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[G.R. No. 221190. October 8, 2024]

BAGONG ALYANSANG MAKABAYAN (BAYAN), represented by its secretary-general, RENATO M. REYES, JR.; REPRESENTATIVE NERI JAVIER COLMENARES; TRAIN RIDERS NETWORK (TREN), represented by its spokesperson, JAMES BERNARD ECHANO RELATIVO, and members, ANGELO VILLANUEVA SUAREZ AND MARIA DONNA GREY MIRANDA; MARIA FINESA ALCANTARA COSICO; SAMMY T. MALUNES; FERDINAND RIMANDO GAITE; and MARIA KRISTINA CASSION, *Petitioners*, *v.* **HON. JOSEPH EMILIO A. ABAYA, in his capacity as secretary of the Department of Transportation and Communications and as chairman of the Light Rail Transit Authority Board of Directors; DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; HON. HONORITO D. CHANECO, in his capacity as administrator of the Light Rail Transit Authority; LIGHT RAIL TRANSIT AUTHORITY; and LIGHT RAIL MANILA CORPORATION,** *Respondents*.

D E C I S I O N

LEONEN, *J.*:

The Supreme Court's jurisdiction to issue writs of *certiorari* and prohibition is shared with the Regional Trial Courts and Court of Appeals. This shared jurisdiction is, however, subject to the principle of hierarchy of courts which prohibits litigants to seek direct and immediate recourse to this Court. A direct invocation of the Court's original jurisdiction may only be permitted when there exist "special and important reasons" involving questions of law.

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Before this Court is a Petition for *Certiorari* and Prohibition assailing the validity of the concession agreement for the Manila Light Rail Transit 1 (LRT 1) Extension, Operations and Maintenance Project (Concession Agreement). Petitioners Bagong Alyansang Makabayan (BAYAN), Bayan Muna Party-list Representative Neri Javier Colmenares (Colmenares), Train Riders Network (TREN), Maria Finesa Alcantara Cosico, Sammy T. Malunes, Ferdinand Rimando Gaite, and Maria Kristina Cassion pray for the nullification and enjoinment of the implementation of the Concession Agreement, which according to them have been entered into with grave abuse of discretion amounting to lack or excess of jurisdiction.[1]

Sometime in November 2010, the Philippine Government adopted a Public-Private Partnership (PPP) program for its infrastructure projects.[2] The program involves "a contractual agreement between the Government and a private firm targeted towards financing, designing, implementing[,] and operating infrastructure facilities and services that were traditionally provided by the public sector."[3]

Among the PPP priority projects was the Manila LRT 1 Extension, Operations and Maintenance Project (LRT 1 Extension Project), pertaining to, among others, the extension of LRT 1 from Baclaran to Bacoor, Cavite. The LRT 1 Extension Project, which was sponsored by the Department of Transportation and Communications (DOTC) and the Light Rail Transit Authority (LRTA), was initially approved by the National Economic and Development Authority (NEDA) Board on March 22, 2012.[4]

In June 2012, the Invitation to Qualify and Bid (Invitation to Qualify) for the LRT 1 Extension Project was published in several newspapers.[5]

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1 *Rollo*, pp. 3–86.

2 *Id.* at 1163.

3 Public-Private Partnership Center, *What is PPP?, available at* https://ppp.gov.ph/ppp-program/what-is-ppp (last accessed on March 8, 2023).

4 *Rollo*, pp. 1163–1164.

5 *Id.* at 1164.

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In a December 27, 2012 Notice, the Special Bids and Awards Committee (Awards Committee), composed of representatives from DOTC and LRTA, proclaimed the following as pre-qualified bidders: (1) Light Rail Manila Consortium (LRMC); (2) SMC Infra Resources, Incorporated; (3) DMCI Holdings, Incorporated; and (4) MTD-Samsung Consortium.[6]

On the scheduled date for bid proposal submissions, only LRMC submitted. However, its proposal was rejected by the Awards Committee for failure to comply with the conditions indicated in the Instructions to Bidders. Accordingly, the Awards Committee declared a failure of bidding for the LRT 1 Extension Project.[7]

Following a failed bidding, the government modified the terms of the LRT 1 Extension Project. The revised terms were approved by the NEDA Board in November 2013.[8]

On December 3, 2013, the Invitation to Qualify and Bid for the LRT 1 Extension Project was again announced in several newspapers. The Instructions to Bidders were likewise made available.[9]

Subsequently, DOTC and LRTA (collectively, grantors) met with prospective bidders to explain the bidding process. Following several meetings between them and the prospective bidders, the terms of the Concession Agreement were amended, and the final version was approved and released on April 27, 2014.[10]

On May 28, 2014, the scheduled date for the submission of the bid proposals, only LRMC—composed of the Metro Pacific Light Rail Corporation, Ayala Corporation's AC Infrastructure Holdings Corporation, and the Philippine Investment Alliance

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[6] *Id.*

[7] *Id.* at 1317.

[8] *Id.* at 1164–1165.

[9] *Id.* at 1165.

[10] *Id.*

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for Infrastructure's Macquarie Infrastructure Holdings PTE Limited—submitted a bid proposal.[11]

On September 12, 2014, a Notice of Award was issued to LRMC.[12]

On October 2, 2014, the grantors and LRMC executed the Concession Agreement,[13] under which LRMC was authorized to: (1) construct the LRT Line 1 extension from Baclaran to Bacoor, Cavite; and (2) "operate and maintain the existing LRT Line 1" for 32 years.[14]

Petitioners then filed the present Petition, alleging that the Concession Agreement was unconstitutional and detrimental to the Filipino people.[15]

According to petitioners, this Court has recognized that a rule 65 petition is an appropriate remedy to question the Concession Agreement's constitutionality. They stress that *Araullo v. Aquino III*[16] held that petitions for *certiorari* and prohibition may be used to invoke this Court's power of expanded judicial review and challenge acts of both legislative and executive officials.[17] They assert that the allegations in their petition demonstrate that the Concession Agreement's execution was tainted with grave abuse of discretion warranting the institution of a rule 65 petition.[18]

Petitioners justify their direct resort to this Court on the ground that they raise pure questions of law. They contend that the constitutional issues involved may be resolved without delving on the factual assertions stated in their petition. They also insist that

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[11] *Id.*

[12] *Id.* at 1165–1166.

[13] *Id.* at 87–746.

[14] *Id.* at 1166.

[15] *Id.* at 5.

[16] 752 Phil. 716 (2014) [Per J. Bersamin, *En Banc*].

[17] *Rollo*, pp. 1242–1244.

[18] *Id.* at 1244–1245.

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direct resort to the Supreme Court is proper since they advance "serious and important" constitutional issues of transcendental significance.[19]

On the substantive issues, petitioners submit that the Concession Agreement and the Schedules between respondents DOTC, LRTA, and LRMC should be declared null and void based on the following:

First, respondents violated the constitutional right to information on matters of public concern when they refused to furnish petitioners with copies of the Concession Agreement, its annexes, and the documents relating to the Concession Agreement's negotiations.[20]

Second, permitting respondents to periodically adjust the LRT fare without notice and hearing, as required under the Public Service Law, constitutes a violation of the public's right to due process.[21]

Third, the Concession Agreement infringes on LRTA employees' constitutional right to security of tenure. Petitioners claim that under the Concession Agreement, the concessionaire has the absolute discretion to dismiss a transferring employee due to economic reasons.[22] Petitioners also insist that the Concession Agreement fails to provide guidelines to be followed by transferring employees to prevent them from being discharged.[23]

Fourth, taking into consideration the LRT 1 Extension Project's significance, the Concession Agreement cannot be considered an act of coordination between respondents.[24] According to petitioners, the Concession Agreement is essentially a public utility

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[19] *Id.* at 1245–1248.

[20] *Id.* at 1252–1262.

[21] *Id.* at 1262–1267.

[22] *Id.* at 1290–1292.

[23] *Id.*

[24] *Id.* at 1303.

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franchise which can only be granted by Congress. With respect to the construction and maintenance of a light rail system, petitioners stress that the franchise or authority was granted to LRTA through Executive Order No. 603[25], which contains no provisions allowing LRTA to delegate its function to another entity.[26]

Lastly, the Department of Transportation's[27] (DOTr) powers and functions over railways do not include the authority to grant a franchise for the LRT's construction, operation, and maintenance.[28]

Petitioners also assert that the Concession Agreement contains unconscionable stipulations which violate constitutional and statutory provisions.[29]

They stress that the Commission on Audit (COA), in its 2017 Annual Audit Report (AAR), discussed issues raised by the Office of the Government Corporate Counsel (OGCC) during its contract review, particularly on the following matters: (1) differential generation cost; (2) viability gap financing; and (3) provisions

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[25] Executive Order No. 603 (1980), Creating a Light Rail Transit Authority, Vesting the Same with Authority to Construct and Operate the Light Rail Transit (LRT) Project and Providing Funds Therefor.

[26] *Rollo*, pp. 1293–1303.

[27] Republic Act No. 10844 (2015), Department of Information and Communications Technology Act of 2015, sec. 15(a)(6) provides:
SEC. 15. Transfer of Agencies and Personnel. —
(a) The following agencies are hereby abolished, and their powers and functions, applicable funds and appropriations, records, equipment, property, and personnel transferred to the Department:
. . . .
(6) All operating units of the Department of Transportation and Communications (DOTC) with functions and responsibilities dealing with communications.
All offices, services, divisions, units and personnel not otherwise covered by this Act for transfer to the Department shall be retained under the DOTC which is hereby renamed the Department of Transportation.

[28] *Rollo*, pp. 1300–1301.

[29] *Id.* at 1267.

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on variations and adjustments.[30] These issues, according to petitioners, have yet to be addressed by respondents.[31]

Likewise, they aver that the Concession Agreement's balancing payment method proves that the contract is disadvantageous to the government. They assert that while the Build-Operate-Transfer (BOT) Law[32] does not prohibit installment delivery of the concession payment, the balancing payment method renders the concession payment contingent on the grantors' liabilities to the concessionaire. Petitioners then stress that under this scheme, the amount of concession payment to be received by the grantors is not guaranteed.[33]

Additionally, petitioners question the arrangement permitting the concessionaire to offset from the concession fee the deficit payment; and recover differential generation costs through fare adjustment, which allegedly allows the concessionaire to profit from the agreement without needing to pay for anything.[34] In relation, petitioners also assail the Concession Agreement's provision on differential generation cost, which allegedly passes on to the grantors the liability for power fluctuations. They emphasize that the inclusion of this provision did not go through public hearing and will therefore be detrimental to the grantors and, ultimately, to the public.[35]

They also claim that the grantors assumed substantial financial risks equating to unconscionable financial guarantees in favor of the concessionaire. They claim that the securities which the concessionaire is required to set up are negligible compared to the grantors' financial obligations under the Concession Agreement.

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[30] *Id.* at 1269–1270.

[31] *Id.*

[32] Republic Act No. 6957 (1990). An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes.

[33] *Id.* at 1270–1274.

[34] *Id.* at 52.

