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[G.R. No. 211293. June 4, 2019]

ADELAIDO ORIONDO, TEODORO M. HERNANDEZ, RENATO L. BASCO, CARMEN MERINO, AND REYNALDO SALVADOR, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES 45 AND 64, DISTINGUISHED; THE REMEDY AGAINST AN ADVERSE DECISION, ORDER OR RULING OF THE COMMISSION ON AUDIT IS A PETITION FOR CERTIORARI BASED ON ARTICLE IX-A, SECTION 7 OF THE CONSTITUTION. — A petition for review on *certiorari* is the remedy provided in Rule 45, Section 1 of the Rules of Court against an adverse judgment, final order, or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law: x x x On the other hand, Rule 64 of the Rules of Court pertains to "Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit." Section 1 of Rule 64 defines the scope of the Rule, while Section 2 refers to "Mode of Review" and provides that the judgments, final orders, and resolutions of the Commission on Audit are to be brought on certiorari to this Court under Rule 65. x x x The foregoing provisions readily reveal that a Petition for Review on Certiorari under Rule 45 is an appeal and a true review that involves "digging into the merits and unearthing errors of judgment." However, despite the repeated use of the word "review" in Rule 64, the remedy is principally one for certiorari that "deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous." That the remedy against an adverse decision, order, or ruling of the Commission on Audit is a petition for *certiorari*, not review or appeal, is based on Article IX-A, Section 7 of the Constitution, x x x This is affirmed in *Reyna v. Commission on Audit*, where the Court maintained its certiorari jurisdiction over judgments, final orders or resolutions of the Commission on Audit: x x x We agree with respondent

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Commission that petitioners erroneously denominated their Petition as a "Petition for Review on Certiorari." Except for the designation, however, we find that the Petition was filed under Rule 64 of the Rules of Court given that the Petition refers to Rule 64 and was filed within 30 days from notice of the Resolution dated December 6, 2013 denying petitioners' Motion for Reconsideration before the Commission on Audit. Therefore, we shall resolve the Petition in the exercise of our *certiorari* jurisdiction under Article IX-A, Section 7 of the Constitution.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; JURISDICTION; COMPETENCE TO DETERMINE THE STATUS OF AN ENTITY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UPHELD. — The Constitution, the Administrative Code of 1987, and the Government Auditing Code of the Philippines define the powers of the Commission on Audit. x x x [T]he Commission on Audit generally has audit jurisdiction over public entities. In the Administrative Code's Introductory Provisions, the Commission on Audit is even allowed to categorize government-owned or controlled corporations for purposes of the exercise and discharge of its powers, functions, and responsibilities with respect to such corporations. The extent of the Commission on Audit's audit authority even extends to non-governmental entities that receive subsidy or equity from or through the government. 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.

3. ID.; ID.; ID.; ID.; ID.; INCLUDES THOSE ALTHOUGH NOT CONSIDERED GOVERNMENT-OWNED OR CONTROLLED CORPORATION, BUT RECEIVES FUND FROM THE GOVERNMENT. — The term "government-owned or controlled corporation" is defined in several laws: Presidential Decree No.

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2029 (in Section 2), issued by then President Ferdinand E. Marcos x x x The Administrative Code, in Section 2(13) of its Introductory Provisions, x x x In Republic Act No. 10149, otherwise known as the GOCC Governance Act of 2011, (Section 3(o): x x x [Thus,] an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation; (2) its functions are public in character; and (3) it is owned or, at the very least, controlled by the government. x x x [However,] this Court held in *Funa v. Manila Economic and Cultural Office* that respondent corporation [although] not a government-owned or controlled corporation [because of the absence of the third attribute, i.e., government ownership or control,] it was declared a "sui generis entity" whose accounts were nevertheless subject to the audit jurisdiction of the Commission on Audit because it receives funds on behalf of the government. As for the Executive Committee of the Metro Manila Film Festival, the Court declared that is not a government-owned or controlled corporation in *Fernando v. Commission on Audit* because it was not organized either as a stock or a non-stock corporation. Despite the absence of the first element, the Court held that it is subject to the audit jurisdiction of the Commission on Audit because it receives its funds from the government.

4. **ID.; ID.; ID.; ID.; THE CORREGIDOR FOUNDATION, INC. IS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION UNDER THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT. ––** [T]he Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit. Corregidor Foundation, Inc. was organized as a non-stock corporation under the Corporation Code. It was issued a certificate of registration by the Securities and Exchange Commission on October 28, 1987 and, according to its Articles of Incorporation, Corregidor Foundation, Inc. was organized and to be operated in the public interest: x x x Corregidor Foundation, Inc. was organized primarily to maintain and preserve the war relics in Corregidor and develop the area's potential as an international and local tourist destination. Its Articles of Incorporation provides purposes x x x [that] are related to the promotion and development of tourism in the country, a declared state policy and, therefore,

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a function public in character. When Corregidor Foundation, Inc. was organized, all of its incorporators were government officials, x x x Corregidor Foundation, Inc.'s Articles of Incorporation also require that the members of its Board of Trustees be all government officials and shall so hold their position as members of the Board by reason of their office: x x x There is no showing that these requirements were ever amended. As the foregoing established, the government has substantial participation in the selection of Corregidor Foundation, Inc.'s governing board. The government controls Corregidor Foundation, Inc. making it a government-owned or controlled corporation.

5. ID.; ID.; ID.; ID.; THE CORREGIDOR FOUNDATION, INC. AS GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UNDER THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT. ESTABLISHED FURTHER. –– Petitioners contend that Corregidor Foundation, Inc. x x x was not organized as a stock corporation and was incorporated under a general law, not a special law or an original charter. x x x A government-owned or controlled corporation [may be] "stock or non-stock corporation. . ." Furthermore, there is nothing in the law which provides that government-owned or controlled corporations are always created under an original charter or special law. x x x Just because the employees of Corregidor Foundation, Inc. are not under the jurisdiction of the Civil Service Commission does not mean that Corregidor Foundation, Inc. is not government-owned or controlled. Article IX-B, Section 2(1) of the Constitution is clear that the jurisdiction of the Civil Service Commission is over government-owned or controlled corporations with original charters, not over those without original charters like Corregidor Foundation, Inc. x x x Also, there is no proof that Corregidor Foundation, Inc.'s funding primarily comes from grants and donations of international organizations or foreign entities as petitioners contend. On the contrary, for the period audited by the Commission on Audit or in 2003, 99.66% of Corregidor Foundation, Inc.'s budget x x x came from the government, specifically, from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority. This was never controverted by petitioners. x x x At any rate, even if it were true that Corregidor Foundation, Inc. is funded by international organizations and foreign entities, these foreign

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grants already became public funds the moment they were donated to Corregidor Foundation, Inc. Thus, these funds may be audited by the Commission on Audit. x x x Lastly, while it is true that just like any other corporation organized under the Corporation Code, Corregidor Foundation, Inc. may determine voluntarily and solely the successors of its members in accordance with its own by-laws, this does not change the public character of its functions and the control the government has over it. As discussed, the promotion and development of tourism is a public function and, as provided in its Articles of Incorporation, the members of Corregidor Foundation, Inc. must be government officials who shall hold their membership by reason of their office.

