated January 25, 2011.**

However, in the same COA **Resolution**, COA did not object to the **agreement** between BSP and DOF that BSP would be remitting only ₱9.312B as its net profits for the year 2003 to 2006, thus:

> WHEREFORE, in view of the foregoing considerations, this Commission hereby **AFFIRMS Decision No. 2010-042 dated March 23, 2010**. Accordingly, **no reserve for whatever purpose shall be allowed**

> **to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the NG. However, for the years 2003 to 2006, this commission interposes no objection to the agreement between the BSP and the DOF, in the presence of the DBM Secretary and the Senate Chairman of the Committee on Finance, that the BSP shall remit the NG dividends in the amount of only ₱9.312 billion,** subject to the submission of the duly signed Agreement of the parties concerned to form part of the record of the herein case.

On January 27, 2011, BSP, COA and the DOF formally executed a **Memorandum of Agreement** to settle the dividends for the period of 2003 to 2006.

On January 31, 2011, BSP remitted ₱9.312B to the government.

On July 15, 2011, COA informed BSP that its **Resolution No. 2011-007** already attained finality because the BSP did not seek its judicial review. Hence, **from 2007 onward,** COA stressed its position that "no reserve for whatever purpose shall be allowed to be deducted from BSP's net earnings/income in the computation of dividends to be remitted to the [government]."

By **Decision No. 2012-1542 dated September 7, 2012,** COA upheld with finality its **Resolution No. 2011-007** and **disallowed any reserve to be deducted** from the BSP's net earnings.

In COA **Resolution No. 2013-214 dated December 3, 2013** BSP's motion for reconsideration was denied.

Significantly, as this suit was being heard, **Section 43** of **RA 7653** was **amended** on **February 14, 2019** by **RA 11211**. Thus, *notwithstanding any provision of law to the contrary*, the **reserves** were **expanded** and the **computation** of **BSP's net profits** was **allowed specific deductions**:

> SECTION 23. Section 43 of the same Act is hereby amended as follows:
>
> "SEC. 43. Computation of Profits and Losses. — Within the first sixty (60) days following the end of each year, the Bangko Sentral shall determine its net profits or losses. **Notwithstanding any provision of law to the contrary**, the net profit of the Bangko Sentral shall be determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations."

Present Petition

BSP raises the following arguments:

(1) the MOA, where BSP's dividend computation was adopted, had superseded Decision No. 2010-042 and Resolution No. 2011-007;

(2) COA has no power to interpret provisions of law with finality;

(3) COA failed to consider BSP's independence as the central monetary authority, and its primary authority to interpret its own charter, with implied power to provide for allowances, reserves and restricted retained earnings;

(4) Section 2(d) of RA 7656 did not impliedly repeal Sections 43 and 44 of RA 7653;

(5) COA's manner of computing dividends is inconsistent and vague since its ruling that BSP may deduct reserves for bad or doubtful accounts *after remittance* of dividends to the government contradicted its ruling on implied repeal; and

(6) RA 7656 does not apply during the 25-year transitory period under Section 132(b) of RA 7653.

In its Comment, COA counters:

(1) its Decision No. 2010-042 and Resolution No. 2011-007 have attained finality and, thus, could no longer be assailed through a petition for certiorari;

(2) the MOA did not supersede its Decision No. 2010-042 and Resolution No. 2011-007 since it only settled the computation of dividends for the period 2003 to 2006;

(3) in case of conflict between a general provision of a special law and a particular provision of a general law, the latter should prevail;

(4) BSP does not have the implied power to maintain as much reserve as may be necessary since it is prohibited by Section 2(d) of RA 7656; and

(5) the manner by which it computed dividends is clear, categorical, and consistent with its above-stated position.

In its Reply, BSP maintains that –

(1) COA's computation of dividends was merely an advisory opinion and cannot be applied as controlling doctrine for succeeding years;

(2) Decision No. 2010-042 cannot be a precedent for future dividends without violating the undertaking of the parties in the MOA to "diligently work towards a mutually acceptable and legal arrangement for the subsequent dividend payments and the account settlement.

Notably, as this petition is being heard, **Section 43 of RA 7653 was amended on February 14, 2019** by **RA 11211**. Thus, the reserves were expanded and the **computation of BSP's net profits** "shall be **determined after allowing for expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets and such allowances for contingencies or other purposes as the Monetary Board may determine** in accordance with prudent financial management and effective central banking operations."

Discussion

My concurrence is based on the following grounds:

*i. **COA has the authority to resolve questions of law in connection with the exercise of its powers and the discharge of its functions under the Constitution and the law.***

COA is **special** because its **core powers are specified in the *Constitution*** itself:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.
>
> SECTION 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

The ***Administrative Code of 1987*** deals with the **powers** of COA **in more detail**. Although it is **not an exhaustive statement** of the powers of COA, the references therein are enough to prove that **COA has the *implied power to resolve questions of law* in connection with the exercise of its powers and the discharge of its functions**.

Hacienda Luisita Inc. v. Presidential Agrarian Reform Council,[1] quoting ***Chavez v. National Housing Authority***,[2] explained that **administrative agencies** like COA has both **express** and **implied** powers:

> Basic in administrative law is the doctrine that **a government agency or office** has **express and implied powers based on its charter and other pertinent statutes**. **Express powers** are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. On the other hand, **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**. In *Angara v. Electoral Commission*, the Court clarified and stressed that 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. (emphases added)

There is **no doubt** that in the exercise of COA's general jurisdiction "to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations...." **COA will have to pass upon questions of law** that the affected parties may raise. Because *if* COA has no such implied power, COA would have *no way of exercising its powers, much less, accomplishing its mandate and objectives*.

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[1] 668 Phil. 365, 531-532 (2011).
[2] 557 Phil. 29, 80 (2007).

As explained by the erudite Justice Enrique Fernando in his *Concurring Opinion* in ***Samar Mining Co., Inc. v. Workman's Compensation Commission***:[3]

> Implicit in the ably written opinion of Justice Teehankee, which I join, is the recognition of the power of the Workmen's Compensation Commission, **an administrative tribunal, to pass upon and decide questions ordinarily falling within the competenee of and cognizable by the judiciary**, namely "as to who of the two claimants is the legal wife of the decedent and as such a dependent entitled under Section 9 of the act to the compensation . . ." Thus once again is made evident a sympathetic response to the question of the permissible scope of the authority that may be lawfully entrusted to administrative agencies. That is as it should be. **No bar should be interposed to the conferment of the needed authority to the governmental agency which can best discharge the function entrusted to it, even at the risk of defying the canons a rigid, formalistic approach to the postulate of separation of powers would impose.** It does not admit of doubt that if the determination as to who is the widow of the deceased according to law in case conflicting claims are raised cannot be passed upon by the Commission but must be left to the courts in a separate action, then the result would be further delay and frustration of an objective of a legislation which in accordance with the social justice principle and protection to labor provisions of the Constitution require speedy implementation. This latest manifestation of according wide discretion to administrative tribunals marks to my mind the attainment of further progress in the effort of government through such instrumentalities to cope with the increased responsibilities thrust on it if social and economic rights, or liberty in an affirmative sense, would be vitalized.... (emphases added)

ii. COA's rulings on questions of law are subject to judicial review.