[35] *Id.*

They likewise stress that the liability of the concessionaire, should it not perform its obligations in relation to the operation and maintenance of the LRT 1 system, are comparably lesser than the grantors' liabilities should they fail to "increase the Notional Fare," fund the Blocked Account, and acquire the identified intermediate right of way, among others. On this note, petitioners presented a table of financial risks and its indicative amounts, which the grantors allegedly assumed under the Concession Agreement:[36]

Failure to comply with obligations relating to the Operations and Maintenance of the Existing LRT 1 system		
Item	When Liability will (or commence to) Attach	Indicative Amount
Restoration of Existing System to meet Existing system Requirements of (a) 100 operational light rail vehicles ("LRVS") and (b) 106-minute cycle time	Within 5 days after Effective Date - Concessionaire to give notice of intention to claim; Within 40 days thereafter - Consessionaire to present detailed estimate of cost	2,600,000,000.00
LRV Shortfall Payments	On Effective Date - Grantors should meet the Existing System Requirements	282,666,667.00 (2 quarters, where 1st quarter shall be from September 5 to September 30)
Replenishment of strategic spare parts, tools. Equipment and consumables to meet the levels as of Bid Proposals Submission Date (April 28, 2014)	On Effective Date - Level as of Bid Proposals Submission Date should be met	Estimate to be provided by LRTA
Rectification of Seismic/Fire Defects	Within 30 days after Effective Date - Concessionaire to give notice of belief that seismic/fire protection elements of Existing System do not comply with Legal Requirements	2,000,000,000.00

[36] *Id.* at 1274–1282.

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Restoration Costs for Structural Defects (for 2015-Q4, liability cap of [PHP] 2 Billion spread over four quarters)	Within the later of October 2, 2016 or 1st anniversary of Effective Date - Concessionaire to conduct Structural Defect Survey and submit Structural Defect Report; Within 10 days from receipt of Structural Defect Report - Independent Consultant to approve and issue Structural Defect Notice; Within 60 days from the issuance of Structural Defect Notice - Concessionaire to provide Detailed Design to cure structural Defects; Within 10 days from receipt of Detailed Design - Independent Consultant to issue Structural Defect Design Acceptance Certificate; Concessionaire to implement restoration works according to Structural Defect Notice and Detailed Design	500,000,000.00
Compensation for shutdown of Station/s during restoration work to cure Structural Defects (assuming at least one station will be shutdown, at [PHP] 300.00/day for 90 days)		27,000,000.00
Compensation for shutdown of sections of the Track during restoration work to cure Structural Defects		No estimate since there is no data available
Indicative Total Amount Needed		5,409,666,667.00
Failure to Increase the Initial Notional Fare to the equivalent of the Approved Fare		
Item	When Liability will (or commence to) attach	Indicative Amount
Fare Deficit Payment	October 30, 2015 - Concessionaire to deliver invoice on fare deficit from September	80,000,000.00 per quarter
Indicative Total Amount Needed		106,667,000.00 (2 quarters where 1st quarter shall be from September 5 to September 30)
Funding of the Blocked Account		
Item	When Liability will (or commence to) attach	Indicative Amount
Minimum funding for Blocked Account	June 30, 2016	500,000,000.00
Indicative Total Amount Needed		500,000,000.00

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Amounts paid pursuant to dispute		
Item	When Liability will (or commence to) attach	Indicative Amount
Land reclamation of intermodal station (adjacent to the satellite depot)	Procurement for depot works on the satellite depot will commence on September 1, 2015 in order to complete the construction of the satellite depot by March 15, 2016	1,014,000,000.00
Tetra radio system on 120 light rail vehicles (LRVs)	Procurement for LRVs will commence on September 1, 2015, in order to ensure that 120 LRVs have been designed, procured, delivered, commissioned and are ready for integrated testing on October 31, 2017	45,000,000.00
Indicative Total Amount Needed		1,059,000,000.00
Acquisition of Identified Intermediate ROW		
Item	When Liability will (or commence to) attach	Indicative Amount
Acquisition of Identified Intermediate Right-of-Way (5.438 m^2 in Paranaque City at [PHP] 40,000/m^2; 8.400m^2 in Paranaque City at [PHP] 20,000/m^2[;] and 477 m^2 in Bacoor City at [PHP] 25,000/m^2)	Acquisition of the Identified Intermediate Right-of-Way will commence within the third quarter of 2015 in order to fully acquire the properties by January 30, 2017 - or two years from its identification	397,445,000.00
Acquisition of right of way for change in MIA station	Once the Secretary of Transportation and Communications and LRTA Administrator have approved the variation, an additional 422 sq.m. property, valued at [PHP] 50,000.00/ sq.m. will be acquired.	16,650,000.00
Acquisition of right of way for Aseana Station	Once the Secretary of Transportation and Communications and LRTA Administrator have approved the variation, an additional 600 sq.m.. property, valued at [PHP] 50,000.00/ sq.m. will be acquired.	30,000,000.00

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Indicative Total Amount Needed	444,095,000.00
Total Indicative Amount (in [PHP])	**7,519,428,667.00**

Petitioners also assail the grantors' assumption of real property tax liabilities for the rail project assets, arguing that this arrangement renders the grantors liable to pay real property taxes without the ability to protest tax assessments.[37]

Petitioners then insist that all these financial guarantees constitute government subsidies which effectively render useless the BOT Law's objective.[38]

Finally, petitioners claim that the grantors' financial guarantees and the parties' failure to conduct public hearings prior to a fare increase confirm that the Concession Agreement unjustly enriches the concessionaire, to the prejudice of the Government and, ultimately, the taxpayers. Petitioners aver that the excessive risks assumed by the grantors warrant the invalidation of the Concession Agreement.[39]

Based on these assertions and due to the alleged patent unconstitutionality of the Concession Agreement, petitioners pray for the issuance of a preliminary injunction and/or a temporary restraining order enjoining the implementation of the agreement.[40]

For its part, respondents DOTr[41] and former DOTC Secretary Joseph Emilio A. Abaya (Secretary Abaya) counter that the Petition should be dismissed outright on account of the following procedural infirmities:

First, acts performed in the exercise of an executive prerogative, as in this case, are not covered by a Rule 65 petition. They claim that a writ of *certiorari* only covers judicial or quasi-judicial

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[37] *Id.* at 1282–1284.

[38] *Id.* at 1285–1286.

[39] *Id.* at 1286–1289.

[40] *Id.* at 67–71.

[41] *See* Republic Act No. 10844 (2015), sec. 15(a)(6).

functions while a petition for prohibition may only be instituted against officers or persons exercising judicial, quasi-judicial, or ministerial functions.[42]

Second, none of the petitioners have the legal standing to sue. While claiming to have instituted the present Petition as taxpayers, petitioners failed to demonstrate that they have sustained, or will sustain, direct injury by reason of the Concession Agreement's implementation.[43] Similarly, petitioner Colmenares made no mention of the legislative prerogative allegedly violated by the execution of the Concession Agreement.[44]

Finally, petitioners' assertions failed to establish that the issue is of transcendental importance.[45]

As to the merits, respondents contend that no constitutional or statutory provision was violated by the execution of the Concession Agreement. They raise the following contentions:

First, respondents complied with the constitutional guarantee to information when it posted, published, and advertised in its websites and bulletin boards the invitation to qualify and bid, as well as several general and special bid bulletins. Additionally, they stress that they conducted a pre-bid conference where all prospective bidders were informed of the bidding procedure for the project.[46]

Second, the Concession Agreement is not a lopsided contract considering that the concessionaire had also assumed substantial financial obligations. According to respondents, the concessionaire undertook to pay the concession payment notwithstanding that it was not a requirement under the BOT Law.[47] Further, respondents

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[42] *Rollo*, pp. 1166–1169.

[43] *Id.* at 1169–1171.

[44] *Id.* at 1171.

[45] *Id.* at 1171–1173.

[46] *Id.* at 1173–1176.

[47] *Id.* at 1177–1192.

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aver that pursuant to the Revised Implementing Rules and Regulations of the BOT Law (Revised IRR), the concessionaire's performance securities may be used to settle liquidated damages due to the grantors should the former be found guilty of delay.[48]

Third, Republic Act Nos. 8974 and 8975 permit the grantor's acquisition of the right of way for the LRT 1 Extension Project. They also argue that the government's acquisition of the right of way ensures the prompt completion of the project.[49]

Fourth, the grantors' obligation to set up a blocked account does not guarantee profit payments in concessionaire's favor. They maintain that not all components of the concessionaire revenue may be charged against the blocked account as it only covers the deficit and grantor's compensation payments.[50]

Fifth, the nature of a value added tax (VAT) as an indirect tax allows the concessionaire to shift the burden of paying it to the buyer or by including it in the LRT fare.[51]

Sixth, the grantors' assumption of the liability to pay real property taxes for the rail project assets is valid and reasonable. Citing *National Power Corp. v. Province of Quezon*,[52] respondents contend that the BOT Law permits the government's assumption of taxes to entice private entities to participate in BOT projects.

Seventh, the balancing of payment arrangement does not constitute unjust enrichment on the concessionaire's part. Respondents insist that the arrangement only pertains to the "netting off of certain payments owed to either party[,]"[53] which is equivalent to compensation under Article 1278 of the Civil

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[48] *Id.* at 1193–1194.

[49] *Id.* at 1195–1196.

[50] *Id.* at 1196–1198.

[51] *Id.* at 1199–1200.

[52] 610 Phil. 456 (2009) [Per J. Brion, Second Division].

[53] *Rollo*, pp. 1202–1203.

Code.[54] That there is no unjust enrichment is further demonstrated by the nature of a BOT project where the concessionaire shoulders the full cost of construction, without requiring cash outlay from the government.[55]

Eighth, the differential generation cost and deficit payments are reasonable measures for the purpose of cancelling out parties' losses or gains.[56] According to respondents, the amount of these obligations are computed using a predetermined formula which considers "extreme fluctuations in generation costs"[57] and differences between the notional and approved fares.[58]

Ninth, the government's contribution on the project did not exceed the 50% limitation under the BOT Law. Respondents state that since the Concession Agreement does not specify any valuation of the assets contributed, there was no basis for petitioners to conclude that the 50% limitation was violated.[59] Respondents stress further that being the agency having technical expertise of determining a transportation project's viability, respondents' exercise of its administrative discretion in entering into the Concession Agreement should be respected by this Court.[60]

Tenth, LRTA did not unduly delegate its powers to the DOTr. LRTA is primarily responsible for the construction of the country's light rail transit system; DOTr is the government agency primarily tasked with the development and regulation of the country's transport system. Respondents contend that nothing in LRTA's charter prohibits DOTr and LRTA from cooperating in the implementation of the LRT 1 Extension Project.[61]

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[54] *Id.* at 1203.

[55] *Id.* at 1204–1205.

[56] *Id.* at 1206–1209.

[57] *Id.* at 1208.

[58] *Id.* at 1206–1209.

[59] *Id.* at 1209–1210.

[60] *Id.* at 1211–1212.

[61] *Id.* at 1213–1216.

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Finally, congressional approval or franchise need not be obtained for the LRT 1 Extension Project, as the 1987 Administrative Code and Executive Order No. 125-A both recognize respondent DOTr's power to authorize the concessionaire to operate the LRT 1.[62]

Like the DOTr, respondents LRTA and its administrator, Hon. Honorito D. Chaneco, argue that there was no violation of the constitutional right to information. They maintain that with the publication of the invitation to qualify and the various bid bulletins, "[p]etitioners had all opportunities to participate in the bidding as well as be informed of the transactions concerning the Project."[63]

They also contend that the notice and hearing requirements under the Public Service Act do not apply to the fixing or adjustment of the LRT rate. They insist that LRTA's authority to fix the LRT rate is conferred by Executive Order No. 603, which only requires consultation with the Board of Transportation, now the Land Transportation Franchising and Regulatory Board (LTFRB).[64] That no notice and hearing is required is further supported by LRTA's lack of quasi-judicial functions and this Court's ruling in *Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports*.[65]

As to the alleged undue delegation of the LRT 1's operation and maintenance, they aver that Executive Order No. 603 explicitly permits LRTA to perform its functions through an agent or a private entity without the need for the latter to obtain a separate franchise.[66] They also assert that in *LRTA v. Commission on Audit*,[67] this Court recognized the authority of LRTA to delegate

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[62] *Id.* at 1216–1220.