6. **ID.; ID.; ID.; NOTICE OF DISALLOWANCE; UPHELD AS PETITIONERS WERE NOT ENTITLED TO THE ADDITIONAL HONORARIA RECEIVED. —** There are cases where this Court, despite the disallowance by the Commission on Audit, nevertheless enjoined the refund of the disallowed amounts. In these instances, this Court found that the parties received the disallowed amounts in good faith, defined as "that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry." It also means "an honest intention to abstain from taking any unconscientious disadvantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transactions unconscientious." Here, we cannot ascribe good faith to petitioners in receiving the disallowed amounts. x x x [P]etitioners knew fully well that they [are not entitled to the honoraria]. It is also undisputed that petitioners, as officers and personnel of the Philippine Tourism Authority, already received honoraria and cash gifts. x x x [R]eceiving another set of honoraria and cash gift for rendering services to the Corregidor Foundation, Inc. would be tantamount to payment of additional compensation proscribed in Article IX-B, Section 8 of the Constitution. These circumstances negate any claim of good faith.

APPEARANCES OF COUNSEL

Teodoro M. Hernandez for petitioners.
The Solicitor General for respondent.

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D E C I S I O N

LEONEN, *J.*:

A corporation, whether with or without an original charter, is under the audit jurisdiction of the Commission on Audit so long as the government owns or has controlling interest in it.

This resolves the Petition[1] under Rule 64 of the Rules of Court filed by Adelaido Oriondo, Teodoro M. Hernandez, Renato L. Basco, Carmen, Merino, and Reynaldo Salvador, former officers of the Philippine Tourism Authority who had received honoraria and cash gifts for concurrently rendering services to Corregidor Foundation, Inc. They assail the Commission on Audit's Decision[2] No. 2010-095 dated October 21, 2010 and Resolution[3] dated December 6, 2013, disallowing the payment of the honoraria and cash gifts to them for being contrary to Department of Budget and Management Budget Circular No. 2003-5 on the payment of honoraria and Article IX-B, Section 8[4] of the Constitution prohibiting the payment of additional or double compensation.

The submissions of the parties present the following facts.

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[1] *Rollo*, pp. 3-24.

[2] *Id*. at 25-29. The Commission on Audit Commission Proper was composed of Chair Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

[3] *Id*. at 30-31.

[4] CONST., Art. IX-B, Sec. 8 provides:

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

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Executive Order No. 58, series of 1954,[5] made certain battlefield areas in Corregidor open to the public and accessible as tourist attractions. Executive Order No. 123, series of 1968, further amended Executive Order No. 58, thereby authorizing the Ministry of National Defense to enter into contracts for the conversion of areas within the Corregidor as tourist spots.[6]

Pursuant to Executive Order No. 123, the Ministry of National Defense and the Philippine Tourism Authority executed a Memorandum of Agreement[7] dated July 10, 1986 for the development of Corregidor and its neighboring islands into major tourist attractions. Specifically, the Ministry of National Defense, with prior approval of the President, leased the entire island of Corregidor to the Philippine Tourism Authority for one peso (₱1.00). As for the Philippine Tourism Authority, it undertook to maintain and preserve the war relics on the island and to fully develop Corregidor's potential as an international and local tourist destination. The Philippine Tourism Authority was thus authorized to "[p]ackage and source the necessary funds to develop and restore the Corregidor Island group."[8]

On February 6, 1987, the Philippine Tourism Authority Board of Directors adopted Resolution No. B-7-87,[9] approving the creation of a foundation for the development of Corregidor. On October 28, 1987, the Corregidor Foundation, Inc. was incorporated under Securities and Exchange Commission Registration No. 145674.[10]

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[5] Available at <https://www.officialgazette.gov.ph/1954/08/16/executive-order-no-58-s-1954/> (last accessed April 12, 2019).

[6] *Rollo*, p. 32, Annex "C" of the Petition. *See also* <https://www.officialgazette.gov.ph/1968/03/15/executive-order-no-123-s-1968/> (last accessed April 12, 2019).

[7] *Id*. at 34-35.

[8] *Id*. at 35.

[9] *Id*. at 36.

[10] *Id*. at 38. Annex G of the Petition.

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On August 3, 1993, the Philippine Tourism Authority executed a Memorandum of Agreement[11] with Corregidor Foundation, Inc. to centralize the island's planning and development. The Philippine Tourism Authority agreed to release to the Corregidor Foundation, Inc. its operating funds based on a budget for its approval. For its part, the Corregidor Foundation, Inc. agreed to submit a quarterly report on the receipts and disbursements of Philippine Tourism Authority funds. It additionally agreed to deposit all collections of revenues in a distinct and separate account in the name of the island of Corregidor, with the disposition of the funds at the sole discretion of the Philippine Tourism Authority.

Another Memorandum of Agreement[12] was subsequently entered into by the Philippine Tourism Authority and the Corregidor Foundation, Inc. on September 3, 1996. The subsequent Agreement reiterated the provisions of the August 3, 1993 Agreement but added some stipulations. In particular, the second paragraph of item 4 was included, providing that the disbursements of the Philippine Tourism Authority's funds by Corregidor Foundation, Inc. shall be subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit.

On February 14, 2005, the Commission on Audit, through Audit Team Leader Divina M. Telan, issued Audit Observation Memorandum No. 2004-002[13] for comments of then Corregidor Foundation, Inc. Executive Director Artemio G. Matibag. There, the Audit Team noted that the following personnel of the Philippine Tourism Authority who were concurrently rendering services in Corregidor Foundation, Inc. received honoraria and cash gifts in 2003, to wit:

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[11] *Id*. at 46-47. Annex J of the Petition.

[12] *Id*. at 53-55, Annex L of the Petition.

[13] *Id*. at 62-64, Annex R of the Petition.

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Name	Position	Bonus	Cash Gift	Total
Adelaido Oriondo	Treasurer/Deputy General Manager of the Philippine Tourism Authority	42,000	1,500	43,500
Teodoro Hernandez	Corporate Secretary	42,000	1,500	43,500
Renato L. Basco	Technical Assistant	16,000	1,500	17,500
Carmen Merino	Executive Secretary A	9,600	1,500	11,100
Reynaldo Salvador	Utility Worker A	14,400	1,500	15,900
Total		124,000	7,500	131,500

The Audit Team was of the opinion that the grant of honoraria to Oriondo, Hernandez, Basco, Merino, and Salvador were contrary to Department of Budget and Management Circular No. 2003-5.[14] This budget circular, applicable to all national government agencies, government-owned and/or controlled corporations, and government financial institutions, enumerated in item 4 those exclusively entitled to honoraria:

4. General Guidelines

Heads of entities are authorized to use their respective appropriation for the payment of honoraria only to the following:

4.1. teaching personnel of the Department of Education, Commission on Higher Education, Technical Education and Skills Development Authority, State Universities and Colleges and other educational institutions engaged in actual classroom teaching whose teaching load is outside of the regular office hours and/or in excess of the regular load;

4.2 those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs and other similar activities in training institutions, including those conducted by entities for their officials and employees; and

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[14] *Id*. at 73-75, Annex U of the Petition.