There is an **important caveat, however**, to the **power of COA to resolve questions of law**. The caveat is that its resolutions thereon do not *form part of the legal system of the Philippines* **in the sense of *stare decisis*** that is binding upon anyone on the same or similar legal question.

These COA resolutions are **binding upon the parties only as to the matter or case before it** that are **not brought on judicial review**. They **cease to be binding** upon the same or other parties **in other cases**, and especially upon non-parties or the public, **even where the same interpretation is invoked** by COA, where the affected parties **seek judicial review** to challenge COA's interpretation. There is **no rule of precedent** governing decisions of administrative agencies especially on questions of law **in the sense that they are precluded from being subjected to judicial review.** Thus:

> Apropos of the power of judicial review, while decisions of voluntary arbitrators are given the highest respect and accorded a certain measure of finality, **this does not preclude the exercise of judicial review over such decisions**. A voluntary arbitrator, by the nature of his functions,

[3] 148 Phil. 344, 357 (1971).

> **acts in a quasi-judicial capacity. There is no reason why his decisions involving interpretations of law should be beyond the Supreme Court's review. Administrative officials are presumed to act in accordance with law and yet the Court does not hesitate to pass upon their work where a question of law is involved** or where there is a showing of abuse of authority or discretion in their official acts.[4]

Generally, judicial review of a COA decision is through **Rule 64**, *Rules of Court*. Admittedly, there is a 30-day time limit to file the petition. Beyond this period, the decision becomes final and executory.

*a. **Public welfare, advancement of public policy and broader interest of justice***

However, judicial review is still available even when the decision has become final and executory if these circumstances are present: (a) when **public welfare** and the **advancement of public policy** dictates; (b) when the **broader interest of justice** so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an **oppressive exercise of judicial authority**.[5]

Public welfare and the **advancement of public policy** and **broader interest of justice** dictate that the assailed COA issuances be **not considered** final and executory and the issues raised by BSP be resolved on the merits.

For one, resolving the issues on the merits will **uphold legislative intention** that Section 2(d) in relation to Section 3 of RA 7656 **did NOT mean** to impliedly repeal Section 43 of RA 7653. It also gives this Court the opportunity to **stress** the doctrine that **implied repeals are neither presumed nor favoured but is inferred only in the clearest of cases**.

For another, it allows the Court to memorialize the **reasons** for the enactment of Section 43, RA 7653 and its re-enactment under RA 11211, which is to protect the **fiscal stability** of BSP as our **central monetary authority**.

Although this matter is **now settled** by legislative clarification of the legislative intent through RA 11211 that Section 2 (d) in relation to Section 3 of RA 7656 **did NOT mean** to impliedly repeal Section 43 of RA 7653, there is that **period of time** that BSP was *barred* from making reserves from year 2007 to year 2019.

If *no review is allowed* in this case, we will **not** be able to correct this *erroneous* and *egregious* impact upon BSP's fiscal position for **12 long years**. We may also be **setting** a **precedent** that **loosely defines** and **applies implied repeals** to **BSP's powers** that ultimately would threaten and possibly prejudice BSP's **future viability** as a **central monetary authority**.

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[4] *Philippine Long Distance Telephone Company v. Montemayor*, 268 Phil. 455, 459 (1990).
[5] *Associated Anglo-American Tobacco Corporation v. Court of Appeals*, 633 Phil. 266, 273 (2010).

b. Absence of negligence on BSP's part

It is also clear that BSP was **not negligent in seeking a review of COA's position** and **neither will COA be unduly prejudiced** by allowing the present review. Besides, this **review is definitely not frivolous or dilatory** since there is **prima facie merit** to BSP's claim.

To recall, BSP, COA and DOF entered into a **Memorandum of Agreement** that **set aside the formula** for determining BSP's net profits that the implied repeal argument had been supporting. In all likelihood, BSP was lulled into believing that COA would settle the legal debate between them as regards years beyond 2006 following the spirit of cooperation necessarily implicit in the perfection of the **Agreement**. **Otherwise, BSP would have taken immediate action to question** what is COA's legally untenable position of implied repeal. This conclusion is reinforced by the fact that even DBM and the Senate witnessed and confirmed this **Agreement**.

c. Agreement as a supervening event that vacated the earlier COA Decision and Resolution

As well, this **Agreement** constituted a **supervening event** that **overtook** and **superseded** COA's Opinion, AOMs, Decision and Resolution for the years 2003-2006. While COA's **Resolution No. 2011-007 dated January 25, 2011** insisted on its implied repeal argument, this **was not the formula** it agreed to with BSP and DOF and witnessed and confirmed by DBM and the Senate. This **Agreement vacated** COA's prior issuances that centered on its implied repeal argument. This argument **arose again** in COA's **Decision No. 2012-1542 dated September 7, 2012** and **Resolution No. 2013-214 dated December 3, 2013**.

The **period to challenge** COA's implied repeal theory **commenced again** from BSP's receipt of these subsequent COA issuances.

The Court is **not precluded** from reviewing **erroneous legal conclusions** of administrative agencies. Their decisions on questions of law are **binding on parties only on a case-by-case basis** and **only in those cases** that **have not been brought on judicial review**. While ***stare decisis*** in administrative decisions brings *consistency* and *stability* to the **reasoning** in these decisions **inter se**, *stare decisis* **cannot control, much less preclude judicial review** of similar reasoning **in different matters** or **cases**. In the latter instance, the courts may set aside or reverse this reasoning and the ruling arising from this reasoning.

To repeat, this Court is **not precluded** from reviewing **Decision No. 2012-1542 dated September 7, 2012** and **Resolution No. 2013-214 dated December 3, 2013** and their **implied repeal argument** because BSP's petition to review them was **filed timely**.

d. COA's assailed issuances apply ONLY to BSP reserves for the years 2003 to 2006 but not to reserves for later years.

Lastly, *assuming that none of the exceptions is relevant*, we **cannot reckon** the time for seeking judicial review from **Decision No. 2010-04221 dated March 23, 2010** and **Resolution No. 2011-007 dated January 25, 2011**. This is because by virtue of the **Agreement**, these COA decisions were **applicable only** to BSP reserves occurring **prior to 2007**, while **Decision No. 2012-1542 dated September 7, 2012** and **Resolution No. 2013-214 dated December 3, 2013** were the issuances meant **to cover matters** arising in year **2007** to year **2019**.