[63] *Id.* at 1319.

[64] *Id.* at 1319–1321.

[65] 237 Phil. 606 (1987) [Per J. Gancayco, *En Banc*]. *See also rollo*, pp. 1321–1322.

[66] *Rollo*, pp. 1325–1328.

[67] G.R. No. 88365, January 9, 1990 [Notice, *En Banc*]. *See also rollo*, p. 1328.

to a private entity the operation and maintenance of the light rail transit system.[68]

They also emphasize that the BOT Law does not prohibit the grantors from granting support or contributing to a project. They aver that the Revised IRR has enumerated certain forms of support which may be granted to a project, including but not limited to cost sharing and direct government subsidy.[69]

Lastly, respondents stress that the Department of Finance (DOF) reviewed the terms of the Concession Agreement, which not only include the contract's financial risks but the contingent liabilities as well.[70]

As for respondent LRMC, it maintains that determining whether the Concession Agreement is lopsided is a question of fact which should be raised before a trial court.[71] In relation, it claims that the Petition should be dismissed outright since petitioners' direct filing with this Court violates the doctrine of hierarchy of courts.[72] That it should be dismissed is further supported by this Court's ruling in *Tatad v. Garcia*,[73] which involved a petition to prohibit the implementation of the "Revised and Restated Agreement to Build, Lease and Transfer a Light Rail Transit System for EDSA[.]"[74]

Respondent LRMC further stresses that the Concession Agreement had been reviewed by the OGCC and DOF, which have the technical expertise to evaluate the viability and necessity of highly technical contracts. According to LRMC, the assessment made by these agencies and the subsequent approvals of LRTA, DOTr, and NEDA should be respected by this Court pursuant to the principle of separation of powers.[75]

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[68] *Id.* at 1328–1329.

[69] *Id.* at 1323–1325.

[70] *Id.* at 1322–1323.

[71] *Id.* at 1082–1083.

[72] *Id.* at 1085–1086.

[73] 313 Phil. 296 (1995) [Per J. Quiason, *En Banc*].

[74] *Id.*

[75] *Rollo*, pp. 1090–1091.

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On the matter of the Concession Agreement's alleged unconstitutionality, LRMC raises the following contentions:

First, as with public respondents, LRMC also maintain that there was no violation of the constitutional right to information. It claims that DOTr and LRTA complied with the guidelines laid down in *Chavez v. Public Estates Authority*[76] since they published the details of the project through the invitation to qualify and numerous bid bulletins. Accordingly, it states that "the public had access to information relating to the Project from the very beginning[.]"[77]

LRMC further contends that the right to information as to negotiations leading to a contract's execution requires that demands have been made for the disclosure of these information. Here, while petitioners claimed that their request for information was refused by respondents, the Petition failed to narrate the circumstances surrounding petitioners' request. LRMC stresses that petitioners did not specify that they "submitted any specific request to access any particular information or documents related to the bidding, the meetings between the DOTC, the LRTA, and the potential bidders, or internal meetings of the DOTC and the LRTA."[78]

LRMC also claims that infringement of the constitutional right to information is not a ground for the invalidation of the Concession Agreement.[79]

Second, the installment delivery of the concession payment is not prohibited by the BOT Law and its Revised IRR. The adoption of this installment scheme is considered an incentive for the concessionaire's assumption of the LRT 1 Extension Project.[80]

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[76] 433 Phil. 506 (2002) [Per J. Carpio, *En Banc*].

[77] *Rollo*, pp. 1075–1079.

[78] *Id.* at 1079–1080.

[79] *Id.* at 1080–1082.

[80] *Id.* at 1095–1097.

LRMC insists that the delivery of the concession payment is a separate and distinct undertaking from the concessionaire's obligation to finance the project. It stresses that while concession payment is not a requirement under the BOT Law, the concessionaire assumed the obligation as payment for the government's grant of the project to LRMC.[81]

It further emphasizes that Section 26.2.e of the Concession Agreement is a mere representation to the concessionaire, which does not invalidate the ceiling on the liability of the grantors.[82]

Third, the government's delivery of the right of way is a form of support or contribution to solicited projects permitted under Section 13.3(a) of the Revised IRR.[83]

Further, the concessionaire, as a private entity, has no authority to exercise the power of eminent domain.[84]

Fourth, the creation and transfer of funds to the blocked account shall be subject to legal requirements, which includes but is not limited to applicable domestic laws, ordinances, or regulations.[85] Additionally, it emphasizes that payments to the concessionaire from the blocked account are contingent in nature, in that, it shall only occur upon the happening of certain events indicated in the Concession Agreement.[86]

Fifth, the obligations assumed by the grantors—in particular the restoration of the existing system, LRV shortfall payments, rectification of fire defects, and structural defects' restoration costs—are not financial guarantees, but contingent liabilities dependent on the occurrence of certain events.[87]

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[81] *Id.* at 1097–1099.

[82] *Id.* at 1099–1100.

[83] *Id.* at 1100.

[84] *Id.* at 1101.

[85] *Id.* at 1101–1102.

[86] *Id.* at 1102–1103.

[87] *Id.* at 1103–1105.

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LRMC also denies that these alleged financial guarantees constitute direct government subsidy, emphasizing that "direct government subsidy" refers to the government's contribution to the project for which the project proponent is not obliged to compensate. Contrarily, it maintains that the concessionaire is liable to deliver concession payment and ownership of the project assets at no cost to the grantors.[88] Neither does the balancing payment scheme render contingent the delivery of the concession payment, since this mechanism merely constitutes "contractual setting off of liabilities" permitted under the Civil Code.[89]

LRMC also questions the indicative amounts of the grantors' liabilities for being unfounded and inconclusive estimates. It stresses that petitioners presented no basis nor calculation for these amounts.[90]

As to the alleged invalidity of the provisions on variation payments, respondent LRMC maintains that all variation proposals under the Concession Agreement are subject to the grantors' approval and compliance with legal requirements.[91]

Sixth, VAT is an indirect tax which may be passed on to the buyers, which in this case are the LRT 1 passengers.[92]

Seventh, the grantors' assumption of real property taxes for the rail project assets is a form of government support or contribution permitted under the Revised IRR.[93]

Eighth, neither the COA nor the OGCC reported any findings on the alleged invalidity of the Concession Agreement. In its 2017 AAR, the COA merely noted that its review of the Concession Agreement was yet to be completed due to the absence of certain documents. However, COA's recommendations have been partially

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88 *Id.* at 1106–1107.

89 *Id.* at 1104–1105.

90 *Id.* at 1105.

91 *Id.* at 1107.

92 *Id.* at 1107–1108.

93 *Id.* at 1108–1111.

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implemented as indicated in the COA's 2018 and 2019 AARs.[94] As to the OGCC's observations, LRMC stresses that these were made prior to the execution of the final version of the Concession Agreement, and that these were mere recommendations which do not relate the agreement's validity.[95] LRMC also notes that LRTA is being represented by the OGCC in this case, which has consistently insisted on the agreement's validity.[96]

Ninth, there is no proof that the 50% limitation on the government's share of the capital expenses was violated by the Concession Agreement.[97] LRMC claims that the question of which items are included in the project cost necessitates presentation of evidence that must be made before the trial court.[98] Besides, it insists that the 50% limitation under Section 13.3 of the Revised IRR has no basis in law, and thus, adopted in excess of the administrative rule-making power.[99]

Tenth, petitioners cannot assert violation of the right to security of tenure since none of them are available employees as defined in the Concession Agreement. Accordingly, the petitioners are not considered as real parties-in-interest with respect to this claim.[100] Further, LRMC maintains that the Concession Agreement is not an employment contract which defines the relationship between the concessionaire and its employees.[101]

Additionally, Section 6.3.c of the Concession Agreement states that the dismissal of a transferring employee shall be "in accordance with the Relevant Rules and Procedures"[102] which includes but is

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[94] *Id.* at 1111.

[95] *Id.* at 1111–1113.

[96] *Id.* at 1113.

[97] *Id.* at 1113–1116.

[98] *Id.* at 1116.

[99] *Id.* at 1118–1122.

[100] *Id.* at 1122.

[101] *Id.* at 1122–1123.

[102] *Id.* at 1124.

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not limited to the Constitution and the Labor Code. On this note, LRMC asserts that the Labor Code recognizes economic cause as a valid ground for the dismissal of an employee and provides the procedure for its implementation.[103]

Eleventh, the Concession Agreement provides that adjustments in the approved fare shall be subject to compliance with applicable laws. Section 20.3.b, in particular, states that in granting the adjustment of approved fares, grantors are first required to obtain all legally mandated relevant consents, including the consent of third parties such as the public. LRMC then adds that there have been no increases to the LRT 1 fare since 2015,[104] and that contrary to petitioners' assertion, the Concession Agreement takes into consideration various factors to ensure that the fare imposed allows for a reasonable rate of return.[105]

Twelfth, the grantors may validly award the Concession Agreement without the need of a legislative approval. Citing *Albano v. Reyes*,[106] LRMC maintains that the authority to operate public utilities emanates not only from franchises issued by Congress but also from administrative agencies. It avers that under the Administrative Code[107] and Executive Order No. 125-A[108] DOTr is vested with the authority to issue franchises for the operation of rail transportation utilities. This interpretation, according to LRMC, has been confirmed by the Department of Justice in its July 4, 2013 Opinion.[109]

Finally, nowhere in Executive Order No. 603 does it state that LRTA is prohibited from granting a private entity the

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[103] *Id.* at 1123–1125.

[104] *Id.* at 1128–1131.

[105] *Id.* at 1131.

[106] 256 Phil. 718 (1989) [Per J. Paras, *En Banc*].

[107] Executive Order No. 292 (1987), Administrative Code of 1987.

[108] Executive Order No. 125-A (1987), Reorganizing the Ministry of Transportation and Communications, Defining Its Powers and Function, and For Other Purposes.

[109] *Rollo*, pp. 1132–1136.

administrative franchise to operate a light rail transit system[110] nor is it proscribed from cooperating with DOTr in implementing a light rail project.[111]

The issues for this Court's resolution are:

First, whether the Concession Agreement may be validly assailed through a petition for *certiorari* and prohibition;

Second, whether the petition complies with the requisites for a judicial review;

Third, whether petitioners violated the doctrine of hierarchy of courts;

Fourth, whether the Concession Agreement's provision on the periodic adjustment of LRT fares violates the public's right to due process;

Fifth, whether VAT may be included in the cost of fare collected from LRT 1 passengers;

Sixth, whether grantors may assume the liability to pay real property taxes for the rail project assets;

Seventh, whether the Concession Agreement violates the Constitutional right to security of tenure;

Eighth, whether the Concession Agreement was validly awarded to respondent LRMC;

Ninth, whether respondents violated the constitutional guarantees to information and full disclosure of transactions involving public interest; and

Finally, whether the Concession Agreement is a lopsided contract which only favors respondent LRMC.

The Petition is unmeritorious.

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[110] *Id.* at 1136.

[111] *Id.* at 1137–1138.

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I

The Court's power of judicial review is an authority vested by the 1987 Constitution. It is enshrined in Article VIII, Section 1, which provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.

Apart from settling "actual controversies involving rights which are legally demandable and enforceable," the Court's power of judicial review also includes the authority to determine if any branch or instrumentality of the Government gravely abused its discretion.

Under the Rules of Court, acts committed with grave abuse of discretion may be corrected either through a special civil action for *certiorari* or prohibition.[112] Both remedies are governed by Rule 65, which states:

> SECTION 1. Petition for *certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess or its or his jurisdiction, or with grave abuse or 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 third paragraph of section 3, Rule 46.