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> 4.3. chairs and members of Commissions/Board Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.[15]

Further, according to the Audit Team, the cash gifts given to Oriondo, Hernandez, Basco, Merino, and Salvador, as officers of the Corregidor Foundation, Inc., constituted double compensation prohibited in Article IX-B, Section 8[16] of the Constitution because they had already received honoraria and cash gifts as employees of the Philippine Tourism Authority.[17]

The Audit Team thus recommended that Corregidor Foundation, Inc. comply with Budget Circular No. 2003-5; otherwise, it would be constrained to recommend the disallowance of the amounts paid as honoraria and cash gift.[18]

On June 15, 2006, the Legal and Adjudication Office-Corporate of the Commission on Audit issued Notice of Disallowance No. CFI-2006-001,[19] disallowing in audit the honoraria and cash gift paid to Oriondo, Hernandez, Basco, Merino, and Salvador. Aside from the payees, the persons made liable for the amount were Corregidor Foundation, Inc.'s Chief Accountant Noria Jane Perez, Finance Office Lauro Legazpi, and Executive Director Artemio G. Matibag.[20]

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[15] *Id*. at 74.

[16] CONST., Art. IX-B, Sec. 8 provides:

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

[17] *Rollo*, p. 63.

[18] *Id*.

[19] *Id*. at 66-69, Annex S of the Petition.

[20] *Id*. at 66-67.

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Oriondo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration of the Notice of Disallowance, arguing that Corregidor Foundation, Inc. is a private corporation created under the Corporation Code and, therefore, cannot be audited by the Commission on Audit.[21] This was denied by the Legal Adjudication Office-Corporate in its Decision No. 2007-037,[22] where it held that Corregidor Foundation, Inc. is a government-owned or controlled corporation.

The appeal filed was likewise denied by the Adjudication and Settlement Board of the Commission on Audit in Decision No. 2009-002.[23] Citing the definition of a government owned or controlled corporation in the Administrative Code of 1987, the Adjudication and Settlement Board held that Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit powers of the Commission on Audit. Corregidor Foundation, Inc., according to the Adjudication and Settlement Board, is a non-stock corporation which receives funds from the government, through the Philippine Tourism Authority. The Adjudication and Settlement Board highlighted that Memorandum of Agreement dated September 3, 1996 provided that the funds received and disbursed by the Corregidor Foundation, Inc. is subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit. Finally, Corregidor Foundation, Inc. was deemed created for a public purpose, which is the maintenance and preservation of Corregidor.

Considering that Corregidor Foundation, Inc. is a government-owned or controlled corporation, the Adjudication and Settlement

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[21] *Id*. at 77-78.

[22] *Id*. at 76-79, Annex V of the Petition. The Decision was penned by Ms. Janet D. Nation, Director IV.

[23] *Id*. at 80-85, Annex W of the Petition. The Adjudication and Settlement Board was composed of Chairperson Elizabeth S. Zosa, Assistant Commissioner-Legal Services; and Members Emma M. Espina, Assistant Commissioner-National; Carmela S. Perez, Assistant Commissioner-Government Accountancy; Jaime P. Naranjo, Assistant Commissioner-Corporate; and Gloria S. Cornejo, Assistant Commissioner-Local.

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Board held the foundation is subject to Budget Circular No. 2003-5 and 2003-02, limiting the grant of honoraria to specific government personnel, and Article IX-B, Section 8 of the Constitution prohibiting double compensation.[24]

The dispositive portion of the Adjudication and Settlement Board's Decision No. 2009-002 read:

> WHEREFORE, the foregoing premises considered, this Board hereby **DENIES** the instant appeal for want of merit. Accordingly, LAO-Corporate Decision No. 2007-037 dated June 07, 2007 sustaining ND No. CFI-2006-001 dated June 15, 2006 is **AFFIRMED**.[25] (Emphasis in the original)

Oriondo, Hernandez, Basco, Merino, and Salvador appealed[26] Decision No. 2009-002, but the appeal was denied by the Commission on Audit in its October 21, 2010 Decision No. 2010-095.[27]

The Commission on Audit Commission Proper maintained that the Corregidor Foundation, Inc. is a government-owned or controlled corporation given the following circumstances: (1) the incorporators of the Corregidor Foundation, Inc. are all government officials; (2) the Corregidor Foundation, Inc. is substantially subsidized by the government, with 99.66% of its budget coming from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; (3) the budget of Corregidor Foundation, Inc. needs prior approval of the Philippine Tourism Authority; (4) Corregidor Foundation, Inc. is required to submit a quarterly report of its receipts and disbursement of Philippine Tourism Authority funds; (5) all

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[24] *Id*. at 84.

[25] *Id*.

[26] *Id*. at 86-89, Annex X of the Petition. The pleading filed was a Motion for Reconsideration, but was treated as an appeal.

[27] *Id*. at 25-29, Annex A of the Petition. The Commission on Audit Commission Proper was composed of Chair Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

collections of revenues are to be deposited and taken up in the books of Corregidor Foundation, Inc. as accountability to the Philippine Tourism Authority, and the disposition of the funds are at the sole discretion of the Philippine Tourism Authority; and (6) Corregidor Foundation, Inc. has no authority to dispose of the properties subject of the Memorandum of Agreement.[28]

While it is true that Corregidor Foundation, Inc. was organized under the Corporation Code, the Commission Proper, citing *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*,[29] held that it is the "totality test"—the totality of the relation of a corporation to the State-that determines a corporation's status as a government-owned or controlled corporation. Given that Corregidor Foundation, Inc. was created by the State as its own instrumentality to carry out a governmental function, the Commission Proper concluded that Corregidor Foundation, Inc. should be considered a public corporation.

The Commission proper added that coverage under the Social Security System "is but a consequence of [Corregidor Foundation, Inc.'s] insistence that it is a private corporation, not *a priori* reason that it is."[30]

Given the foregoing premises, the Commission Proper held that Corregidor Foundation, Inc. is a government-owned or controlled corporation subject to Budget Circular No. 2003-5 and Article IX-B, Section 8 of the Constitution. Corregidor Foundation, Inc. had no authority to grant honoraria to its personnel and give cash gifts to its employees who were concurrently holding a position in the Philippine Tourism Authority.

The dispositive portion of the Commission on Audit's Decision No. 2010-095 read:

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[28] *Id*. at 27-28.

[29] 560 Phil. 385 (2007) [Per *J*. Austria-Martinez, *En Banc*].

[30] *Rollo*, p. 28.

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WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-002 dated January 26, 2009 is **AFFIRMED**.[31] (Emphasis in the original)

Oriondo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration, which the Commission on Audit *En Banc* denied in a its December 5, 2013 Resolution[32] thus:

> The [Commission on Audit Proper] denied the Motion for Reconsideration for lack of merit and affirmed with finality COA Decision No. 2010-095 dated October 21, 2010 affirming the disallowance on the grant of honoraria and cash gift to the Philippine Tourism Authority employees who are rendering services to Corregidor Foundation[,] Inc. in the amount of ₱131,500.00. The movant failed to present new and material evidence that would warrant a reversal or modification of the assailed decision.[33]

On March 14, 2014, Oriondo, Hernandez, Basco, Merino, and Salvador filed before this Court a Petition[34] designated as a "Petition for Review on Certiorari"[35] under Rule 64 of the Rules of Court. The Commission on Audit, through the Office of the Solicitor General, filed its Comment[36] on June 25, 2014, to which Oriondo, Hernandez, Basco, Merino, and Salvador replied[37] on October 7, 2014. Upon the directive of this Court,[38] the parties filed their respective Memoranda.[39]

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[31] *Id*. at 29.

[32] *Id*. at 30-31, Annex B of the Petition.

[33] *Id*. at 30.

[34] *Id*. at 3-24.

[35] *Id*. at 3.

[36] *Id*. at 105-117.

[37] *Id*. at 125-137.