But for the **Agreement**, BSP would have otherwise been bound to follow **Decision No. 2010-04221 dated March 23, 2010** and **Resolution No. 2011-007 dated January 25, 2011**. **However**, as regards the reserves for **later** years, BSP was **not bound to be silent** and **merely to accept COA Decision No. 2012-1542 dated September 7, 2012** and **Resolution No. 2013-214 dated December 3, 2013**. *Within the period* for seeking judicial review, BSP availed of its remedy against these COA decisions, and thus, this Court has jurisdiction to review the merits of the respective claims of BSP and COA.

iii. The BSP is not covered by RA 7656

a. BSP is not a Government-Owned or Controlled Corporation under RA 7656

Section 3 of RA 7656[6] commands all government-owned or controlled corporations (GOCCs) to declare and remit at least fifty percent (50%) of their annual net earnings to the National Government. Meanwhile, Section 2(b) of the same law defines a GOCC, thus:

> SECTION 2. *Definition of Terms.* — As used in this Act, the term:
>
> x x x x
>
> (b) "**Government-owned or controlled corporations**" refers to corporations **organized as a stock or non-stock corporation** vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least fifty one percent (51%) of its capital stock. This term shall also include financial institutions,

[6] SECTION 3. *Dividends.* — All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: *Provided*, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

> owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges. (emphasis added)

On the other hand, Section 1 of RA 7653 states:

> **Section 1.** *Declaration of Policy.* - The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, **while being a government-owned corporation**, shall enjoy fiscal and administrative autonomy. (emphasis added)

The statement in Section 1 of RA 7653 that the BSP is a GOCC should not be taken at face value. For we have clear legal standards on what constitutes a GOCC and as it was, the BSP failed to satisfy them.

Under Section 2(b) of RA 7656 itself, one of the indispensable characteristics of a GOCC is that it is **organized as a stock or non-stock corporation.** This definition is in accordance with Section 2(13) of the Introductory Provisions of the Administrative Code of 1987, *viz.*:

> SEC. 2. *General Terms Defined.* — x x x
>
> x x x x
>
> (13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation,** vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock. (emphasis added)

As defined, a stock corporation is a corporation that has capital stock divided into shares and is authorized to distribute dividends to its stockholders. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.[7]

BSP does not fall under either classification. It has a ₱50,000,000,000.00 capital[8] but it does not have capital stock. Nor does it have authority to distribute dividends. Hence, it is **not** a stock corporation.

BSP is **not** a non-stock corporation either. It does not have members to whom it may distribute its income. Too, it was not formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary,

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[7] *Philippine Fisheries Development Authority v. Court of Appeals*, 555 Phil. 661, 668 (2007).
[8] Section 2, Republic Act No. 7653.

scientific, social, civic service, or similar purposes non-stock corporations typically have.[9]

It is clear, therefore, that BSP does not meet the indispensable criteria to be considered a GOCC under both the Administrative Code and RA 7656 – that it was organized as a stock or non-stock corporation.

Similarly, the Court held in ***Manila International Airport Authority v. Court of Appeals***[10] ***(MIAA)*** that MIAA could not be considered a GOCC on ground that it was neither a stock nor non-stock corporation, thus:

> Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.
>
> MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.
>
> Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

In determining MIAA's true nature, the Court elucidated:

> Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?
>
> MIAA is a **government instrumentality vested with corporate powers to perform efficiently its governmental functions**. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "**instrumentality**" as follows:

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[9] Section 88, BP 86.
[10] 528 Phil. 181, 211-212 (2006).

> SEC. 2. *General Terms Defined.* — x x x x
>
> (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (Emphasis supplied)
>
> **When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation,** it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."
>
> Likewise, **when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.** The MIAA Charter expressly states that transforming MIAA into a "separate and autonomous body "will make its operation more "financially viable." (emphases added)

Verily, the MIAA is a **government instrumentality**. It is a public utility organized to operate an international and domestic airport for public use. It exercises the power of eminent domain as well as police power. Though it has operational autonomy, it remains part of the National Government machinery. The main difference with the typical government instrumentality, however, is that MIAA is **endowed with corporate powers**.

The circumstances and status of BSP are not different from MIAA. The primary objective of the BSP is to maintain price stability conducive to a balanced and sustainable growth of the economy, as well as to promote and maintain monetary stability and the convertibility of the peso.[11] It exercises regulatory powers over banks, finance companies, and non-bank financial institutions performing quasi-banking functions.[12] Though it enjoys administrative and fiscal autonomy,[13] the BSP also remains part of the National Government machinery. Finally, Section 5 of RA 7653 enumerates the BSP's corporate powers, thus:

> **Section 5.** *Corporate Powers.* - The Bangko Sentral is hereby authorized to adopt, alter, and use a corporate seal which shall be judicially noticed; to enter into contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act.

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[11] Section 3, Republic Act No. 7653.
[12] *Id.*
[13] Section 1, Republic Act No. 7653.

> The Bangko Sentral may acquire and hold such assets and incur such liabilities in connection with its operations authorized by the provisions of this Act, or as are essential to the proper conduct of such operations.
>
> The Bangko Sentral may compromise, condone or release, in whole or in part, any claim of or settled liability to the Bangko Sentral, regardless of the amount involved, under such terms and conditions as may be prescribed by the Monetary Board to protect the interests of the Bangko Sentral.

Just like the MIAA, therefore, the Court should not consider BSP as a GOCC within the definition of RA 7656. The Court even said so in ***MIAA***, thus:

> Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and ***Bangko Sentral ng Pilipinas***. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. **These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.** (emphases and underscoring added)

The impact of our ruling in ***MIAA*** vis-à-vis RA 7656 was not lost on Justice Tinga who dissented from the majority, *viz.*:

> **In fact, the ruinous effects of the majority's hypothesis on the nature of GOCCs can be illustrated by Republic Act No. 7656. Following the majority's definition of a GOCC and in accordance with Republic Act No. 7656, here are but a few entities which are not obliged to remit fifty (50%) of its annual net earnings to the National Government as they are excluded from the scope of Republic Act No. 7656:**
>
> 1) Philippine Ports Authority – x x x
>
> 2) Bases Conversion Development Authority – x x x
>
> 3) Philippine Economic Zone Authority – x x x
>
> 4) Light Rail Transit Authority – x x x
>
> **5) Bangko Sentral ng Pilipinas** – x x x
>
> 6) National Power Corporation – x x x
>
> 7) Manila International Airport Authority – x x x

> **Thus, for the majority, the MIAA, among many others, cannot be considered as within the coverage of Republic Act No. 7656.** x x x (emphases added)

Clearly, the effect of the ***MIAA*** ruling was to remove government instrumentalities such as the BSP from the coverage of RA 7656. The BSP, nevertheless, would still have to remit dividends to the National Government pursuant to its own charter.[14]

b. BSP's fiscal autonomy removes it from the coverage of RA 7656

I am aware that under RA 10149, approved on June 6, 2011, the definition of a GOCC was expanded to expressly cover government instrumentalities with corporate powers, thus:

> Sec. 3. Definition of Terms –
>
> x x x x
>
> (n) ***Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)*** **refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following:** the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Orb Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).
>
> (o) ***Government-Owned or -Controlled Corporation (GOCC)*** refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however,* That for purposes of this Act, **the term "GOCC"- shall include GICP/GCE and GFI as defined herein.** (emphases added)

Consequently, the coverage of RA 7656 has been expanded to include government instrumentalities with corporate powers within its coverage as well. However, this is only the general rule which admits of exceptions. Most notably, Section 4 of RA 10149 expressly excludes the BSP from the expanded definition of a GOCC, thus:

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[14] Section 43 of Republic Act No. 7653.