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[112] *Araullo v. Aquino III*, 737 Phil. 457, 531 (2014) [Per J. Bersamin, *En Banc*].

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SECTION 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise 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 third paragraph of section 3, Rule 46.

Notwithstanding the limitations under the Rules of Court, we have recognized that *certiorari* and prohibition are remedies which may also be used to question acts of the executive and legislative departments. *Araullo v. Aquino III*[113] teaches:

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts or legislative and executive officials.[114]

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[113] 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

[114] *Id.* at 531.

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Likewise, *Ifurung v. Carpio Morales*[115] held:

> Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law, or existing jurisprudence. We have already ruled that petitions for *certiorari* and prohibition filed before the Court "are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution," and explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions."[116] (Citations omitted)

That *certiorari* and prohibition may be used to assail acts of "any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions" was also reiterated in *Jardeleza v. Sereno*,[117] *Samahan ng mga Progresibong Kabataan v. Quezon City*,[118] *Inmates of the New Bilibid Prison v. De Lima*,[119] and *Kilusang Magbubukid ng Pilipinas v. Aurora Economic Zone and Freeport Authority*.[120]

With these pronouncements, this Court finds proper petitioners' resort to a petition for *certiorari* and prohibition to assail the validity of the Concession Agreement.

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[115] 831 Phil. 135 (2018) [Per J. Martires, *En Banc*].

[116] *Id.* at 151–152.

[117] 741 Phil. 460 (2014) [Per J. Mendoza, *En Banc*].

[118] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[119] 854 Phil. 675 (2019) [Per J. Peralta, *En Banc*].

[120] 890 Phil. 944 (2020) [Per J. Leonen, *En Banc*].

II

As with most constitutionally granted powers, the Supreme Court's power of judicial review is subject to limitations. *Jumamil v. Cafe*[121] discussed that it is imperative for a party invoking this Court's power of judicial review to comply with certain requisites:

> There is an unbending rule that courts will not assume jurisdiction over a constitutional question unless the following requisites are satisfied: (1) there must be an actual case calling for the exercise of judicial review; (2) the question before the Court must be ripe for adjudication; (3) the person challenging the validity of the act must have standing to do so; (4) the question of constitutionality must have been raised at the earliest opportunity[;] and (5) the issue of constitutionality must be the very *lis mota* of the case.[122] (Citation omitted)

Among these requisites, respondents question the existence of petitioners' legal standing to sue.

Legal standing or *locus standi* refers to the right of a party to "come to a court of justice" and question the validity or constitutionality of a governmental act.[123] There is compliance with the legal standing requirement when the litigant has a "personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged."[124] The rules on legal standing were clarified in *Anak Mindanao Party-List Group v. Executive Secretary Ermita*:[125]

> *Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that

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[121] 507 Phil. 455 (2005) [Per J. Corona, Third Division].

[122] *Id.* at 464–465.

[123] *Espina v. Zamora, Jr.*, 645 Phil. 269, 276 (2010) [Per J. Abad, *En Banc*].

[124] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632–633 (2000) [Per J. Kapunan, *En Banc*].

[125] 558 Phil. 338 (2007) [Per J. Carpio Morales, *En Banc*].

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concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action.[126] (Citations omitted)

Litigants are deemed to have legal standing when they have material, real, and personal interest in the assailed act, such that they "sustained or [are] in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that they suffer thereby in some indefinite way."[127] More particularly, they must demonstrate that "[they have] been or [are] about to be denied some right or privilege to which [they are] lawfully entitled or that [they are] about to be subjected to some burdens or penalties by reason of the statute or act complained of."[128]

There are two reasons for the rule on legal standing: first is the respect for the principle of separation of powers, and second is the acknowledgement that our resources are limited. *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*[129] discussed:

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[126] *Id.* at 350–351.

[127] *Agan, Jr. v. Philippine International Air Terminals Co., Inc*., 450 Phil. 744, 802 (2003) [Per J. Puno, *En Banc*].

[128] *Id.*

[129] 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

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The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:

> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[130] (Citations omitted)

Nonetheless, this Court has acted on cases filed by litigants "who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise 'constitutional issue[s] of critical significance.'"[131] In *Funa v. Villar*[132] we held:

> To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act. In *David*, the Court laid out the bare minimum norm before the so-called "non-traditional suitors" may be extended standing to sue, thusly:

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[130] *Id.* at 249–250.

[131] *Id.* at 250. (Citation omitted)

[132] 686 Phil. 571 (2012) [Per J. Velasco, Jr., *En Banc*].

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> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[133] (Citations omitted, emphasis in the original)

Provincial Bus Operators expounded on the exceptions to the legal standing requirement:

> Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance." This Court summarized the requirements for granting legal standing to "non-traditional suitors" in *Funa v. Villar*[.]
>
> . . . .
>
> Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect [their] own interests."
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> . . . .
>
> Associations were likewise allowed to sue on behalf of their members.
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> . . . .
>
> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.

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[133] *Id.* at 585–586.

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In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.

Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.

In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves — i.e., the amount they would pay for the lease of the motels — will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.[134] (Citations omitted)

The characteristic common to these exceptions is the transcendental significance of the issues raised.

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[134] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 250–256 (2018) [Per J. Leonen, *En Banc*].

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"Transcendental importance is not defined in our jurisprudence[.]"[135] Whether a petition advances question of transcendental importance is a matter dealt with on a case-to-case basis. *Francisco, Jr. v. House of Representatives*[136] teaches:

> There being no doctrinal definition of transcendental importance, the following determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[137] (Citation omitted)

Applying these guidelines, this Court finds that the issues raised are of transcendental importance warranting the relaxation of the rule on legal standing.

The Concession Agreement pertains to the extension and operation of the LRT 1. While LRMC undertook to finance the project, the grantors allegedly assumed financial obligations which, according to petitioners, will unduly burden the government, and ultimately the taxpayers.

Further, the agreement provides for various provisions which include, but are not limited to, the financing of the project, creation of a blocked account, delivery of basic right of way, adjustment of LRT fare, and payment of taxes, among others. Petitioners assail these provisions on the ground of violating public policy.

This Court also notes that the Concession Agreement will affect a great number of people. As mentioned by LRMC, 400,000 individuals ride the LRT 1 on a daily basis.[138] Based on these circumstances, we deem it proper to relax the rule on standing.

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[135] *In re Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund*, 751 Phil. 30, 43 (2015) [Per J. Leonen, *En Banc*].

[136] 460 Phil. 830 (2003) [Per J. Carpio Morales, *En Banc*].

[137] *Id.* at 899.

[138] *Rollo*, p. 1063.

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II (A)

To be justiciable, the issues raised must also be ripe for adjudication. *Fuertes v. Senate of the Philippines*[139] discussed the importance of this requirement:

> An issue is ripe for adjudication when an assailed act has already been accomplished or performed by a branch of government. Moreover, the challenged act must have directly adversely affected the party challenging it. In *Philconsa v. Philippine Government*:
>
> > For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.
>
> When matters are still pending or yet to be resolved by some other competent court or body, then those matters are not yet ripe for this Court's adjudication. This is especially true when there are facts that are actively controverted or disputed.[140] (Citations omitted)

To be considered ripe for adjudication, the issues presented must not be prematurely raised. Jurisprudence dictates that this condition is complied with when party litigants observe the rules on exhaustion of administrative remedies and hierarchy of courts.[141]

II (B)

Article VIII, Section 5(1) of the Constitution provides for the Supreme Court's original jurisdiction over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*.

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[139] 868 Phil. 117 (2020) [Per J. Leonen, *En Banc*].

[140] *Id.* at 138.

[141] *Aala v. Uy*, 803 Phil. 36 (2017) [Per J. Leonen, *En Banc*]. *See also* J. Leonen, Separate Opinion in *GIOS-SAMAR, Inc. v Department of Transportation and Communications*, 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

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This jurisdiction, however, is not exclusive, and is shared with the Regional Trial Court and the Court of Appeals. *People v. Cuaresma*[142] elaborated on the concurrent jurisdiction of these courts:

> This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction."[143] (Citations omitted)

Cuaresma continued to clarify that the concurrence of jurisdiction does not grant party litigants unbridled discretion of seeking redress in any court of their choice:[144]

> This concurrence of jurisdiction is not, however; to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

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[142] 254 Phil. 418 (1989) [Per J. Narvasa, First Division].

[143] *Id.* at 426.

[144] *See also Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132 (2013) [Per J. Mendoza, Third Division].

Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra* — resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court corresponding jurisdiction, would have had to be filed with it.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of *certiorari* sought against a City Court was brought directly to this Court although there is discernible special and important reason for not presenting it to the Regional Trial Court.[145]

The doctrine of hierarchy of courts is a recognition that "[t]here is an ordained sequence of recourse to courts vested with concurrent jurisdiction, beginning from the lowest, on to the next highest, and ultimately to the highest."[146] It "guides litigants on the proper forum of their appeals as well as the venue for the issuance of extraordinary writs."[147]

Diocese of Bacolod v. Commission on Elections[148] explained the reason for this rule:

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues

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[145] *People v. Cuaresma*, 254 Phil. 418, 427–428 (1989) [Per J. Narvasa, First Division].

[146] *Montes v. Court of Appeals*, 523 Phil. 98, 109 (2006) [Per J. Tinga, Third Division].

[147] *Malingin v. Sandagan*, 887 Phil. 922, 929 (2020) [Per J. Inting, Second Division].

[148] 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

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of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This [C]ourt, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this [C]ourt promulgates these doctrinal devices in order that it truly performs that role.[149] (Citation omitted)

GIOS-SAMAR, Inc. v. Department of Transportation and Communications[150] also acknowledged that the doctrine operates as a filtering mechanism which produces the following effects:

(1) [P]revent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the

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[149] *Id.* at 329–330.

[150] 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

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lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.[151] (Citations omitted)

The policy of the Court is to enjoin strict observance of the hierarchy of courts. We will not entertain a petition directly filed with this Court "when relief can be obtained in the lower courts."[152]

Yet, there are recognized exceptions:

> Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[153] (Citation omitted)

GIOS-SAMAR clarified that before this Court may permit noncompliance with the hierarchy of courts, it is imperative that the litigants establish not only the existence of these exceptional circumstances but also that they only raise pure questions of law:

> A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator — the issues for resolution of the Court are purely legal. Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.
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> We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor

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[151] *Id.* at 182–183.

[152] *Aala v. Uy*, 803 Phil. 36, 56 (2017) [Per J. Leonen, *En Banc*]. (Citation omitted)

[153] *Id.* at 57.

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considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.[154] (Citation omitted)

Here, while petitioners insist that they only raise pure questions of law, we find that most, if not all of the issues raised require the resolution of interrelated factual questions. As will be discussed later, there are factual issues which much first be established before this Court can properly rule on the issues raised.

III

Before delving on the questions requiring factual findings, we shall first discuss issues which are purely legal in nature.

Among the provisions assailed by petitioners is the stipulation providing for the adjustments of the notional and approved fares. They claim that the arrangement violates the public's right to due process since the notional and approved fares may be adjusted without complying with the notice and hearing requirements under the Public Service Act.[155] They stress that the lack of a public hearing prior to a fare increase evinces not only the government's relinquishment of "its rate-fixing function to the detriment of the Filipino taxpayer[,]"[156] but also the unjust enrichment on the part of the concessionaire.[157]

Petitioners' arguments are unavailing.

Commonwealth Act No. 146, as amended, or the Public Service Act, vests the Public Service Commission with jurisdiction and supervision over public services such as common carrier, railroad, and motor vehicles, among others.[158] In the exercise

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[154] 849 Phil. 120, 173–175 (2019) [Per J. Jardeleza, *En Banc*].

[155] *Rollo*, pp. 1263–1264.