[38] *Id*. at 138-139, Resolution dated October 14, 2014.

[39] *Id*. at 147-165, Memorandum for Petitioners; and 166-183, Memorandum for the Respondent.

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According to petitioners, a cursory reading of Article IX-D, Section 2[40] of the Constitution reveals that the Commission on Audit has no power to determine whether an entity is a government-owned or controlled corporation. Petitioners maintain that the Commission on Audit had no jurisdiction to conduct a post-audit of Corregidor Foundation, Inc.'s disbursements on the basis of its own determination of Corregidor Foundation's status as a government-owned or controlled corporation. Consequently, the Commission's rulings on the grant of honoraria and cash gifts are allegedly null and void.[41]

On the threshold issue, petitioners insist that Corregidor Foundation, Inc. is *not* a government-owned or controlled corporation due to the following reasons: (1) Corregidor Foundation, Inc. is neither organized as a stock corporation nor is it created by a special law or is governed by a charter created by a special law;[42] (2) Corregidor Foundation, Inc. was organized as a private corporation under the general corporation law, and its assets are allegedly its exclusive property, not

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[40] CONST., Art. IX-D, Sec. 2(1) provides:

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.

[41] *Rollo*, pp. 159-160.

[42] *Id*. at 152-155.

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government-owned;[43] (3) the personnel of Corregidor Foundation, Inc. are under the coverage of the Social Security System, further showing that Corregidor Foundation, Inc. is a private corporation;[44] (4) its funds come primarily from grants and donations of international organizations and foreign entities, not from the National Government considering that its funding was never provided in the General Appropriations Act;[45] and (5) the quarterly reports submitted by Corregidor Foundation, Inc. is only based on its Memorandum of Agreement with the Philippine Tourism Authority, not because it is a government-owned or controlled corporation.[46]

Countering petitioners, respondent Commission on Audit first highlighted that the Petition was erroneously denominated as a "Petition for Review on Certiorari" under Rule 64 of the Rules of Court. "[T]here is no such thing as a Petition for Review under Rule 64,"[47] argued respondent Commission. The error notwithstanding, respondent Commission contends that the Petition should be treated as one for certiorari, specifically, to determine whether or not there was grave abuse of discretion on the part of the Commission on Audit in disallowing the grant of honoraria and cash gifts to petitioners.[48]

On whether or not it has the jurisdiction to determine whether an entity is a government-owned or controlled corporation, respondent Commission argues that it has the competence to make such determination. Pursuant to its constitutional duty to examine, audit, and settle all accounts pertaining to the revenue and expenditures of the government, including government-owned or controlled corporations, respondent Commission maintains

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[43] *Id*. at 155-157.

[44] *Id*. at 157-158.

[45] *Id*. at 158.

[46] *Id*. at 158-159.

[47] *Id*. at 168.

[48] *Id*. at 168-169.

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that the determination of the status of an entity as a government-owned or controlled corporation is but a "necessary incident to [the] performance of its duties and the discharge of its functions."[49] Respondent Commission asserts its competency to determine the status of Corregidor Foundation, Inc. as a government-owned or controlled corporation, arguing that it only applied the law on the matter.[50]

On the principal issue of whether or not Corregidor Foundation, Inc. is a government-owned or controlled corporation, respondent Commission answers in the affirmative. It cites *Philippine National Oil Company (PNOC) — Energy Development Corporation v. National Labor Relations Commission*[51] *and Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*[52] where this Court enunciated the criteria for determining the status of a corporation as government-owned or controlled. Respondent Commission thereafter noted the circumstances demonstrating that all these criteria are present in this case. First, Corregidor Foundation, Inc. is under the Department of Tourism, created to develop the tourism in the island of Corregidor. Second, the incorporators of Corregidor Foundation, Inc. are all government officials and all of its trustees are public officials sitting in an *ex officio* capacity.[53]

Respondent Commission maintains that Corregidor Foundation, Inc. was created by the State to carry out a governmental function as shown by the following: (1) Corregidor Foundation, Inc. is substantially subsidized by the government, with 99.66% of its budget, as audited, coming from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; (2) Corregidor Foundation, Inc.'s budget is subject to the prior approval of the Philippine Tourism Authority; (3) Corregidor

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[49] *Id.* at 175.

[50] *Id.* at 176.

[51] 294 Phil. 856 (1993) [Per *C J.* Narvasa, Second Division].

[52] 560 Phil. 385 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[53] *Rollo*, p. 177.

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Foundation, Inc. is required to submit a quarterly report on its receipts and disbursement of Philippine Tourism Authority funds; (4) all collections of revenues are deposited and taken up in the books of Corregidor Foundation, Inc. as accountability to the Philippine Tourism Authority; and (5) Corregidor Foundation, Inc. cannot encumber, mortgage, or alienate the premises subject of its Memorandum of Agreement with the Philippine Tourism Authority.[54] These allegedly show that the disallowed amounts were public funds, which are definitely within the audit jurisdiction of respondent Commission; thus, there was no grave abuse of discretion on the part of the Commission on Audit in issuing the Notice of Disallowance.

The issues for this Court's resolution are:

First, whether or not the Commission on Audit has jurisdiction to determine whether a corporation such as Corregidor Foundation, Inc. is a government-owned or controlled corporation; and

Second, whether or not Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

The Petition is dismissed.

Respondent Commission on Audit did not gravely abuse its discretion in issuing Notice of Disallowance No. CFI-2006-001. It has the competency to determine the status of corporations such as Corregidor Foundation, Inc. as government-owned or controlled, and correctly found that Corregidor Foundation, Inc. is, indeed, a government-owned or controlled corporation under its audit jurisdiction.

I

We first address respondent Commission's contention that petitioners erroneously referred to their Petition as a "Petition for Review on Certiorari" under Rule 64 of the Rules of Court.

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[54] *Id*. at 177-178.

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A petition for review on certiorari is the remedy provided in Rule 45, Section 1 of the Rules of Court against an adverse judgment, final order, or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law:

RULE 45
Appeal by Certiorari to the Supreme Court

SECTION 1. *Filing of Petition with Supreme Court*. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

On the other hand, Rule 64 of the Rules of Court pertains to "Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit." Section 1 of Rule 64 defines the scope of the Rule, while Section 2 refers to "Mode of Review" and provides that the judgments, final orders, and resolutions of the Commission on Audit are to be brought on certiorari to this Court under Rule 65. The pertinent provisions of Rules 64 and 65 are as follows:

RULE 64
Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit

SECTION 1. *Scope*. — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

SECTION 2. *Mode of Review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

SECTION 3. *Time to File Petition*. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new

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trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

. . . . . .

RULE 65
Certiorari, Prohibition and Mandamus

SECTION 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

. . . . . .

SECTION 4. *Where Petition Filed.* — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

The foregoing provisions readily reveal that a Petition for Review on Certiorari under Rule 45 is an appeal and a true

review that involves "digging into the merits and unearthing errors of judgment."[55] However, despite the repeated use of the word "review" in Rule 64, the remedy is principally one for certiorari that "deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous."[56]

That the remedy against an adverse decision, order, or ruling of the Commission on Audit is a petition for certiorari, not review or appeal, is based on Article IX-A, Section 7 of the Constitution, thus:

ARTICLE IX
Constitutional Commissions

A. *Common Provisions*

. . . . . .