> SEC. 4. *Coverage.*—**This Act shall be applicable to all GOCCs**, GICPs/GCEs, and government financial institutions, including their subsidiaries, **but excluding the Bangko Sentral ng Pilipinas**, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided,* That in economic zone authorities and *research* institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG.

More, under DOJ Opinion No. 028, s. 2016 dated April 29, 2016 addressed to then Secretary of Finance Cesar V. Purisima, Secretary of Justice Emmanuel L. Caparas explained that the Civil Aviation Authority of the Philippines (CAAP) is not required to remit 50% of its net earnings to the National Government pursuant to RA 7656 because applying ***MIAA***, CAAP could not be deemed a GOCC within the contemplation of the law, thus:

> Here, it appears that CAAP, similar to MIAA, is not a stock corporation because it has *no capital stock divided into shares.* CAAP also has no stockholders or voting shares, and the CAAP Charter does not *authorize the distribution of dividends* and allotments of surplus and profits. Section 14 of the CAAP Charter provides that CAAP shall have an authorized capital stock, but does not authorize the distribution of dividends, *viz.*:
>
> x x x x
>
> Neither can CAAP be considered a non-stock corporation. A *non-stock corporation* is "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members, but are not allowed to distribute any of its income to its members. Moreover, non-stock corporations are usually "formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof." CAAP does not have any members, and is not organized for any of the aforesaid purposes. Instead, CAAP is an independent *regulatory body* with quasi-judicial and quasi-legislative powers and possessing corporate attributes.

Subsequently, DOJ Opinion No. 049, s. 2016 dated August 2, 2016 addressed to then Secretary of Finance Carlos G. Dominguez III modified the earlier opinion of the Secretary Caparas. Speaking now through Secretary Vitaliano N. Aguirre II, the Department of Justice opined that **CAAP is a GOCC within the expanded definition under RA 10149. Yet CAAP is still exempt from the application of RA 7656 in view of its fiscal autonomy**, thus:

> Whether CAAP is a GOCC
> within the ambit of the
> Dividend Law
>
> For our purposes, the Dividend Law must be read in consonance with the GOCC Governance Act.

Section 2 (b) of the Dividend Law defines GOCCs as follows:

> Section 2(b). "Government-owned or controlled corporations" refers to corporations organized as a stock or non-stock corporation vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least fifty one percent (51%) of its capital stock. This term shall also include financial institutions, owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities.

On the other hand, Section 3 (o) of the GOCC Governance Act defines GOCC as follows:

> Section 3 (o). *Government-Owned or -Controlled Corporation (GOCC)* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: Provided, however, that for purposes of this Act, the term "GOCC" — shall include GICP/GCE and GFI as defined herein.

The rule in statutory construction is that statutes are in *pari materia* when they relate to the same person or thing, or have the same purpose or object, or cover the same specific or particular subject matter. The fact that no reference is made to the prior law does not mean that the two laws are not in *pari materia*. It is sufficient, in order that they may be considered in *pari materia*, that the two or more statutes relate to the same subject matter.

This doctrine requires that a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. Statutes in *pari material*, although in apparent conflict, are as far as reasonably possible construed to be in harmony with each other. Later statutes are supplementary or complementary to the earlier enactments and in the passage of its act, the legislature supposed to have in mind the existing legislations on the subject and to have enacted its new act with reference thereto.

The applicability of this doctrine may be gleaned when the GOCC Governance Act was passed. **It may be deduced that the same was enacted not to repeal the Dividend Law but to expand the coverage thereof, as evident by the definition of GOCCs in the GOCC Governance Act which included GICPs (government instrumentalities with corporate powers), GCEs (government corporate entities) and GFIs (government financial institutions) in its coverage.**

x x x x

Whether CAAP is exempted from the coverage of the Dividend Law

Section 3 of R.A. No. 7656 (the Dividend Law) which states:

> Section 3. *Dividends.* — All government-owned or controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earning as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

On the other hand, Section 15 of R.A. No. 9497 (CAAP Charter), which is a letter legislation, states:

> Section 15. **The Authority shall enjoy fiscal autonomy. All moneys earned by the Authority** from the collection/levy of any and all such fees, charges, dues, assessments and finds it is empowered to collect/levy under this Act **shall be used solely to fund the operations of the Authority.**
>
> The utilization of any funds coming from the collection and/or levy of the Authority shall be subject to the examination of the Congressional Oversight Committee. (Emphasis supplied)

Having been granted fiscal autonomy, it is but logical that the CAAP Law should be construed or an exeeption to the provisions of Section 3 of R.A. No. 7656, above-quoted. At this point it may be reiterated that the rule in statutory construction is that, **in case of irreconcilable conflict or repugnancy between a general law or provision and a special law or provision, the latter shall prevail and repeals the earlier general law to the extent of any irreconcilable conflict between their provisions.**

The legislative intent of Section 15 of R.A. No. 9497 to afford full authority of the Agency, through its Board of Directors, the discretion in the disbursement of all collection, revenues, and incomes it generates from the exercise of regulatory and proprietary functions is clear, subject, however, to the following conditions:

(a) shall be used solely to fund the operations of the Authority;

(b) utilization of the funds shall be subject to the examination of the Congressional Oversight Committee.

In *Civil Service Commission v. Department of Budget and Management*, the Supreme Court had the occasion to define what fiscal autonomy is:

> **x x x the fiscal autonomy enjoyed x x x contemplates a guarantee of full flexibility to allocate and utilized their resources with the wisdom and dispatch that their needs require.** It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

> Fiscal autonomy means freedom from outside control. x x x
>
> This Department has had the occasion to rule that fiscal autonomy entails freedom from outside control and limitations, other than those provided by law. It is the freedom to allocate and utilize funds granted by law, in accordance with law, and pursuant to the wisdom and dispatch its needs may require from time to time.
>
> x x x x
>
> **Indeed, CAAP, having being granted fiscal autonomy, has the full authority to disburse all moneys earned from the collection of fees and charges to fund its operations.**
>
> **Given the foregoing, we, therefore, are of the opinion that CAAP is not obliged to declare and remit 50% of its net earnings as dividends to the National Government as required under Section 3 of R.A. No. 7656.**
>
> Thus, Opinion No. 28, s. 2016 is hereby modified to the extent that CAAP is a GOCC, while maintaining our earlier opinion that CAAP is exempted from the coverage of the Dividend Law for reasons cited herein. (emphases added)