[156] *Id.* at 1288–1289.

[157] *Id.*

[158] Commonwealth Act No. 146 (1936), sec. 13(b), as amended.

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of its jurisdiction, Section 16(c) of this act permits the Public Service Commission, after notice and hearing, to fix the rates to be observed by these public services. It states:

> SECTION 16. Proceedings of the Commission, upon notice and hearing. — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exception mentioned and saving provisions to the contrary:
>
> . . . .
>
> (c) To fix and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates.

Following the implementation of the Integrated Reorganization Plan in 1972, the Public Service Commission was abolished and its functions transferred to "the appropriate regulatory boards."[159] At present, the powers and duties of the Public Service Commission are exercised by various administrative agencies such as the DOTr.[160]

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[159] *See Divinagracia v. Consolidated Broadcasting System, Inc*., 602 Phil. 625 (2009) [Per J. Tinga, Second Division].

[160] *See* Republic Act No. 11659 (2022), sec. 3, which provides:
> Section 3. Recognition of Transfer of Jurisdiction to Various Administrative Agencies. — All references to the Public Service Commission in Commonwealth Act No. 146, as amended, shall pertain to any Administrative Agency to which the powers and duties of the Public Service Commission were transferred by subsequent laws, such as but not limited to:
>
> . . . .
>
> (f) Department of Transportation (DOTr)[.]

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The DOTr is "the primary policy, planning, programming, coordinating, implementing, regulating[,] and administrative entity of the Executive Branch of the government in the promotion, development[,] and regulation of dependable and coordinated networks of transportation[.]"[161] It has various attached agencies, which includes LRTA.[162]

The LRTA was created pursuant to Executive Order No. 603 and was given the primary responsibility of constructing, operating, maintaining, and/or leasing the country's light rail system.[163] To effectively perform its functions, LRTA was vested with the authority to fix the fare for the use of the light rail system. Section 4 of Executive Order No. 603 provides:

SECTION 4. General Powers. The Authority, through the Board of Directors, may undertake such action as are expedient for or conducive to the attainment of the purposes and objectives of the Authority, or of any purpose reasonably incidental to or consequential upon any of these purposes. As such, the Authority shall have the following general powers:

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[161] Executive Order No. 125 (1987), sec. 4.

[162] Executive Order No. 125 (1987), sec. 18.

[163] Executive Order No. 603 (1980), sec. 2 provides:
SECTION 2. Creation of Authority. — To carry out the foregoing transportation policy, there is hereby created a corporate body to be known as the LIGHT RAIL TRANSIT AUTHORITY, hereinafter called the "AUTHORITY", which shall be primarily responsible for the construction, operation, maintenance, and/or lease of light rail transit systems in the Philippines, giving due regard to the reasonable requirements of the public transportation system of the country. The principal office of the Authority shall be in the Metropolitan Manila Area, but it may establish branches and agencies elsewhere within the Philippines, as may be necessary for the proper conduct of its business and the discharge of its functions. The Authority shall be attached to the Ministry of Transportation and Communication.

The Authority shall conduct it business, according to prudent commercial principles and shall ensure, as far as possible, that its revenues for any given year are, at least sufficient to meet its expenditures. Any excess of revenues over expenditure in any fiscal year may be applied by the Authority in any way consistent with this Order, including such provisions for the renewal of capital assets and the repayment of loans, as the Authority may consider prudent.

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. . . .

(5) To contract any obligation or enter into, assign or accept the assignment or, and vary or rescind any agreement, contract of obligation necessary or incidental to the proper management of the Authority;

(6) To borrow funds from any source, private or public, foreign or domestic, and to issue bonds and other evidence of indebtedness, the payment of which shall be guaranteed by the National Government, subject to pertinent borrowing law;

. . . .

(13) To determine the fares payable by persons travelling on the light rail system, in consultation with the Board of Transportation[.]

This power of LRTA to fix and determine the fares was likewise recognized in the recent case of *Syjuco, Jr., v. Abaya*:[164]

Thus, it is clear that there is a valid delegation of legislative power to the LRTA to fix the rates for the LRT-1 and the LRT-2. This power is circumscribed by a standard that is found in the policy underlying the grant to the President of the authority to reorganize the national government – to effect economy and promote efficiency in the government, as well as in the conduct of its functions, services and activities. To be sure, as early as the case of *Cervantes v. Auditor General*, this Court already considered the promotion of "simplicity, economy, and efficiency" in operations as sufficient standard for the delegation of legislative power to the president to create the defunct Government Enterprises Council in order to effect reforms and changes in government owned and controlled corporations.

All told, the authority of the DOTC and the LRTA to impose and regulate the fares for the MRT and the LRT, respectively, is beyond cavil. In fact, this Court has ruled that the grant of rate-fixing powers to administrative agencies is "now commonplace." In holding that the TRB, LTFRB, National Telecommunications Commission, and Energy Regulatory Commission (ERC) all exercise similar delegated rate-fixing powers, this Court in *Francisco, Jr., et al. v. Toll Regulatory Board, et al.* recognized the crucial role played by administrative bodies vested with more expertise and specialized knowledge and even acknowledged

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[164] G.R. Nos. 215650 et al., March 28, 2023 [Per J. J. Lopez, *En Banc*].

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their position in the bureaucracy as the "fourth department of the government."[165]

Having established LRTA's authority to fix LRT 1 fare rates, this Court shall now discuss whether there is a need to comply with the notice and hearing requirements.

The power to fix rates is characterized to be generally legislative in nature. It is a function which may be performed by the legislature itself or delegated to an administrative agency.[166] Nonetheless, there are instances when the administrative agency's fixing of rates is considered an adjudicative function. *Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports*[167] teaches:

> The function of prescribing rates by an administrative agency may be either a legislative or an adjudicative function. If it were a legislative function, the grant of prior notice and hearing to the affected parties is not a requirement of due process. As regards rates prescribed by an administrative agency in the exercise of its quasi-judicial function, prior notice and hearing are essential to the validity of such rates. When the rules and/or rates laid down by an administrative agency are meant to apply to all enterprises of a given kind throughout the country, they may partake of a legislative character. Where the rules and the rates imposed apply exclusively to a particular party, based upon a finding of fact, then its function is quasi-judicial in character.[168] (Citation omitted)

In this case the rates to be determined pursuant to the Concession Agreement shall apply to all individuals using the LRT 1. Any fare increase approved by the grantors are considered to have been issued in the exercise of their legislative function.

Rates approved by the grantors do not, as a rule, necessitate compliance with the notice and hearing requirements. However,

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[165] *Id.* at 46. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[166] *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, 494 Phil. 664 (2005) [Per J. Carpio Morales, Third Division].

[167] 237 Phil. 606 (1987) Per J. Gancayco, *En Banc*].

[168] *Id.* at 611.

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Association of International Shipping Lines, Inc. v. Philippine Ports Authority[169] introduced an exception:

> If the agency is in the exercise of its legislative functions or where the rates are meant to apply to all enterprises of a given kind throughout the country, however, the grant of prior notice and hearing to the affected parties is not a requirement of due process except where the legislature itself requires it.[170] (Citation omitted)

This exception was further elaborated in the recent case of *Syjuco, Jr.*:[171]

> This Court is mindful of decisions pronouncing that notice and hearing are not essential when an administrative agency acts pursuant to its rule-making power or in the exercise of legislative functions. In the early case of *Vigan Electric Light Company, Inc. v. Public Service Commission*, this Court has delineated when the exercise of an administrative agency's rate fixing-power partakes either of a legislative or quasi-judicial character. When such rules and/or rates are meant to apply to all enterprises of a given kind throughout the Philippines, they partake of a legislative character. Meanwhile, when the rule applies exclusively to a specific party and a predicated upon the finding of a fact, the function performed partakes of a quasi-judicial character.
>
> *Vigan Electric* further drew a line between when notice and hearing are required and when they are not. When the administrative agency performs a quasi-judicial function, notice and hearing are required. Otherwise, when the administrative agency performs a legislative function, notice and hearing are not required.
>
> Here, the rate fixed by D.O. No. 2014-014 affects all Filipinos riding the railway transit systems, without distinction. Undoubtedly, and as earlier discussed, when the DOTC issued D.O. No. 2014-014, it exercised a legislative function. Nevertheless, it must be clarified that the doctrine laid down in *Vigan Electric* has since been modified by this Court when it comes to the notice and hearing requirements. As it now stands, the rule that prior notice and hearing are not requirements of due process when the administrative rule was issued in the agency's

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[169] 494 Phil. 664 (2005) [Per J. Carpio Morales, Third Division].

[170] *Id.* at 677.

[171] G.R. Nos. 215650 et al., March 28, 2023 [Per J. J. Lopez, *En Banc*].

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exercise of legislative function, does not apply where when the law itself expressly requires it, as in this case.[172] (Citation omitted)

To be sure, as with the Public Service Act, the Administrative Code likewise mandates the grantors to comply with the notice and hearing requirements. *Syjuco, Jr.* discussed:

Section 9, Chapter 2, Book VII of the Administrative Code of 1987 explicitly provides that when it comes to rate-fixing, the proposed rates must have been published in a newspaper of general circulation at least two weeks before the first hearing thereon. Hence:

> SECTION 9. Public Participation.—(1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> (2) *In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.*
>
> (3) In case of opposition, the rules on contested cases shall be observed.

The foregoing provision is clear, straightforward, and admits of no room for interpretation. Rate-fixing requires notice and hearing, which notice must come at least two weeks before the hearing.

In *Manila International Airport Authority (MIAA) v. Airspan Corporation*, this Court ruled that MIAA, an agency attached of the DOTC, cannot validly raise fees, charges, and rates without prior notice and public hearing. As an attached agency, the MIAA is governed by the Administrative Code of 1987, which specifically requires notice and public hearing in the fixing of rates[.]

. . . .

Despite having a larger measure of independence from the department to which it is attached, MIAA has already established that attached agencies are still governed by the provisions of the Administrative Code

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[172] *Id.* at 50. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

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on notice and public hearing in the fixing of rates. This goes without saying that as an attached agency of the DOTC, the LRTA should similarly follow the requirements in Section 9, Chapter 2, Book VII of the Administrative Code of 1987.[173] (Emphasis in the original)

The foregoing discussion notwithstanding, we find that the Concession Agreement does not violate the public's right to due process. It merely provides for a mechanism through which the concessionaire may apply for an increase of the LRT fare. Any increase shall still be subject to the grantors' approval, who in turn are required to comply with the notice and hearing requirements.

Section 20.3 of the Concession Agreement provides for the guidelines in the adjustment of the notional and approved fares:

20.3 Notional Fare, Approved Fare and Actual Fare

20.3.a The Notional Fare is set out in Part 1 of Schedule 9 (Financial Matters) and shall be adjusted during the Concession Period as set out in Part 1 of Schedule 9 (Financial Matters).

20.3.b The Approved Fare shall be the fares approved by the Grantors (or other Government Authority having jurisdiction over fare levels) from time to time. Whenever the Notional Fare is adjusted, the Concessionaire shall apply to the Grantors for an adjustment of the Approved Fare so that it is at least equal to the Notional Fare. The Grantors shall seek to obtain necessary Relevant Consents for such adjustment. Once approval to any adjustment of the Approved Fare has been obtained, the Grantors shall, at the cost of the Concessionaire, publish such adjustment in accordance with applicable Legal Requirements. This revision shall become the Approved Fare upon obtaining the Relevant Consents to the adjustment. For the avoidance of doubt, (i) a change to the structure of the fares imposed by the Grantors (for example the imposition of a single boarding charge for journeys across more than one system) shall, for the purpose of this Concession Agreement, constitute a change in the Approved Fare and (ii) pending introduction of AFCS, the stored value cards used on the System incorporate a "last ride bonus" and this shall be considered part of the Approved Fare.