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)

This is affirmed in *Reyna v. Commission on Audit*,[57] where the Court maintained its certiorari jurisdiction over judgments, final orders or resolutions of the Commission on Audit:

In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for certiorari, under Rule 64 of the Rules of Court. The office of the petition for certiorari is not to correct

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[55] *Aratuc v. Commission on Elections*, 177 Phil. 205, 223 (1979) [Per *J*. Barredo, *En Banc*].

[56] *Id*.

[57] 657 Phil. 209 (2011) [Per *J*. Peralta, *En Banc*].

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simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.[58]

We agree with respondent Commission that petitioners erroneously denominated their Petition as a "Petition for Review on Certiorari." Except for the designation, however, we find that the Petition was filed under Rule 64 of the Rules of Court given that the Petition refers to Rule 64 and was filed within 30 days from notice of the Resolution dated December 6, 2013 denying petitioners' Motion for Reconsideration before the Commission on Audit. Therefore, we shall resolve the Petition in the exercise of our certiorari jurisdiction under Article IX-A, Section 7 of the Constitution.

II

The Constitution, the Administrative Code of 1987, and the Government Auditing Code of the Philippines define the powers of the Commission on Audit. Article IX-D, Section 2 of the Constitution provides:

> 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

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[58] *Id.* at 225.

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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. (Emphasis supplied)

A provision similar to Article IX-D, Section 2(1) is found in Book V, Title I, Subtitle B, Chapter 4, Section 11 of the Administrative Code:

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. (Emphasis supplied)

The Government Auditing Code of the Philippines, in Section 26, likewise provides:

SECTION 26. *General Jurisdiction*. — The authority and powers of the Commission shall extend to and comprehend all matters relating

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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*. (Emphasis supplied)

Based on the foregoing provisions, the Commission on Audit generally has audit jurisdiction over public entities.[59] In the Administrative Code's Introductory Provisions, the Commission on Audit is even allowed to categorize government-owned or controlled corporations for purposes of the exercise and discharge of its powers, functions, and responsibilities with respect to such corporations.[60]

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[59] *Fernando v. Commission on Audit*, G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*]

[60] ADM. CODE OF 1987, Introductory Provisions, Sec. 2(13) provides:

SECTION 2. *General Terms Defined*. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

(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

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The extent of the Commission on Audit's audit authority even extends to non-governmental entities that receive subsidy or equity from or through the government.[61]

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,"[62] 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.

This Court upheld the competence of the Commission on Audit to determine the status of an entity as a government-owned or controlled corporation in *Feliciano v. Commission on Audit*[63] and *Boy Scouts of the Philippines*,[64] among others. In these cases, the Court took cognizance of petitions assailing the Commission on Audit's determination that Leyte Metropolitan Water District and Boy Scouts of the Philippines are government-owned or controlled corporations, and are thus subject to the Commission's audit jurisdiction.

Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

[61] Presidential Decree No. 1445, Sec. 29 (1)(5).

[62] *Villagracia v. Fifth Shari'a District Court*, 734 Phil. 239, 251 (2014) [Per J. Leonen, Third Division] citing *Reyes v. Diaz*, 73 Phil. 484, 486 (1941) [Per J. Moran, *En Banc*].

[63] 464 Phil. 439 (2004) [Per J. Carpio, *En Banc*].

[64] 666 Phil. 140 (2011) [Per J. Leonardo-De Castro, *En Banc*].

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III

The Commission on Audit's power to determine whether an entity is a government-owned or controlled corporation is already settled. We thus proceed to resolve the issue of whether the Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

The term "government-owned or controlled corporation" is defined in several laws. Presidential Decree No. 2029, issued by then President Ferdinand E. Marcos, defines a government-owned or controlled corporation in Section 2, thus:

> SECTION 2. *Definition*. — A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;
>
> *Provided*, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;
>
> *Provided, further*, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and

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Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation.

The Administrative Code, in section 2(13) of its Introductory Provisions, defines a government-owned or controlled corporation in this wise:

SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

. . . . . .

(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.

In Republic Act No. 10149, otherwise known as the GOCC Governance Act of 2011, the term is defined in Section 3(o):

SECTION 3. *Definition of Terms*. —

. . . . . .

(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.

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Based on the above provisions, an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation;[65] (2) its functions are public in character;[66] and (3) it is owned[67] or, at the very least, controlled[68] by the government.

Examples of government-owned or controlled corporations are the Leyte Metropolitan Water District and the Boy Scouts of the Philippines. As found in *Feliciano*, the Leyte Metropolitan Water District is a stock corporation organized under an original charter or special law, i.e., Presidential Decree No. 198 or the Provincial Water Utilities Act of 1973. It performs a public service by providing water to its water district and, as a local water utility, it is controlled by the government considering that its directors are appointed by the head of the local government unit. It was in *Feliciano* where this Court said that "the determining factor of the [Commission on Audit's] audit jurisdiction is government ownership or control of the corporation."[69]

As for the Boy Scouts of the Philippines, this Court held in *Boy Scouts of the Philippines v. Commission on Audit*[70] that it is a non-stock corporation created under an original charter, specifically, Commonwealth Act No. 111. Its functions primarily involve implementing the state policy provided in Article II, Section 13 of the Constitution on promoting and protecting the well-being of the youth; and that it is an attached agency of the then Department of Education, Culture, and Sports, now Department of Education.

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[65] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 90 (2014) [Per *J*. Perez, *En Banc*].

[66] *Id*.

[67] *Id*.

[68] *Id*. at 94.

[69] 464 Phil. 439, 462 (2004) [Per *J*. Carpio, *En Banc*].

[70] 666 Phil. 140 (2011) [Per *J*. Leonardo-De Castro, *En Banc*].

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In contrast, the Philippine Society for the Prevention of Cruelty to Animals, the Manila Economic and Cultural Office, and the Executive Committee of the Metro Manila Film Festival were all declared not subject to the audit jurisdiction of the Commission on Audit. The Court in *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*[71] held that the petitioner corporation, though created through an original charter, eventually became a private corporation when its "sovereign powers" to arrest offenders of animal welfare laws and the power to serve processes in connection therewith were withdrawn via an amendatory law. The second attribute—the public character of the corporation's functions—was therefore absent. It was in *Philippine Society for the Prevention of Cruelty to Animals* where the Court held that "[t]he true criterion. . . to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State,"[72] adding that "[if] the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is public; otherwise, it is private."[73]

The Manila Economic and Cultural Office is a non-stock corporation performing certain "'consular and other functions' relating to the promotion, protection and facilitation of Philippine interests in Taiwan."[74] However, none of its members, officers or trustees were found to be government appointees or public officers designated by reason of their office. Because of the absence of the third attribute, i.e., government ownership or control, this Court held in *Funa v. Manila Economic and Cultural Office*[75] that respondent corporation was not a

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[71] 560 Phil. 385 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[72] *Id.* at 408.

[73] *Id.*

[74] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 92 (2014) [Per *J.* Perez, *En Banc*].

[75] 726 Phil. 63 (2014) [Per *J.* Perez, *En Banc*].

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government-owned or controlled corporation. Instead, it was declared a "sui generis entity" whose accounts were nevertheless subject to the audit jurisdiction of the Commission on Audit because it receives funds on behalf of the government.

As for the Executive Committee of the Metro Manila Film Festival, the Court declared that is not a government-owned or controlled corporation in *Fernando v. Commission on Audit*[76] because it was not organized either as a stock or a non-stock corporation. Despite the absence of the first element, the Court held that it is subject to the audit jurisdiction of the Commission on Audit because it receives its funds from the government.