As with CAAP, the BSP also enjoys fiscal autonomy and should therefore be exempted as well form the coverage of RA 7656. To reiterate[15]

> **Section 1.** *Declaration of Policy.* - The State shall maintain a central monetary authority that shall function and operate as an **independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit.** In line with this policy, and **considering its unique functions and responsibilities**, the central monetary authority established under this Act, while being a government-owned corporation, **shall enjoy fiscal and administrative autonomy**. (emphases and underscoring added)

To be sure, the grant of fiscal and administrative autonomy to BSP is pursuant to Article XII, Section 20 of the 1987 Constitution which decrees:

> Section 20. **The Congress shall establish an independent central monetary authority**. x x x It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions. (emphasis and underscoring added)

In the article of Atty. Jun de Zuniga, former Member of the Monetary Board whose tenure in the BSP spanned 37 years,[16] he discussed the independence accorded to the BSP thus:

> Under the Constitution and its Charter, the Bangko Sentral ng Pilipinas (BSP) in the discharge of its mandate was vested with fiscal and administrative autonomy. "Fiscal autonomy" was defined by the

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[15] Section 1, Republic Act No. 7653.

[16] https://mb.com.ph/2020/07/08/retirement/ last accessed on July 24, 2021, 9:30AM.

> Supreme Court as "freedom from outside control" and in BSP is exemplified by its authority to adopt its own budget and authorize its expenditures as are in the interest of its operation. It does not depend on Congress for budgetary appropriation unlike other government agencies. "Administrative autonomy," on the other hand, is defined as freedom from intervention and interference by other agencies which means that, in the case of the BSP, its decisions are not subject to administrative review within the executive branch, but can only be reviewed through the judicial process.
>
> There is historical background for such autonomy. By mandating the independence of the central monetary authority, the framers of the 1987 Constitution sought to prevent a situation where the executive branch of the government is in control of monetary policy. Their view is that monetary policy should be adopted with focus on long-term financial stability and not on political expediency and other considerations. Moreover, such autonomy is envisioned to ensure that the BSP is able to anticipate and respond to the challenges of a more globalized economy.[17]

Indeed, the BSP is ***sui generis***. Its **"unique functions and responsibilities"** compounded by its **"fiscal and administrative autonomy"** and not to mention, **independence**, only show that **the BSP should not be treated as any other generic GOCC.**

For some time, the COA agreed to this idea. To be sure, RA 7653 was approved on June 14, 1993 while RA 7656 was approved on November 9, 1993, barely only five (5) months later. **Yet the COA had no issue with the BSP's remittance of dividends from 1993 to 2002 based on Section 43 of RA 7653 rather than Section 3 of RA 7656.** The controversy only started when the COA assessed the BSP with supposed underdeclared earnings from 2003 to 2006. As it was, however, ***MIAA*** was promulgated in **2006,** clarifying that MIAA and the BSP, among others, could not be deemed GOCCs as they were not organized as stock or non-stock corporations, hence, outside the ambit of RA 7656.

In sum, RA 7656 **does not cover the BSP**. For one, **the BSP was never a GOCC within the definition of RA 7656.** For another, the **BSP's fiscal and administrative autonomy, compounded by its constitutional independence, exempts it from the coverage of RA 7656.**

iv. Even assuming that BSP is a GOCC, Section 43 of RA 7653 would still govern; Section 2(d) in relation to Section 3 of RA 7656 did NOT impliedly repeal Section 43 of RA 7653.

An **implied repeal** is a **repeal based on the implied or inferred intention of Congress** to do so. The implication or inference could be derived from the texts of the involved statutes and their respective contexts and effects

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[17] https://mb.com.ph/2020/06/10/lending-to-government/ last accessed on July 24, 2021, 9:30AM; citing Banking Laws of the Philippines, Book I, BSP, p. 14

– but the **controlling intent is the legislative intent** and **not the intent of the members of this Court** as they read the texts and consider the contexts and effects:

> .... An implied repeal will not be allowed unless it is convincingly and unambiguously demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist. This is based on the rationale that **the will of the legislature cannot be overturned by the judicial function of construction** and interpretation. **Courts cannot take the place of Congress in repealing statutes**. Their function is to try to harmonize, as much as possible, seeming conflicts in the laws and resolve doubts in favor of their validity and a co-existence." Thus, a subsequent general law does not repeal a prior special law, "unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law." .... *Verba legis non est recedendum.*[18]

An implied repeal must have been **clearly and unmistakably intended by the legislature.**[19]

a. The amendment introduced in RA 11211 is the best evidence of the intention of Congress that Section 2(d) of RA 7656 did not impliedly repeal Section 43 of RA 7653.

I respectfully submit that the **amendment** introduced by **RA 11211 clearly expresses** the **legislative intent** that **no repeal** was implied by Congress between **Section 2 (d) of RA 7656** and **Section 43 of RA 7653**.

The **benefit of hindsight** is that it **provides 20/20 vision** of **intention**. Since **intention** is something **internal**, we can **best** ascertain one's **intention** *not* from our own inferences, which more often than not are self-serving, *but from* the evidence of **one's conduct** and **outward acts**.

In the case at bar, there is **no better proof** of the intention of Congress **other than** its **affirmation** and **confirmation** that **Section 2(d)** of **RA 7656** did **not** impliedly repeal **Section 43** of **RA 7653** through its **enactment** of **RA 11211**.

Please allow me to expound.

First. An **amendment** is **effective from the date of effectivity** of the **amended** statute and the amendment is **deemed part** of the latter. The sole **exception** to this rule is when this rule would result in the "**abrogation of contractual relations** between the state and others." As held in ***Kua v. Barbers***:[20]

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[18] *Fabella v. Court of Appeals*, 346 Phil. 940, 955 (1997).
[19] *Commissioner of Internal Revenue v. Primetown Property Group Inc.*, 346 Phil. 940, 955 (1997).
[20] 566 Phil. 516, 531-535 (2008).

Petitioner maintains his submission that Sections 15 and 16 of P.D. No. 564 are applicable only to the three non-ex officio part-time members of the PTA Board. Aside from reiterating his arguments in the court below, he adds that there is a marked difference between the tasks of the PTA General Manager and the part-time members: the powers and duties of the PTA Board are enumerated in Sec. 22 of P.D. No. 564 which are alleged to be circumscribed solely to participating in the exercise of the corporate powers and functions of the PTA, while those of the General Manager are found in Sections 23, 24, 25 and 26 of the same law. Also, the principal function of the PTA General Manager is to act as PTA's Chief Executive and to direct, manage, and supervise its day-to-day operations and internal administration in accordance with the policies set by the Board. He is furthermore said to be vested with additional authority and functions in the event of extraordinary emergencies.

The argument is not tenable.

In *Estrada v. Caseda*, this Court held:

An amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, **[it is] as if the statute had been originally enacted in its amended form**. The **amendment becomes a part of the original statute as if it had always been contained therein**, unless such amendment involves the abrogation of contractual relations between the state and others. Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment . . . .

The Court is, therefore, in full accord with the ruling of the Court of Appeals that the provisions of P.D. No. 1400, particularly Sec. 2 thereof which added Sec. 23-A, should be considered as part and parcel of P.D. No. 564 as if it had always been contained in the latter at the time it took effect. On the other hand, the portions of the original act left unchanged by the succeeding law are continued in force, bearing the same meaning and effect that they had before the amendment.... To conclude, **Section 23-A, as well as all other amendments made by P.D. No. 1400, should be read in connection with the provisions of P.D. No. 564 as if all had been enacted at the same time in the said decree**, and, as far as possible, effect should be given to them all in furtherance of the general design of the statute.

The above-quoted principle was more clearly illustrated in ***Estrada v. Caseda***:[21]

The above requirements were provided in **Commonwealth Act No. 689, which was approved October 15, 1945. Section 14** of that Act provided that the same **"shall be in force for a period of two years after its approval." Republic Act No. 66, approved October 18, 1946, amended section 14** of Commonwealth Act No. 689 so as to read as follows: **"Section 14. This Act shall be in force for a period of four years after its approval."**

[21] 84 Phil. 791 (1949).

> **When did this four-year period commence to run?** Is the present lease still within this period?
>
> An amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead; or, as frequently stated by the courts, so far as regards any action after the adoption of the amendment, as if the statute had been originally enacted in its amended form. **The amendment becomes a part of the original statute as if it had always been contained therein, unless such amendment involves the abrogation of contractual relations between the state and others.** Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment. So where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act, such portions of the existing law as are retained, either literally or substantially, are regarded as a continuation of the existing law, and not as a new enactment. (59 C. J., 1096, 1097.)
>
> In accordance with this rule, **the provision of Republic Act No. 66 amending section 14 of Commonwealth Act No. 689, related back to, and should be computed from, the date of the approval of the amended act, that is October 15, 1945**. The period as thus construed expired on October 15, 1949.

Because **RA 11211** is already part of **Section 43 of RA 7653** ***from the date of the latter's enactment***, it cannot be concluded that *Section 2 (d) of RA 7656 impliedly repealed Section 43 of RA 7653.*

To stress, Section 43 **from the time of the enactment of RA 7653**, as a result of the **amendment thereof by RA 11211**, has allowed the deduction of reserves from BSP's net profits. This clear expression of legislative intent exempts BSP from the import of **Section 2(d) of RA 7656**.

Second. The fact-pattern in the case at bar is **similar** or **analogous** to ***Lechoco v. Civil Aeronautics Board***[22] and therefore the present case **should be similarly resolved**.

In ***Lechoco***, the Court took note of **subsequent legislations** that **clarified** which agency has the power over such rate increases. With **this subsequent clarification**, the Court held that there was **no way** one could successfully **impute an implied intention** by one statute to impliedly repeal a prior statute.

Lechoco held:

> The issue submitted for Our decision is **whether authority to fix air carrier's rates is vested in the Civil Aeronautics Board (CAB) or in the Public Service Commission (PSC)**.
>
> Petitioner Lechoco contends that by **the enactment of Republic Act No. 2677 (on 18 June 1960) *amending* sections 13(a) and 14 of**

[22] 150 Phil. 769 (1972).

Commonwealth Act No. 146 (the original PSC Act), jurisdiction to control rates of airships was taken away from the Civil Aeronautics Board and revested in the PSC, since Republic Act 2671 impliedly repealed section 10 (c) (2) of Republic Act No. 776, passed on 20 June 1952, conferring control over air rates and fares on the CAB.

Respondents aver, on the other hand, that, at the very least, jurisdiction over air fares and rates was, under both statutes, exercisable concurrently by the CAB and the PSC, and that following the rule on concurrent jurisdictions of judicial bodies, the first to exercise or take jurisdiction (CAB in this case) should retain it to the exclusion of the other body.

In resolving the issue posed, it is apposite to review the various laws enacted on the matter.

In 1932, the Philippine (pre Commonwealth) Legislature provided by **Public Law No. 3996**, in its **section 15**, that any —

"Person or persons engaged in air commerce shall submit for approval to the Public Service Commission or its authorized representative uniform charges applied to merchandise and passengers per kilometer or over specified distances. . ."

In consonance with said law, the legislative franchise granted in November of 1935 to the Philippine Aerial Taxi Company, Inc. (**Act No. 4271**) specified that (section 3) —

"The grantee shall fix just, reasonable and uniform rates for the transportation of passengers and freight, subject to the supervision and approval of the Public Service Commission. . ."

The following year the PSC was reorganized by **Commonwealth Act No. 146**, enacted 7 November 1936. Section 13 thereof granted **PSC** "general supervision and regulation of, jurisdiction and control over, all public services . . ." except as otherwise provided. The same section, however, contained the following reservation:

". . . Provided further, That the Commission **shall not exercise any control or supervision over aircraft in the Philippines, except with regard to the fixing of maximum passenger and freight rates** . . ."

In the aftermath of World War II the Legislature of the independent Republic of the Philippines passed **Republic Act No. 51**, on 4 October 1946, authorizing the Chief Executive to reorganize within one year the different executive departments, bureaus, offices, agencies and other instrumentalities of the government, including corporations owned or controlled by it. In the exercise of the broad powers thus conferred, the President of the Philippines, by **Executive Order No. 94**, of 4 October 1947, in its section 149, **abolished the Civil Aeronautics Commission and transferred its functions and duties to the Civil Aeronautics Board** created by said Order No. 94, with the following provision:

"The . . . functions provided in section 13 of Commonwealth Act No. 146, pertaining to the power of the Public Service Commission to fix the maximum passenger and freight rates that may be charged by airlines . . . are hereby **transferred to and consolidated in the Civil Aeronautics Administration and/or Civil Aeronautics Board.**"

The foregoing transfer of functions was **virtually ratified by Republic Act No. 776**, effective on 20 June 1952, entitled "An Act to Reorganize the Civil Aeronautics Board and the Civil Aeronautics Administration, to provide for the regulation of civil aeronautics in the Philippines . . ." that delimited the powers of the Board. Section 10 of Act 776 prescribed, inter alia, the following:

"SEC. 10. Powers and duties of the Board. — (A) Except as otherwise provided herein, the Board shall have the power to regulate the economic aspect of air transportation, and shall have the general supervision and regulation of, and jurisdiction

and control over, air carriers as well as their property, property rights, equipment, facilities, and franchise, in so far as may be necessary for the purpose of carrying out the provisions of this Act.

x x x x x x x x x

'(C) The Board shall have the following specific powers and duties:

'(2) **To fix and determine reasonable individual, joint, or special rates, charges or fares** which an air carrier may demand, collect or receive for any service in connection with air commerce. The Board may adopt any original, amended, or new individual, joint or special rates, charges or fares proposed by an air carrier if the proposed individual, joint, or special rates, charges or fares are not unduly preferential or unduly discriminatory or unreasonable. The burden of proof to show that the proposed individual, joint or special rates, charges or fares are just and reasonable shall be upon the air carrier proposing the same.'"