20.3.c No later than the date sixty (60) days prior to any scheduled adjustment to the Notional Fare, the Grantors and the Concessionaire

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[173] *Id.* at 50–51, 54.

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shall commence the taking of any steps required by Legal Requirements to obtain an adjustment to the Approved Fare so as to make it equal to the increase in Notional Fare following such adjustment.[174]

In relation, Schedule 9, Part 1 of the Concession Agreement outlines the components of the notional fare,[175] formula for its computation,[176] and the dates during which adjustments shall be made.[177] The notional fare has two components: "a boarding fare component to be charged for each trip plus a distance fare component corresponding to the distance travelled from the originating/boarding station to the terminating/exiting station[.]"[178] The Concession Agreement provides for a periodic adjustment of the notional fare. When adjustment to the notional fare had been made, the concessionaire is then permitted to apply to the grantors for an adjustment of the approved fare.

As correctly argued by LRMC, the adjustment of the approved fare is not automatic.[179] Approved fare adjustment requires authorization from the grantors, who in turn, are obligated to obtain the "relevant consents for such adjustment."[180]

The Concession Agreement defines "relevant consents" as:

. . . all national and local consents, permissions, approvals, authorisations, acceptances, licences, exemptions, filings, registrations, notarisations and other matters which are required (including any agreements with any Government Authority) by any Legal Requirement or under the terms of or in connection with this Concession Agreement (or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained) in connection with the Project, including:

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[174] *Rollo*, pp. 207–208.

[175] *Id.* at 451.

[176] *Id.* at 452–457.

[177] *Id.*

[178] *Id.* at 451.

[179] *Id.* at 1129.

[180] *Id. See also id.* at 208, Section 20.3.b of the Concession Agreement.

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(a) the Railway Infrastructure Works, the Railway System Works and the System Upgrades; or

(b) the operation, maintenance and renewal of the System and performance of the Services,

of or from any Government Authority or third party and, where a Government Authority or third party is authorised to prohibit a proposal, the passing of the time limit for such prohibition without the proposal being prohibited.[181]

Meanwhile, "legal requirements," according to respondent LRMC, refers to:

. . . any domestic law, statute, ordinance, rule, standard, administrative interpretation or guideline, regulation, order, writ, injunction, directive, judgment, decree, Relevant Consent and any requirement of any Government Authority having jurisdiction over the person, or any of its respective properties, assets or representatives, or the matter in question, and in each case being of legally binding effect.[182]

Based on the foregoing, the Concession Agreement merely provides for a mechanism through which the concessionaire may apply to the grantors for an increase of the LRT fare. In turn, the grantors, before approving any adjustment to the fare, are required to comply with various statutory requirements, including but not limited to the notice and hearing requirements under the Public Service Act and the Administrative Code.

IV

Petitioners also question the grantors' obligation to deliver the basic right of way. They claim that it is an unconscionable undertaking and violative of the constitutional and statutory provisions on public policy.[183]

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[181] *Id.* at 99, Section 1 of the Concession Agreement.

[182] *Id.* at 1130. The copy of the 212–page Concession Agreement attached to the *rollo* is missing pages 10 to 24.

[183] *Id.* at 1267.

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This Court notes that while petitioners assail the validity of this undertaking, they failed to identify the legal provisions allegedly violated.

Further, we agree with respondents that by assuming the responsibility of delivering the right of way, not only did the grantors acknowledge LRMC's lack of authority to exercise the power of eminent domain,[184] but it also ensured the expeditious completion of much needed transportation facilities.[185]

Eminent domain refers to the power of "the [S]tate to acquire private property for public use upon payment of just compensation."[186] It is an indispensable attribute of sovereignty, which requires no constitutional imperative.[187]

The power of eminent domain is a function lodged in the legislative branch of the government. The Congress, however, may delegate this function "to local government units, other public entities and public utilities, although the scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law."[188]

Here, it is undisputed that LRMC is not vested with the authority to exercise the power of eminent domain. This being the case, LRMC has no power to expropriate property to be used as right of way for the project.

In addition, we stress that Section 4 of Republic Act No. 8974[189] states that when there is a need to expropriate real property

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[184] *Id.* at 1101.

[185] *Id.* at 1195–1196.

[186] *Metropolitan Cebu Water District v. J. King and Sons Co., Inc*., 603 Phil. 471, 480 (2009) [Per J. Tinga, Second Division].

[187] *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 687 (2000) [Per J. Gonzaga-Reyes, Third Division].

[188] *Id.* at 689. (Citation omitted) *See also Manapat v. Court of Appeals*, 562 Phil. 31, 47 (2007) [Per J. Nachura, Third Division].

[189] Republic Act No. 8974 (2000). This has been repealed by Republic Act No. 10752 (2015), The Right-of-Way Act, sec. 16, which states:

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deemed necessary for the right of way of a national government infrastructure project such as those implemented pursuant to the BOT Law,[190] the court proceedings shall be initiated by the appropriate agency implementing the project. The provision states:

> Section 4. *Guidelines for Expropriation Proceedings*. — Whenever it is necessary to acquire real properly for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:
>
> (a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
>
> (b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and
>
> (c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

SECTION 16. Repealing Clause. — Republic Act No. 8974 is hereby repealed and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

[190] Republic Act No. 8974 (2000), sec. 2 states:
Section 2. *National Government Projects*. — The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

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Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

Further, it must be emphasized that it is the policy of the State to recognize "the indispensable role of the private sector" in the national economy.[191] On this note, Section 1 of the BOT Law, as amended by Republic Act No. 7718,[192] provides:

Sec. 1. Declaration of Policy. — It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector.

Similarly, its 2012 Revised IRR states:

SECTION 1.1 — Policy

It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and

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[191] CONST., art. II, sec. 20.

[192] An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes" (1994).

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development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the Construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government.

In line with the foregoing, these Revised IRR seek to identify specific incentives, support and undertakings, financial or otherwise, that may be granted to Project Proponents, provide a climate of minimum Government regulations, allow reasonable returns on investments made by Project Proponents, provide procedures that will assure transparency and competitiveness in the bidding and award of projects, ensure that Contractual Arrangements reflect appropriate sharing of risks between the Government and the Project Proponent, assure close coordination between national government and Local Government Units (LGUs), and ensure strict compliance by the Government and the Project Proponent of their respective obligations and undertakings and the monitoring thereof, in connection with or relative to Private Sector Infrastructure or Development Projects to be undertaken under this Act and these Revised IRR.

In recognition of this state policy, the Revised IRR lists down several undertakings which the government may assume as a form of support to BOT projects:

SECTION 13.3 — Government Undertakings.

Subject to existing laws, policies, rules and regulations, the Government may provide any form of support or contribution to solicited projects, such as, but not limited, to the following:

a. Cost Sharing — This shall refer to the Agency/LGU concerned bearing a portion of capital expenses associated with the establishment of an infrastructure development facility, such as, the provision of access infrastructure, right-of-way, transfer of ownership over, or usufruct, or possession of land, building or any other real or personal property for direct use in the project and/or any partial financing of the project, or components thereof, Provided, that such shall not exceed fifty percent (50%) of the Project Cost, and the balance to be provided by the Project Proponent. Such government share may be financed from direct government appropriations and/or from Official Development Assistance (ODA) of foreign government or institutions.

. . . .

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c. Direct Government Subsidy — This shall refer to an agreement whereby the Government, or any of its Agencies/LGUs will: (a) defray, pay for or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the project; (b) contribute any property or assets to the project; (c) in the case of LGUs, waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or (d) waive charges or fees relative to business permits or licenses that are to be obtained for the Construction of the project, all without receiving payment or value from the Project Proponent and/or Facility operator for such payment, contribution or support.

Among the support which the government may provide is the delivery of right of way associated with the infrastructure facility project.

The grantors, therefore, validly assumed the obligation to deliver the basic right of way necessary for the implementation of the Concession Agreement.

V

Petitioners next assail the alleged inconsistency between Section 20.11.b of the Concession Agreement and Schedule 9, Part 1, Section E of the Schedules. According to petitioners, while Section 20.11.b of the Concession Agreement states that the concessionaire is liable for all national and local taxes which may accrue in connection with the project's implementation, Schedule 9, Part 1, Section E permits the concessionaire to pass on to passengers the Value-Added Tax (VAT) levied on the fares.[193]

Contrary to petitioners' claim, there is no inconsistency between the assailed provisions. Section 20.11.b of the Concession Agreement provides:

20.11.b General Taxes

Save as stated in Section 20.11.c (Responsibility for Real Property Tax), the Concessionaire shall be liable for and shall be responsible for paying as and when the same shall become due, all national and local

[193] *Rollo*, p. 45.

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taxes, which are payable at any time during the Concession Period in connection with the implementation of the Project.[194]

Meanwhile, Schedule 9, Part 1, Section E states:

[I]f a sales tax or value-added tax (VAT) is levied on the fares, the Concessionaire shall be allowed to pass this cost as part of the fare to be collected from passengers of the LRT 1.[195]

VAT has been characterized as "a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods 'as they pass along the production and distribution chain.'"[196] It is an indirect sales tax,[197] the burden of which "may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services."[198]

Commissioner of Internal Revenue v. Philippine Long Distance Telephone Co.[199] discussed the concept of VAT as an indirect tax:

> Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax.
>
> In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.
>
> On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise,

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[194] *Id.* at 216.

[195] *Id.* at 456.

[196] *Team Energy Corp. v. Commissioner of Internal Revenue*, 828 Phil. 85, 110 (2018) [Per J. Leonen, Third Division]. (Citation omitted)

[197] *See* J. Abad, Separate Concurring Opinion in *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, 694 Phil. 7 (2012) [Per J. Del Castillo, *En Banc*].

[198] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005) [Per J. Panganiban, Third Division]. (Citation omitted)

[199] 514 Phil. 255 (2005) [Per J. Garcia, Third Division].

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indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

To put the situation in graphic terms, by tacking the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services, is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or end-user of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.[200] (Citations omitted)

Considering the nature of VAT as an indirect tax, we find that there is no inconsistency between Section 20.11.b of the Concession Agreement and Schedule 9, Part 1, Section E of its Schedules. Under these provisions, the LRMC remains the entity liable for paying VAT and only the burden of tax is shifted to passengers of LRT 1.

VI

On the matter of real property taxes, Section 20.11.c of the Concession Agreement provides that the liability to pay the real property tax on rail project assets falls on the grantors. Meanwhile, the concessionaire shall be liable for the real property tax on those considered as commercial assets. On this note, the concessionaire is required to prepare a list enumerating the assets considered as commercial and rail project:

20.11.c (3) No later than thirty (30) days after the Effective Date the Concessionaire shall prepare and submit to the Grantors for approval the following lists:

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[200] *Id.* at 266–267.

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20.11.c (3) (a) a list of the Commercial Assets;

20.11.c (3) (b) a list of those Rail Project Assets which are either used exclusively for provision of the Services or where any use thereof for the generation or Commercial Revenue is wholly incidental to their use for the provision of the Services (such Rail Project Assets shall include all LRVs, all Stations and all of the Railway Infrastructure and Railway Systems); and

20.11.c (3) (c) in the case of other Rail Project Assets (such as buildings used partly for the performance of the Services and partly for the generation of Commercial Revenue) an estimate of the percentage of the value of each such Rail Project Asset attributable to (1) the provision of the Services and (2) to the generation of the Commercial Revenue.

Each such list shall be updated (i) annually and (ii) fifteen (15) days after any significant new asset is added to the System and/or to the Commercial Business. Each such list shall be accompanied by supporting documentation and in the case of this paragraph 20.11.c (iii) (*Responsibility for Real Property Tax*) by a detailed, reasoned justification for the split.