Taking the foregoing into consideration, we rule that the Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

Corregidor Foundation, Inc. was organized as a non-stock corporation under the Corporation Code. It was issued a certificate of registration[77] by the Securities and Exchange Commission on October 28, 1987 and, according to its Articles of Incorporation,[78] Corregidor Foundation, Inc. was organized and to be operated in the public interest:

> NINTH: That the Foundation is organized and shall be operated in the public interest and shall have no capital stock, no premium profit, and shall devote all of its income from whatever source including gifts, donations, grants, subsidies or other form of philantrophy (sic) and income derived from business - gate receipts, tourists, [and] entrance fees to the accomplishment of the purpose enumerated herein.[79]

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[76] G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*].

[77] *Rollo*, p. 38, Annex G of the Petition.

[78] *Id*. at 39-43, Annex H of the Petition.

[79] *Id*. at 42.

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Corregidor Foundation, Inc. was organized primarily to maintain and preserve the war relics in Corregidor and develop the area's potential as an international and local tourist destination. Its Articles of Incorporation provides the following purposes:

SECOND: That the purposes for which the Foundation is formed are as follows:

1. To maintain and preserve war relics on Corregidor Island and the development of its potentials as an international and local tourist destination, and to that end and purpose, to promote and encourage the recovery, collection, preservation, restoration and protection of materials and objects, including land and buildings, forming part or otherwise depicting the historic character and role of the island fortress in the defense of the country's territorial integrity and sovereignty, such as but not limited to maps, sketches, drawings, flags, documents, books and military armaments, equipment and facilities.

2. To enter into, make, perform and carry out of (sic) cancel and rescind contracts of every kind and for any lawful purpose with any person, firm, association, corporation, entity, domestic or foreign, or others, in which it has a lawful interest.

3. To acquire, purchase, own, hold, operate, develop, lease, mortgage, pledge, exchange, sell, transfer, or otherwise in any manner permitted by law, real and personal property of every kind and description or any interest therein as may be necessary to carry out its purposes.

4. To raise or borrow money for any of the purposes of the Foundation and from time to time without limits as to amount to draw, make, accept, endorse, guarantee, execute and issue promisory (sic) notes, drafts, bills of exchange, warrants, debentures, and other negotiable or non-negotiable instruments and evidence of indebtedness, and to secure the payment thereof, and of the interest thereon by mortgage on, or pledge, conveyance or assignment in trust of the whole or any part of the assets of the Foundation, real, personal, or mixed, including contract rights, whether at the time owned or thereafter acquired; and to sell[,] pledge, or otherwise dispose of such securities or other obligations for the Foundation in furtherance of its purposes.

5. To invest funds as it may be able to obtain from donations, grants, or loans and from all other sources, in securities or properties

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from the return of which the foundation hopes to subsist and carry on the activities and purposes for which it was organized.

6. In general, to carry on any activity and to have and exercise any and all of the powers conferred by law, and to do any and all acts and things herein set forth to the same extent as juridical persons could do, and in any part of the world, as principal, factor, agent or otherwise either alone, or in syndicate, partnership, association or corporation, domestic or foreign, and to establish and maintain offices and agencies and to exercise all or any of its corporate powers and rights within the Philippines or abroad, as may be directly or indirectly incidental or conducive to the attainment of the above-mentioned purposes.[80]

The enumeration shows that Corregidor Foundation, Inc.'s purposes are related to the promotion and development of tourism in the country, a declared state policy[81] and, therefore, a function public in character.

When Corregidor Foundation, Inc. was organized, all of its incorporators were government officials, to wit: (1) Jose Antonio U. Gonzalez, Secretary of Tourism; (2) Rafael Ileto, Secretary of National Defense; (3) General Fidel Ramos, Chief of Staff; (4) Dominador O. Reyes, Undersecretary of Tourism for Internal Services; and (5) Atty. Ramon Binamira, General Manager, Philippine Tourism Authority.[82]

Corregidor Foundation, Inc.'s Articles of Incorporation also require that the members of its Board of Trustees be all

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[80] *Id*. at 39-40.

[81] ADM. Code, Book IV, Title XIII, Ch. 1, Sec. 1 provides:

SECTION 1. *Declaration of Policy*. — The State shall promote, encourage and develop tourism as a major national activity in which private sector investment, effort and initiative are fostered and supported, and through which socio-economic development may be accelerated, foreign exchange earned, international visitors offered the opportunity to travel to the Philippines and appreciate its natural beauty, history and culture, and Filipinos themselves enabled to see more of their country and imbued with greater pride in and commitment to the nation.

[82] *Rollo*, pp. 40-41.

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government officials and shall so hold their position as members of the Board by reason of their office:

SIXTH: That the affairs of the Foundation shall be administered and governed by the Board of Trustees composed of seven (7) members who are to serve until their successors are chosen or elected and qualified as provided by the By-Laws and their names, nationalities, residences and official address are as follows:

Name	Citizenship	Address
HON. JOSE ANTONIO U. GONZALEZ Secretary of Tourism	Filipino	. . . DOT Bldg., Kalaw Street, Ermita, Manila
HON. RAFAEL ILETO Secretary of National Defense	Filipino	. . . Camp Emilio Aguinaldo Quezon City
GENERAL FIDEL RAMOS Chief of Staff	Filipino	. . . Camp Crame, Quezon City
MS. BETH DAY ROMULO	Filipino	. . .
MS. NINI QUEZON AVANCEÑA	Filipino	. . .
MR. NICHOLAS PLATT	American	U.S. Embassy Roxas Blvd., Metro Manila
ATTY. RAMON BINAMIRA	Filipino	. . .
General Manager, Philippine Tourism Authority		DOT Bldg., Kalaw Street Ermita, Manila

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Provided, however, that the abovenamed government officials shall hold their position as members of the Board by reason of their respective offices.

Provided, further, that a representative of the Department of Science and Technology or any other governmental agency which may succeed to the functions of said agency shall be allowed to sit with the Board of Trustees of the Foundation as Department of Science and Technology representative therein.[83]

There is no showing that these requirements were ever amended.

As the foregoing established, the government has substantial participation in the selection of Corregidor Foundation, Inc.'s governing board.[84] The government controls Corregidor Foundation, Inc. making it a government-owned or controlled corporation.

Petitioners nevertheless contend that Corregidor Foundation, Inc. is not a government-owned or controlled corporation because it was not organized as a stock corporation and was incorporated under a general law, not a special law or an original charter.

These arguments are wrong. Even a cursory reading of the statutory definitions of "government owned-or controlled corporation" readily reveals that a non-stock corporation may be government-owned or controlled. These definitions begin with "a government-owned or controlled corporation"[85] and refers to a "stock or non-stock corporation. . ."[86] Furthermore, there is nothing in the law which provides that government-owned or controlled corporations are always created under an original charter or special law. As held in *Feliciano*, there are

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[83] *Id.* at 41.

[84] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 94 (2014) [Per *J.* Perez, *En Banc*].

[85] *See* Presidential decree 2029 (1986), Sec. 2.