Latest enactment of the series was **Republic Act No. 2677**, in effect on 18 June 1960, that **amended various sections of Commonwealth Act No. 146**, the basic Public Service Act. Among those amended was section 14, which was made to read:

"Sec. 14. — The following are exempted from the provisions of the preceding section:

x x x x x x x x x

"(c) **Airships within the Philippines except as regards the fixing of their maximum rates or freight and passengers.**"

Contrary to the views of petitioner Lechoco, **there is nothing in Republic Act 2677 that expressly repeals Republic Act No. 776.** While section 3 of Republic Act 2677 provides that "All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed", the fact is that **the derogation was thereby made dependent upon actual inconsistency with previous laws.** This is **the very foundation of the rule of implied repeal.** However, there is **nothing in Act 2677 that evidences an intent on the part of the Legislature to set aside the carefully detailed regulation of civil air transport as set forth in Act 776.** Said Act in itself constitutes a recognition of the need of entrusting regulation, supervision and control of civil aviation to a specialized body.

We find **no irreconcilable inconsistency between section 14 of the Public Service Act, as amended by Republic Act 2677,** and **section 10 (c) (2) of the prior Republic Act 776,** above quoted, except for the fact that **power over rates to be charged by air carriers on passengers and freight are vested in different entities, the CAB and the PSC. Even that will result in no more than a concurrent jurisdiction in both supervisory entities,** and not in the divesting of the power of one in favor of the other.

The absence of intent to repeal Republic Act No. 776 by the enactment of Act 2677 is also evidenced by the explanatory note to House Bill 4030 (that later became Act 2677). It expressly stated the desire to broaden the jurisdiction of the PSC "by vesting it with the power to supervise and control maritime transportation . . . except air transportion and warehouses which are now subject to regulation and supervision by the Civil Aeronautics Board and the Bureau of Commerce respectively."

The same legislative intent to maintain the jurisdiction and powers of the CAB appears from a consideration of the legislation subsequent to the enactment of Republic Act 2677. Thus, Republic Act No. 4147, enacted 20 June 1964 (granting an air transportation franchise to Filipinas Orient Airways), **and Republic Act No. 4501,** passed in 19 June 1965 (granting a similar franchise to Air Manila, Inc.), **both uniformly require (in their section 3) that the franchise grantee —**

"shall fix just and reasonable and uniform rates for the transportation of passengers and freight, subject to the regulations and approval of the Civil Aeronautics Board or such other regulatory agencies as the Government may designate for this purpose."

> **Such references to the Civil Aeronautics Board after the enactment of Republic Act No. 2677 would be difficult to explain if said law had already repealed the power of the CAB over fares or rates**, as contended by petitioner Lechoco.
>
> Be that as it may, the well-established principle is that **implied repeals are not favored and consequently statutes must be so construed as to harmonize all apparent conflicts and give effect to all the provisions whenever possible.** This rule makes it imperative to reconcile both section 14 of the Public Service Act as amended by Republic Act No. 2677, and section 10 (c) (2) of Republic Act No. 776, by recognizing the power of the Civil Aeronautics Board to "fix and determine reasonable individual, joint or special rates, charges or fares" for air carriers (under Republic Act 776) but subject to the "maximum rates on freights and passengers" that may be set by the Public Service Commission (as per Republic Act 2677); so that the rates, charges or fares allowed or fixed by CAB may in no case exceed the maxima prescribed now or to be prescribed in the future by the PSC....

b. The contemporaneous understanding of Section 2 (d) of RA 7656 and Section 43 of RA 7653 belies the claim of implied repeal.

For the period 2003 to 2006, this **Agreement jettisoned the formula** for computing net profits that the implied repeal argument sought to buttress.

This **contemporaneous understanding** of the meaning and impact of the laws involved, *Section 2 (d) of RA 7656* and *Section 43 of RA 7653*, **opposite** to what otherwise would have been **demanded by the implied repeal**, should have **factored against** inferring such repeal.

An implied repeal, to repeat, is inferred only in the **clearest of cases**. The **Agreement** shows that Section 2 (d) of RA 7656 **could not have repealed** Section 43 of RA 7653 because, **otherwise**, DOF, DBM and the Senate would **not** have sponsored the **Agreement** if it was *violating the law* and *contrary to Congress' intent*.

Another. It bears reiterating that RA 7653 was **approved on June 14, 1993 while RA 7656 was approved on** November 9, 1993, **barely only five (5) months** later. Surely, Congress is **not fickle-minded** to change its policy direction for BSP just **a few months** after it has established a **clear** and **rock-solid** policy to exempt in the computation of its net profits and losses "**adequate allowance or adequate reserves for bad and doubtful accounts**."

All told, I **cannot find** the **intention** to **impliedly repeal** a **very positive** and **categorical methodology** on the **computation of BSP's profits and losses** merely **months after** this **very positive** and **categorical grant** was **explicitly bestowed**.

Conclusion

I therefore vote to grant the petition and reverse and set aside **COA Decision No. 2012-1542 dated September 7, 2012** and **COA Resolution No. 2013-214 dated December 3, 2013**, and for good measure, **COA *Decision No. 2010-04221* dated March 23, 2010**, and **COA *Resolution No. 2011-007* dated January 25, 2011.**

AMY C. LAZARO-JAVIER
Associate Justice

G.R. No. 210314 – Bangko Sentral ng Pilipinas v. Commission on Audit

Promulgated:

October12, 2021

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SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

I concur with the *ponente's* conclusion that the Commission on Audit (COA) committed grave abuse of discretion when it held in its assailed Decision No. 20112-154 dated 07 September 2012 and Resolution No. 2013-214 dated 03 December 2013 that COA Resolution No. 2011-007 dated 25 January 2011, in its entirety, had already attained finality and is the concrete precedent for future dividend payments of the Bangko Sentral ng Pilipinas (BSP).

I also join the *ponencia* in finding that BSP is not a government owned or controlled corporation (GOCC) as defined under Section 2(b) of Republic Act No. 7656 (RA 7656);[1] thus, BSP is governed by Republic Act No. 7653 (RA 7653) or the BSP Charter.[2] The *ponencia* ruled that BSP is allowed to set up reserves under its Charter. To avoid any confusion, however, it is necessary to clarify that **BSP's reserves for property insurance and rehabilitation of the Security Plant Complex (SPC)[3] are not allowable reserves** which may be deducted in arriving at net profits under Section 43 of the BSP Charter, which reads:

> Section 43. Computation of Profits and Losses. - Within the first thirty (30) days following the end of each year, the Bangko Sentral shall determine its net profits or losses. In the calculation of **net profits**, the Bangko Sentral shall make **adequate allowance or establish adequate reserves for bad and doubtful accounts.**

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1 An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends under Certain Conditions to the National Government, and for other purposes.