20.11.c (4) The Grantors shall have fifteen (15) days which to approve or disapprove any list submitted by the Concessionaire. If the Grantors disapprove any list, they shall provide supporting documents and a detailed justification for the disapproval. If the Grantors disapprove any list, the Parties shall negotiate together for fifteen (15) days to determine the correct entry, failing which the matter may be referred to the Expert pursuant to Section 35 (*Dispute Resolution*). Failure by the Grantors to respond on a list submitted by the Concessionaire shall constitute deemed approval thereof. Once a list has been approved (or deemed approved) it shall be installed by the Parties and thereafter shall be in the Agreed Forms.

20.11.c (5) If any Real Property Tax is assessed on and/or collected from a Party who is not liable and/or responsible for paying the Real Property Tax in accordance with this Section 20.11 (Taxes), then the Party who is liable and responsible for paying the Real Property Tax in accordance with this Section 20.1l (Taxes) shall either directly pay the Real Property Tax to the Government Authority in the manner and within the period required by law or reimburse the Real Property Tax paid or

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payable by the other Party to the Government Authority upon the latter Party's demand.[201]

Petitioners contend that under this arrangement, while local government units may assess the grantors for real property tax on rail project assets, the grantors will have no capacity to protest the assessment.[202] Further, pursuant to this Court's ruling in *National Power Corp. v. Province of Quezon*,[203] they claim that only the concessionaire—and not the local government unit—can enforce the liability of the grantors for the real property tax.[204]

Petitioners' reliance on *National Power Corp*. is misplaced. The main issue in that case was "whether the National Power Corporation (NPC), as a government-owned and controlled corporation, can claim tax exemption under Section 234 of the Local Government Code (LGC) for the taxes due from the Mirant Pagbilao Corporation (Mirant) whose tax liabilities the NPC has contractually assumed."[205]

The case involved the Energy Conversion Agreement (ECA) entered into by Mirant and NPC, where the former agreed to build, finance, and thereafter operate for 25 years a coal-fired thermal power plant on the lots owned by the latter. After the end of the agreed term, Mirant will transfer to NPC the power plant. Under the ECA, NPC agreed to pay all taxes, including real property taxes, that the government will impose on Mirant.

Subsequently, the Municipality of Pagbilao sent a letter to Mirant informing the latter of its real property tax liability for the power plant and machineries. NPC was furnished a copy of the assessment letter.

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[201] *Rollo*, pp. 217–218.

[202] *Id.* at 1283–1284.

[203] 610 Phil. 456 (2009) [Per J. Brion, Second Division].

[204] *Rollo*, p. 1283.

[205] *National Power Corp. v. Province of Quezon*, 610 Phil. 456 (2009) [Per J. Brion, Second Division].

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NPC protested the assessment by filing a petition before the Local Board of Assessment Appeals. It prayed that it be exempted from the payment of "[p]roperty [t]ax on [m]achineries and [e]quipment [u]sed for [g]eneration and [t]ransmission of [p]ower . . . located at Pagbilao, Quezon[.]"[206] NPC based its petition on the exemption provided under Section 234(c) of the Local Government Code.

The Court decreed that since NPC "is neither the owner nor the possessor/user of the subject machineries[,]"[207] it has no personality to protest the tax assessment. It likewise noted that NPC's contractual assumption of the liability to pay the real property tax was insufficient to clothe it with the personality to protest the tax assessment against Mirant, thus:

> On liability for taxes, the NPC does indeed assume responsibility for the taxes due on the power plant and its machineries, specifically, "all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant]." At first blush, this contractual provision would appear to make the NPC liable and give it standing to protest the assessment. The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract as discussed below. By law, the tax liability rests on Mirant based on its ownership, use, and possession of the plant and its machineries.[208]

In any case, the Court made no ruling on the validity of NPC's contractual assumption to pay the real property tax:

> By our above conclusion, we do not thereby pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC undertook. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only

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[206] *Id.* at 462.

[207] *Id.* at 468.

[208] *Id.* at 470.

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between the parties, their assigns and heirs. Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations. The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected in Section 130 of the LGC[.]

. . . .

An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows:

> If the contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

The NPC's assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPC's assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law that underlie the parties' BOT agreement, the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

To reiterate, only the parties to the ECA agreement can exact and demand the enforcement of the rights and obligations it established — only Mirant can demand compliance from the NPC for the payment of the real property tax the NPC assumed to pay. The local government units (the Municipality of Pagbilao and the Province of Quezon), as third parties to the ECA, cannot demand payment from the NPC on the basis of Article 11.1 of the ECA alone. Corollarily, the local government units can neither be compelled to recognize the protest of a tax assessment from the NPC, an entity against whom it cannot enforce the tax liability.[209]

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[209] *Id.* at 472–473.

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Accordingly, petitioners failed to establish that the grantors assumption of the liability to pay the real property taxes for the rail project assets was illegal or contrary to public policy.

VI (A)

Petitioners also claim that the grantors' financial obligations, which include the assumption of the real property tax, are considered government subsidies that would render useless the BOT Law's objective. They rely on the ruling in *Agan* where this Court invalidated the agreements between Philippine International Air Terminals Co., Inc. (PIATCO) and the government, through Manila International Airport Authority (MIAA) and Department of Transportation and Communications (DOTC).

In that case, the Court decreed that the agreements contained provisions obligating the government to pay the lenders of PIATCO should the latter default on its loans, which are considered direct government guarantees prohibited by the BOT Law and its implementing rules:

> The proscription against government guarantee in any form is one of the policy considerations behind the BOT Law. Clearly, in the present case, the ARCA obligates the Government to pay for all loans, advances and obligations arising out or financial facilities extended to PIATCO for the implementation of the NAIA IPT III project should PIATCO default in its loan obligations to its Senior Lenders and the latter fails to appoint a qualified nominee or transferee. This in effect would make the Government liable for PIATCO's loans should the conditions as set forth in the ARCA arise. This is a form of direct government guarantee.
>
> The BOT Law and its implementing rules provide that in order for an unsolicited proposal for a BOT project may be accepted, the following conditions must first be met: (1) the project involves a new concept in technology and/or is not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication other interested parties to a public bidding and conducted the same. The failure to meet any of the above conditions will result in the denial of the proposal. It is further provided that the presence of direct government guarantee, subsidy or equity will "necessarily, disqualify a proposal from being treated and accepted as an unsolicited proposal."

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The BOT Law clearly and strictly prohibits direct government guarantee, subsidy and equity in unsolicited proposals that the mere inclusion of a provision to that effect is fatal and is sufficient to deny the proposal. It stands to reason therefore that if a proposal can be denied by reason of the existence of direct government guarantee, then its inclusion in the contract executed after the said proposal has been accepted is likewise sufficient to invalidate the contract itself. A prohibited provision, the inclusion of which would result in the denial of a proposal cannot, and should not, be allowed to later on be inserted in the contract resulting from the said proposal. The basic rules of justice and fair play alone militate against such an occurrence and must not, therefore, be countenanced particularly in this instance where the government is exposed to the risk of shouldering hundreds of million[s] of dollars in debt.

This Court has long and consistently adhered to the legal maxim that those that cannot be done directly cannot be done indirectly. To declare the PIATCO contracts valid despite the clear statutory prohibition against a direct government guarantee would not only make a mockery of what the BOT Law seeks to prevent — which is to expose the government to the risk of incurring a monetary obligation resulting from a contract of loan between the project proponent and its lenders and to which the Government is not a party to — but would also render the BOT Law useless for what it seeks to achieve — to make use of the resources of the private sector in the "financing, operation and maintenance of infrastructure and development projects" which are necessary for national growth and development but which the government, unfortunately, could ill-afford to finance at this point in time.[210]

The factual setting in *Agan* differs from this case.

First, the agreement in *Agan* emanated from an unsolicited proposal "for the development of NAIA International Passenger Terminal III (NAIA IPT III)[.]" Meanwhile, the Concession Agreement in this case pertains to a priority infrastructure project of the government.

Second, while the agreement in *Agan* contained stipulations on direct government guarantee, the petitioners in this case admit that the Concession Agreement does not involve direct government guarantees.

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[210] *Agan, Jr. v. Philippine International Air Terminals Co., Inc*., 450 Phil. 744, 831–833 (2003) [Per J. Puno, *En Banc*].

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Finally, unlike in unsolicited proposals where there is an express prohibition against direct government guarantee, subsidy, or equity, agreements covering priority infrastructure projects, as in this case, may contain stipulations on direct government subsidy. To reiterate: among the supports or contributions which the government may extend to solicited projects are direct government subsidies as defined under Section 13.3 (c) of the Revised IRR.

Based on the foregoing, the rulings in *National Power Corp.* and *Agan* cannot be used as bases to invalidate the Concession Agreement.

VII

One of the concessionaire's obligations under the Concession Agreement is to offer employment to identified LRTA employees. Employees who accept the offer of employment shall be considered transferring employees subject to a probationary period of 180 days. Section 6.3 of the Concession Agreement states:

6.3 Transferring Employees

6.3.a One (1) month prior to the Effective Date, the Concessionaire shall make offers of employment to each of the employees of LRTA identified in paragraph 1 of Schedule 4 (*Grantors Responsibilities*) ("Available Employees"). On the Effective Date, the Concessionaire shall hire all those Available Employees who accept its offer of employment, subject to a probationary period of one hundred and eighty (180) days starting on the Effective Date, and with levels of compensation and associated benefits no less favorable than those enjoyed by those employees prior to the date the offer is made. The Available Employees who accept the Concessionaire's offer of employment shall be the Transferring Employees.

6.3.b As at 00:01 on the Effective Date, the employment of the Transferring Employees with the LRTA shall be terminated and each such Transferring Employee shall execute and deliver a written release and quitclaim to the LRTA, copies of which shall be provided to the Concessionaire as soon as practicable after the Effective Date. Any retirement and severance payments due to the Transferring Employees by virtue of the termination of their employment with the LRTA shall be the responsibility of the Grantors.

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6.3.c Without limiting the foregoing, the Concessionaire may not terminate the employment of any Transferring Employee due to economic reasons such as the installation of labor-saving devices, redundancy, or retrenchment to prevent losses ("Economic Causes") until the probationary period of one hundred and eighty (180) days has expired. After the aforesaid period, if the Concessionaire wishes to dismiss any employee due to Economic Causes, then the Concessionaire may do so in accordance with the Relevant Rules and Procedures.

6.3.d Those Transferring Employees retained after the probationary period of one hundred and eighty (180) days shall become regular employees of the Concessionaire and shall be accorded all the rights and benefits accorded to regular employees under the Relevant Rules and Procedures.[211]

Petitioners insist that this provision violates the employees' right to tenurial security since it may be used to circumvent labor code provisions. Particularly, they claim that the provision fails to provide reasonable standards for the regularization of probationary employees, and that the dismissal of a transferring employee due to economic causes rests on the concessionaire's absolute discretion.[212]

These contentions have no merit.

Security of tenure is a right guaranteed by the Constitution.[213] It ensures that a worker's employment will not be terminated except

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[211] *Rollo*, pp. 131–132.

[212] *Id.* at 1290–1292.