[86] *See* Presidential decree 2029 (1986), Sec. 2.

government-owned or controlled corporations without an original charter, that is, those created under the Corporation Code.[87]

It is immaterial whether a corporation is private or public for purposes of exercising the audit jurisdiction of the Commission on Audit. So long as the government owns or controls the corporation, as in this case, the Commission on Audit may audit the corporation's accounts. In *Feliciano*:

> [T]he constitutional criterion on the exercise of [the Commission on Audit's] audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.
>
> *The Constitution vests in the [Commission on Audit] audit jurisdiction over* "government-owned and controlled corporations with original charters," as well "*government-owned or controlled corporations*" *without original charters*. [Government-owned or controlled corporations] with original charters are subject to [the Commission's] pre-audit, while [government-owned or controlled corporations] without original charters are subject to [the Commission's] *post-audit*. *[Government-owned or controlled corporations] without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government.* The nature or purpose of the corporation is not material in determining [the Commission's] audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.[88] (Emphasis supplied)

Just because the employees of Corregidor Foundation, Inc. are not under the jurisdiction of the Civil Service Commission does not mean that Corregidor Foundation, Inc. is not government-owned or controlled. Article IX-B, Section 2(1)[89]

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[87] 464 Phil. 439, 461-462 (2004) [Per *J*. Carpio, *En Banc*]. *See also Philippine National Construction Corporation v. Pabion*, 311 Phil. 1019 (1999) [Per *J*. Panganiban, Third Division].

[88] 464 Phil. 439, 461-462 (2004) [Per *J*. Carpio, *En Banc*].

[89] CONST., Art. IX-B, Sec. 2(1) provides:

> SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. (Emphasis supplied)

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of the Constitution is clear that the jurisdiction of the Civil Service Commission is over government-owned or controlled corporations with original charters, not over those without original charters like Corregidor Foundation, Inc. Addressing a similar argument, this Court in *Davao City Water District v. Civil Service Commission*,[90] cited in Feliciano, said that:

> By "government-owned or controlled corporation with original charter," We mean government owned or controlled corporation created by a special law and not under the Corporation Code of the Philippines. Thus, in the case of *Lumanta v. NLRC* (G.R. No. 82819, February 8, 1989, 170 SCRA 79, 82), We held:
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> > "The Court, in National Service Corporation (NASECO) v. National Labor Relations Commission, G.R. No. 69870, promulgated on 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase 'with original charter,' in effect held that *government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from corporations organized under our general incorporation statute - the Corporation Code*. In NASECO, the company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation (NIDC) which in turn was a subsidiary of the Philippine National Bank, a bank chartered by a special statute. Thus, government-owned or controlled corporations like NASECO are effectively, excluded from the scope of the Civil Service." (Emphasis supplied)
>
> From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the [Civil Service Commission] are those corporations created pursuant to the Corporation Code.[91]

Also, there is no proof that Corregidor Foundation, Inc.'s funding primarily comes from grants and donations of international organizations or foreign entities as petitioners contend. On the

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[90] 278 Phil. 605 (1991) [Per *J.* Medialdea, *En Banc*].

[91] *Id.* at 612.

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contrary, for the period audited by the Commission on Audit or in 2003, 99.66% of Corregidor Foundation, Inc.'s budget or Four Hundred Twenty-Three Million, One Hundred Sixty-Four Thousand, One Hundred Fifteen Pesos (P423,164,115.00) came from the government, specifically, from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority.[92] This was never controverted by petitioners.

Indeed, the following provisions of the September 3, 1996 Memorandum of Agreement indubitably show that Corregidor Foundation, Inc. is funded by the government through the Philippine Tourism Authority. Corregidor Foundation, Inc. is required to submit its budget for approval of the Philippine Tourism Authority. It even voluntarily submitted itself to the audit jurisdiction of the Commission on Audit:

MEMORANDUM OF AGREEMENT
CORREGIDOR ISLAND MANAGEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this 3rd day of September, 1996 by and between:

The PHILIPPINE TOURISM AUTHORITY, a government owned corporation with office address at DOT Building, Kalaw, Ermita, Manila, represented herein by its General Manager, EDUARDO T. JOAQUIN, hereinafter referred to as AUTHORITY;

-and-

CORREGIDOR FOUNDATION, INC., a private non-stock, non-profit corporation existing and doing business under the laws of the Philippines with office address at Tourism Building, T. M. Kalaw Street, Ermita, Manila, represented herein by its Executive Director, ALFRED A. X. BURGOS, SR., hereinafter referred to as FOUNDATION;

-WITNESSETH-

WHEREAS, pursuant to a Memorandum of Agreement, referred to as ANNEX I, the then Ministry of National Defense

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[92] *Rollo*, p. 27.

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ceded and conveyed Corregidor Island to the Department of Tourism/Philippine Tourism Authority for tourist development purposes;

WHEREAS, consistent with the avowed objective of the abovementioned Memorandum of Agreement, the FOUNDATION was eventually organized for private concern to work hand in hand with the government in enhancing the touristic potentials of the Island referred to as ANNEX II;

WHEREAS, the parties in order to further accelerate the desired development find it necessary to transfer the management of the Island to the FOUNDATION for the purpose of centralizing its planning and development;

WHEREAS, the AUTHORITY, cognizant of the inability of the FOUNDATION to source fund for the purpose, hereby assumes responsibility of providing the budgetary requirements that will enable the latter to perform the mandate it has received from the former under this agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and covenants and undertakings hereinafter setforth (sic), parties hereto agreed to the following:

1. PTA hereby authorizes FOUNDATION to manage and operate CORREGIDOR ISLAND including all existing facilities therein;

2. FOUNDATION shall use, manage and operate the aforesaid Island together with its facilities in order to update and standardize its service systems;

. . . . . .

4. Upon execution of the Agreement, AUTHORITY shall release an operating fund as financial assistance to the FOUNDATION equivalent to three (3) months operating expenses based on the present budget provided for the Island by FOUNDATION. It is understood that with the execution of this Agreement, FOUNDATION shall submit a budget for Corregidor Island for AUTHORITY'S approval. Within five (5) days of the first month and every month thereafter, the equivalent of two (2) months operating fund based on the approved budget shall be

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released by AUTHORITY. Releases of the operating fund shall be scheduled in such manner that FOUNDATION shall always have at its disposal three (3) months operating fund.

FOUNDATION shall submit an annual report on receipts and disbursements of AUTHORITY funds on or before the 15th day of the first month of each year, duly approved and certified by the Executive Director. Said report shall be subject n to audit by AUTHORITY Internal Auditor and Commission on Audit.

. . . . . .

6. All collections of revenue shall be taken up in the books of the FOUNDATION as accountability to AUTHORITY and to be deposited by FOUNDATION in a distinct and separate account in the name of Corregidor Island, the disposition of which shall be as per approved annual budget of the FOUNDATION whether for Capital Expenditures and for Operating Expenses.[93] (Emphasis supplied)

At any rate, even if it were true that Corregidor Foundation, Inc. is funded by international organizations and foreign entities, these foreign grants already became public funds the moment they were donated to Corregidor Foundation, Inc. Thus, these funds may be audited by the Commission on Audit. The Court elucidated in *Fernando v. Commission on Audit*:[94]

[D]espite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character.

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[93] *Id*. at 53-54.

[94] G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*].

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This is in contrast to cases where there is no transfer of ownership over the funds from private parties to the government, such as in the case of cash deposits required in election protests filed before the trial courts, Commission on Elections, and electoral tribunals. In these cases, the government becomes a mere depositary of such fund, the use and disposition of which is subject to the conformity of the private party-depositor who remains to be the owner thereof.[95]

Lastly, while it is true that just like any other corporation organized under the Corporation Code, Corregidor Foundation, Inc. may determine voluntarily and solely the successors of its members in accordance with its own by-laws, this does not change the public character of its functions and the control the government has over it. As discussed, the promotion and development of tourism is a public function and, as provided in its Articles of Incorporation, the members of Corregidor Foundation, Inc. must be government officials who shall hold their membership by reason of their office.