2 The New Central Bank Act.

3 Revised Ponencia, page 3. Based on the COA findings, BSP incurred an understatement of Php2.101 billion in dividends paid to the government for the period of 2003 to 2005 due to the deduction from its net income of reserves for property insurance and rehabilitation of the SPC.

BSP's reserves for property insurance and rehabilitation of the SPC are not bad debts or doubtful accounts

Section 112 of Presidential Decree No. 1445 (PD 1445)[4] provides that government agencies, such as the BSP, shall record its financial transactions and operations in conformity with the generally accepted accounting principles, and in accordance with pertinent laws and regulations. In the Philippines, we adhere to the Conceptual Framework for Financial Reporting, Philippine Financial Reporting Standards (PFRS), and Philippine Accounting Standards (PAS). Under PAS, the provision for bad debts or doubtful accounts is required when there is objective evidence that the receivable amount is no longer recoverable. We may also be guided by the Manual on the New Government Accounting System (NGAS), which was in effect during the period under consideration. NGAS defines bad debts or doubtful accounts as follows:

> Section 66. **Bad Debts.** Trade receivables shall be valued at their face amounts minus, whenever appropriate, allowance for doubtful accounts. **Bad Debts expense and/or any anticipated adjustments, which in the normal course of events will reduce the amount of receivables from the debtors to estimated realizable values, shall be set up at the end of the accounting period.**
>
> The **Allowance for Doubtful Accounts shall be provided in an amount based on collectibility of receivable balances** and evaluation of such factors as aging of the accounts, collection experiences of the agency, expected loss experiences and identified doubtful accounts. [Emphasis supplied.]

In the performance of its mandate to maintain price stability,[5] BSP extends loans to banks and other financial institutions. Almost invariably, some receivables will prove uncollectible, such that an amount of said loans or receivables must be recognized as expense in computing net profits. Thus, RA 7653 directs BSP to make adequate allowance or establish reserve for bad or doubtful accounts.[6]

Based on BSP's website, the SPC is BSP's currency production facility in East Avenue, Diliman, Quezon City that "*produces banknotes and coins, [...] refines gold, prints land titles for the Land Registration*

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4 Government Auditing Code of the Philippines.
5 Section 3, RA 7653.
6 Banking Laws of the Philippines Book I The New Central Bank Act Annotated, BSP, pp. 213-214.

Authority, crafts presidential medals and commemorative coins, and will soon print the National ID cards for the Philippine Statistics Authority."[7] These functions of SPC being the currency production facility have nothing to do with the lending function of BSP which gives rise to the setting up of allowance or establishment of reserve for bad debts or doubtful accounts. As such, reserves for property insurance and rehabilitation of a building are not allowance for bad debts or doubtful accounts.

BSP's reserves must be in accordance with laws and government accounting rules

As discussed in the *ponencia*, BSP is not a GOCC as defined under Section 2(b) of RA 7656. It follows, therefore, that Section 2(d) of said law,[8] which precludes the recognition of any reserve for whatever purpose, does not apply to BSP. Nonetheless, this should not be taken to mean as an unbridled discretion for BSP to reduce its net profits with any or all kinds of reserves. After all, Section 44 of the BSP Charter requires that 50% of its net profits shall revert to the National Treasury, *viz*:

> Section 44. Distribution of Net Profits. - Within the first sixty (60) days following the end of each fiscal year, the Monetary Board shall determine and carry out the distribution of the net profits, in accordance with the following rule:
>
> Fifty percent (50%) of the net profits shall be carried to surplus and the remaining **fifty percent (50%) shall revert back to the National Treasury,** except as otherwise provided in the transitory provisions of this Act.

Even if Section 43 of the BSP Charter may be read as an authority for BSP to recognize other allowances or reserves (aside from allowance for bad debts and doubtful accounts), the particulars of said allowance or reserves must *still* find basis under applicable laws and government accounting rules. Under government accounting rules, there are several deductible items that may reduce net profits (aside from bad debts), such as depreciation expenses and foreign exchange losses. Reserves or allowances for future expenses are

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[7] Available at *https://www.bsp.gov.ph/sites/NewBSPComplex/SitePages/About.aspx* (last accessed: 19 August 2021).

[8] (d) "Net earnings" shall mean income derived from whatever source, whether exempt or subject to tax, net of deductions allowed under Section 29 of the National Internal Revenue Code, as amended, and income tax and other taxes paid thereon, **but in no case shall any reserve for whatever purpose be allowed as a deduction from net earnings.**

not among those recognized as allowable deductions from net profits.

In this case, BSP merely cites Section 43 of its Charter as its basis in setting up reserves for property insurance and rehabilitation of the SPC. However, nothing in Section 43 suggests that it is allowed to reduce its net profits, thereby the 50% share of National Government, with said reserves or allowances for future expenses. NGAM is also bereft of basis for these deductions.

Notably, the Corporation Code allows stock corporations to setup reserves in its retained earnings in excess of one hundred percent of their paid-in capital stock in limited cases, for example, when there is definite corporate expansion projects or programs approved by the board of directors, or when necessary under special circumstances, such as when there is need for special reserve for probable contingencies.[9] For private stock corporations, reserves for future expenses justify reduced dividends which may be declared to shareholders. However, there is no equivalent provision for government agencies, such as the BSP, especially, considering any deduction from net profits will reduce dividends that will ultimately redound to the National Government.

Finally, the *ponencia* considered the amendment of Section 43 pursuant to Republic Act No. 11211 (RA 11211) as a confirmation of the intent of Congress to allow BSP to maintain reserves for its operations.[10] The manifest intention of Congress is to broaden the allowable deductions from net profits. This, considering that it now includes "*such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations*." The Congress even phrased BSP's authority to be "*notwithstanding any provision of law to the contrary[.]*" To wit:

> SEC. 43. Computation of Profits and Losses. — Within the first sixty (60) days following the end of each year, the Bangko Sentral shall determine its net profits or losses. ***Notwithstanding any provision of law to the contrary***, the net profit of the Bangko Sentral shall be determined after allowing for **expenses of operation, adequate allowances and provisions for bad and doubtful debts, depreciation in assets, and *such allowances and provisions for contingencies or other purposes as the Monetary Board may determine in accordance with prudent financial management and effective central banking operations.***

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[9] Section 43, Batas Pambansa Bilang 68.
[10] Revised Ponencia, page 27.

While the full extent of BSP's authority under the amended provision of Section 43 may be brought this Court on a future occasion, the amendment shows that prior to the enactment of RA 11211, BSP is not permitted to reduce its net profits for future expenses, such as reserves for property insurance and rehabilitation of a building. To avoid any impression of BSP's unbridled authority in setting up reserves that will reduce its net profits, this clarification is set forth. To stress, the general limitation on reserves for GOCCs under Section 2(d) of RA 7656 does not apply to BSP.

RODIL V. ZALAMEDA
Associate Justice