In sum, Corregidor Foundation, Inc. is a government-owned or controlled corporation. Thus, it is under the audit jurisdiction of the Commission on Audit.

IV

There are cases where this Court, despite the disallowance by the Commission on Audit, nevertheless enjoined the refund of the disallowed amounts.[96] In these instances, this Court found that the parties received the disallowed amounts in good faith, defined as "that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[97] It also means "an honest intention

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[95] *Id.*

[96] *See Blaqnera v. Alcala*, 356 Phil. 678 (1998) [Per *J.* Purisima, *En Banc*]; and *De Jesus v. Commission on Audit*, 451 Phil. 812 (2003) [Per *J.* Carpio, *En Banc*].

[97] *Nayong Pilipino Foundation, Inc. v. Pitlido Tan*, G.R. No. 213200, September 19, 2017, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63446> [Per *J.* A.B. Reyes, Jr., *En Banc*].

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to abstain from taking any unconscientious disadvantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."[98]

Here, we cannot ascribe good faith to petitioners in receiving the disallowed amounts. Department of Budget and Management Circular No. 2003-5 is clear that only the following are entitled to honoraria:

4. General Guidelines

4.1. teaching personnel of the Department of Education, Commission on Higher Education, Technical Education and Skills Development Authority, State Universities and Colleges and other educational institutions engaged in actual classroom teaching whose teaching load is outside of the regular office hours and/or in excess of the regular load;

4.2 those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs and other similar activities in training institutions, including those conducted by entities for their officials and employees; and

4.3. chairs and members of Commissions/Board Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.[99]

It is obvious that Corregidor Foundation, Inc. is not an educational institution and petitioners are not its teaching personnel. Neither are petitioners lecturers by virtue of their positions in Corregidor Foundation, Inc. nor are there laws or rules allowing the payment of honoraria to personnel of the Corregidor Foundation, Inc.

Finally, petitioners knew fully well that they serve in Corregidor Foundation, Inc. by reason of their office in the Philippine Tourism

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[98] *Id.*

[99] *Rollo*, p. 74.

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Authority. It is also undisputed that petitioners, as officers and personnel of the Philippine Tourism Authority, already received honoraria and cash gifts. Considering that this Court pronounced as early as 1991 in *Civil Liberties Union v. The Executive Secretary*[100] that an ex-officio position is "actually and in legal contemplation part of the principal office,"[101] receiving another set of honoraria and cash gift for rendering services to the Corregidor Foundation, Inc. would be tantamount to payment of additional compensation proscribed in Article IX-B, Section 8 of the Constitution. These circumstances negate any claim of good faith.

The present case is different from *Blaquera v. Alcala*[102] and *De Jesus v. Commission on Audit*[103] where this Court enjoined the refund of the disallowed amounts. Both cases had ostensible legal bases on which the recipients honestly believed that the disallowed amounts paid were due to them.

In *Blaquera*, productivity incentive benefits of not less than ₱2,000.00 were given to employees of the Philippine Tourism Authority in 1991. The grant was made on the basis of Administrative Order No. 268, series of 1992. The next year, productivity incentive benefits were again granted, but a subsequently issued Administrative Order No. 29, series of 1993 ordered a forced refund of productivity incentive benefits that were more than ₱1,000.00. This Court upheld the validity of Administrative Order No. 29, the latter's issuance being part of the power of control of the President. However, this Court enjoined the refund of the disallowed amounts because the employees received the benefits "in the honest belief that the amounts given were due. . . and the latter accepted the same with gratitude, confident that they richly deserve such benefits."[104]

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[100] 272 Phil. 147 (1991) [Per *C.J.* Fernan, *En Banc*].

[101] *Id.* at 167.

[102] 356 Phil. 678 (1998) [Per *J.* Purisima, *En Banc*].

[103] 451 Phil. 812 (2003) [Per *J.* Carpio, *En Banc*].

[104] *Blaquera v. Alcala*, 356 Phil. 678, 766 (1998) [Per *J.* Purisima, *En Banc*].

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In *Blaquera*, Administrative Order No. 268 ostensibly authorized the payment of the productivity incentive benefits.

In *De Jesus*, allowances and bonuses were given to the members of the Interim Board of Directors of the Catbalogan Water District on the basis of the Local Water Utilities Administration's Resolution No. 313, series of 1995. The Commission on Audit disallowed the payment because, according to Section 13 of the Provincial Water Utilities Act of 1973, directors of local water utilities shall only receive per diems. This Court affirmed the disallowance but held that the recipients "need not refund the [disallowed] allowances and bonus they received[.]"[105] In *De Jesus*, Local Water Utilities Administration's Resolution No. 313, series of 1995 ostensibly authorized the payment of the allowances and bonuses.Unlike in *Blaquera* and *De Jesus*, no such ostensible legal basis was presented in this case. There was no reason for petitioners to honestly believe that another set of honoraria and cash gifts, by reason of their ex-officio positions in Corregidor Foundation, Inc., were due them. It cannot be said that they received the disallowed amounts in good faith.

All told, Corregidor Foundation, Inc. is a government-owned or controlled corporation. It is subject to Department of Budget and Management Circular No. 2003-5 limiting the payment of honoraria to certain personnel of the government. Furthermore, petitioners, being employees of the Philippine Tourism Authority, are public officers prohibited from receiving additional, double or indirect compensation as per Article IX-B, Section 8 of the Constitution. The Commission on Audit did not gravely abuse its discretion in disallowing the payment of honoraria and cash gift to petitioners.

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.

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[105] *De Jesus v. Commission on Audit*, 451 Phil. 812, 824 (2003) [Per *J.* Carpio, *En Banc*].

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Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Reyes, Jr., A., Gesmundo, Reyes, Jr., J., Hernando, Lazaro-Javier, and *Inting, JJ.*, concur.

Jardeleza, J., no part.

Caguioa and *Carandang, JJ.*, on official leave.

FIRST DIVISION

[A.C. No. 10015. June 6, 2019]
(Formerly CBD Case No. 10-2591)

RUBEN S. SIA *petitioner, vs.* **ATTY. TOMAS A. REYES,** *respondent.*

SYLLABUS

LEGAL ETHICS; DISBARMENT AND SUSPENSION; CHARGES AGAINST THE LAWYER MUST BE CONVINCINGLY ESTABLISHED BY CLEARLY PREPONDERANT EVIDENCE; CASE AT BAR. — In a long line of cases, the Court has repeatedly held that the burden of proof in disbarment and suspension proceedings lies with the complainant. The Court will exercise its disciplinary power over members of the Bar if, and only if, the complainant successfully shows that the charges against the respondent has been convincingly established by clearly preponderant evidence. The serious consequences that flow from disbarment or suspension of a lawyer must call for the production or presentation of clear, convincing, and preponderant evidence. It is axiomatic that the law presumes that an attorney is innocent of the charges against him, until the contrary is proven. x x x The Court agrees with the IBP that petitioner has failed to establish, with the requisite degree of proof, that the subject deeds were notarized without his consent, knowledge and physical presence. Petitioner admits his physical presence before respondent on January 3, 2006, but denies he gave his consent to the notarization. Except for