[213] CONST., art. XIII, sec. 3 states:
SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling

for just or authorized causes.[214] This constitutional protection covers not only the regular employees, but also workers whose employment are considered probationary.[215]

Jurisprudence dictates that there are three grounds by which the services of a probationary employee may be terminated: first, a just cause; second, an authorized cause; and third, when the worker "fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer."[216]

As regards the third ground, *Abbott Laboratories, Phils. v. Alcaraz*[217] discussed:

> Corollary thereto, Section 6 (d), Rule I, Book VI of the Implementing Rules of the Labor Code provides that if the employer fails to inform the probationary employee of the reasonable standards upon which the regularization would be based on at the time of the engagement, then the said employee shall be deemed a regular employee, viz.:
>
> > (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.
>
> In other words, the employer is made to comply with two (2) requirements when dealing with a probationary employee: first, the employer must communicate the regularization standards to the

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disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[214] *SME Bank, Inc. v. De Guzman*, 719 Phil. 103, 114 (2013) [Per C.J. Sereno, *En Banc*].

[215] *Tamson's Enterprises, Inc. v. Court of Appeals*, 676 Phil. 384 (2011) [Per J. Mendoza, Third Division].

[216] *Abbott Laboratories, Phils. v. Alcaraz*, 714 Phil. 510, 533 (2013) [Per J. Perlas-Bernabe, *En Banc*].

[217] 714 Phil. 510 (2013) [Per J. Perlas-Bernabe, *En Banc*].

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probationary employee; and second, the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to comply with either, the employee is deemed as a regular and not a probationary employee.

Keeping with these rules, an employer is deemed to have made known the standards that would qualify a probationary employee to be a regular employee when it has exerted reasonable efforts to apprise the employee of what he is expected to do or accomplish during the trial period of probation. This goes without saying that the employee is sufficiently made aware of his probationary status as well as the length of time of the probation.[218]

As correctly argued by LRMC, the Concession Agreement is not an employment contract which stipulates on the relationship between LRMC and the transferring employees. It is a contract which governs the obligations of the grantors and the concessionaire to one another.[219]

Not being an employment contract, the Concession Agreement is not intended lay down the tasks that the transferring employees must undertake. It is not meant to provide for the reasonable standards that the probationary employees must conform to.

Just the same, the Concession Agreement is not a means to circumvent the labor code. The concessionaire is not given the absolute prerogative of dismissing a transferring employee due to economic causes. Economic causes under the Concession Agreement pertain to "the installation of labor-saving devices, redundancy, or retrenchment to prevent losses[.]"[220] An examination of these instances reveals that they are similar to the authorized causes under Article 298 of the Labor Code:

ARTICLE 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of

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[218] *Id.* at 533.

[219] *Rollo*, pp. 1122–1123.

[220] *Id.* at 132, Section 6.3.c of the Concession Agreement.

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the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

The Concession Agreement states that the termination of a transferring employee shall be "in accordance with the Relevant Rules and Procedures."[221] As discussed, these includes all domestic laws and statutes such as the labor code. The inclusion of this qualification constitutes a recognition that while a transferring employee may be terminated due to an economic cause, the dismissal must be in conformity with the procedure provided under article 298.

Accordingly, we find that the Concession Agreement does not violate the constitutional right to security of tenure.

VIII

Congressional approval or legislative franchise is not a prerequisite for the execution of the Concession Agreement.

The granting of authority to operate a public utility is a prerogative generally belonging to the legislature.[222] This principle can be inferred from Article XII, Section 11 of the Constitution, which provides:

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[221] *Id.*

[222] *Philippine Airlines, Inc. v. Civil Aeronautics Board*, 337 Phil. 254 (1997) [Per J. Torres, Jr., Second Division].

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Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

However, recognizing the increasing responsibilities that demand the legislature's attention, "Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities."[223] *Philippine Airlines, Inc. v. Civil Aeronautics Board*[224] teaches:

> The power to authorize and control the operation of a public utility is admittedly a prerogative of the legislature, since Congress is that branch or government vested with plenary powers of legislation.
>
> > "The franchise is a legislative grant, whether made directly by the legislature itself, or by any one of its properly constituted instrumentalities. The grant, when made, binds the public, and is, directly or indirectly, the act of the state."
>
> The issue in this petition is whether or not Congress, in enacting Republic Act 776, has delegated the authority to authorize the operation of domestic air transport services to the respondent Board, such that Congressional mandate for the approval of such authority is no longer necessary.
>
> Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the

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[223] *Id.* at 265.

[224] 337 Phil. 254 (1997) [Per J. Torres, Jr., Second Division].

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subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency towards the delegation of greater powers by the legislature, and towards the approval of the practice by the courts. It is generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.

The trend of modern legislation is to vest the Public Service Commissioner with the power to regulate and control the operation of public services under reasonable rules and regulations, and as a general rule, courts will not interfere with the exercise of that discretion when it is just and reasonable and founded upon a legal right.[225] (Citations omitted)

One of the administrative agencies delegated with the power to grant licenses or authority to operate public utilities is respondent DOTr.

Under Section 5 of Executive Order No. 125-A, one of the powers and functions of the DOTr pertains to the issuance of "certificates of public convenience for the operation of public land and rail transportation utilities and services[.]" This authority was restated in the Administrative Code of 1987[226] which states:

SECTION 3. Powers and Functions. — To accomplish its mandate, the Department shall:

(1) Formulate and recommend national policies and guidelines for the preparation and implementation of integrated and comprehensive transportation and communications systems at the national, regional and local levels;

. . . .

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[225] *Id.* at 264–265.

[226] Executive Order No. 292 (1987), Book IV, Title XV, Chapter 1, sec. 3.

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(7) Issue certificates of public convenience for the operation of public land and rail transportation utilities and services;

. . . .

(11) Establish and prescribe rules and regulations for the issuance of certificates of public convenience for public land transportation utilities, such as motor vehicles, trimobiles and railways[.]

The DOTr was granted these powers to accomplish its mandate of being the primary administrative agency tasked of developing "dependable and coordinated networks of transportation" in the country.[227]

Based on the foregoing, it is undisputed that the DOTr is vested with the power to grant or issue authorization for the operation of the light rail system. In this case, the authority was granted through the Concession Agreement wherein the LRMC was permitted to construct and operate the LRT line 1. Thus, the Concession Agreement was validly executed notwithstanding the absence of a legislative franchise.

VIII (A)

Neither did the LRTA invalidly delegated its powers and functions.

The declared policy of the BOT Law is "to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government."[228] To this end, the law authorizes government agencies to enter into contractual arrangements with private entities to undertake these government infrastructure facilities. Section 3 of the BOT Law, as amended, provides:

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[227] Executive Order No. 125 (1987), sec. 4.

[228] Republic Act No. 6957 (1990), as amended by Republic Act No. 7718 (1994), sec. 1.

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SEC. 3. Private Initiative in Infrastructure. — All government infrastructure agencies, including government-owned and -controlled corporations and local government units are hereby authorized to enter into contract with any duly prequalified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act. Said agencies, when entering into such contracts, are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects.

Under the law, "infrastructure or development projects" includes the construction of railroads, railways, and transportation systems, among others. These projects "shall be undertaken through contractual arrangements as defined [under the BOT Law] and such other variations as may be approved by the President of the Philippines."[229]

Among the contractual arrangements which government agencies may enter into with private entities are build-operate-and-transfer, build-and-transfer, contract-add-and-operate, and rehabilitate-operate-and-transfer, among others.[230]

The LRTA is the government agency[231] primarily tasked with the construction, operation, and maintenance of the country's light rail transit system.[232] These activities are deemed infrastructure or development projects which may be undertaken by the private sector through a contractual agreement with LRTA.

Accordingly, the Concession Agreement does not constitute an invalid delegation of LRTA's franchise. It is an arrangement permitted under the BOT Law, which the parties entered into to effectuate LRTA's mandate of providing transportation services to the people.

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[229] Republic Act No. 6957 (1990), as amended, sec. 2(a).

[230] Republic Act No. 6957 (1990), as amended, sec. 2.

[231] *Light Rail Transit Authority v. City of Pasay*, 924 Phil. 102 (2022) [Per J. Hernando, *En Banc*].

[232] Executive Order No. 603 (1980), sec. 2.

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IX

Petitioners next question the alleged violation of their constitutional right to information. They maintain that although the Concession Agreement is a matter of public concern, respondents rejected their request for a copy of the agreement and its annexes.[233] In addition, they stress that the State policy of full transparency was rendered nugatory when respondents failed to disclose the transactions and negotiations leading to the consummation of the Concession Agreement.[234]

Article III, Section 7 of the 1987 Constitution recognizes the people's right to information on matters of public concern:

> SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The right to information is complemented by the constitutional policy of full public disclosure expressed in Article II, Section 28, which requires that the State "adopts and implements a policy of full public disclosure of all its transactions involving public interest."

Both constitutional provisions promote "transparency in policy-making."[235] It aims to increase the role of the people "in governmental decision-making as well in checking abuse in government."[236] By providing citizens with sufficient information, they are able to "participate in public discussions leading to

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[233] *Rollo*, p. 1262.

[234] *Id.* at 1257–1262.

[235] *Chavez v. Public Estates Authority*, 433 Phil. 506, 529 (2002) [Per J. Carpio, *En Banc*].

[236] *Valmonte v. Belmonte, Jr.*, 252 Phil. 264, 272 (1989) [Per J. Cortes, *En Banc*].

the formulation of government policies and their effective implementation."[237] *Chavez v. Public Estates Authority*[238] teaches:

> These twin provisions of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are essential to the exercise of freedom of expression. If the government does not disclose its official acts, transactions and decisions to citizens, whatever citizens say, even if expressed without any restraint, will be speculative and amount to nothing. These twin provisions are also essential to hold public officials "at all times . . . accountable to the people," for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy. As explained by the Court in *Valmonte v. Belmonte, Jr.* —
>
> > "An essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit."[239] (Citations omitted)

To emphasize, "[t]he freedom of information is the instrument that empowers the people. The right to information is so central to a representative government such as ours that it was integrated as an enforceable constitutional right."[240]

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[237] *Chavez v. Public Estates Authority*, 433 Phil. 506, 530 (2002) [Per J. Carpio, *En Banc*].

[238] 433 Phil. 506 (2002) [Per J. Carpio, *En Banc*].

[239] *Id.* at 529–530.

[240] *See* J. Leonen, Separate Opinion in *Colmenares v. Duterte*, G.R. Nos. 245981 & 246594, August 9, 2022 [Per J. Lopez, *En Banc*] at 9. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

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Yet not all kinds of information are covered by these provisions. *Legaspi v. Civil Service Commission*[241] clarified that these constitutional guarantees only cover information that are of public concern, and those not exempted by law from its operation.

In this case, respondents do not dispute that the information requested are matters of public interest. Nor do they invoke any exception from the provisions' coverage. Respondents, however, maintain that no constitutional right was violated since they made the necessary disclosure through the posting and publication of several bid bulletins. DOTr also stresses that a pre-bid conference was conducted during which bidding procedures were discussed to the prospective bidders.[242]

Respondents' arguments are partly meritorious.

The policy of full disclosure and the right to information, while generally intertwined, are two constitutional guarantees that differ in scope. *Chavez v. National Housing Authority*[243] discussed:

> Sec. 28, Art. II compels the State and its agencies to fully disclose "all of its transactions involving public interest." Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. Such information must pertain to "definite propositions of the government," meaning official recommendations or final positions reached on the different matters subject of negotiation. The government agency, however, need not disclose "intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage." The limitation also covers privileged communication like information on military and diplomatic secrets; information affecting national security; information on investigations of crimes by law enforcement agencies before the prosecution of the accused; information on foreign relations, intelligence, and other classified information.

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[241] 234 Phil. 521 (1987) [Per J. Cortes, *En Banc*].

[242] *Rollo*, p. 1176.

[243] 557 Phil. 29 (2007) [Per J. Velasco, Jr., *En Banc*].

It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act." In the meantime, it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if finances permit, to upload said information on their respective websites for easy access by interested parties. Without any law or regulation governing the right to disclose information, the NHA or any of the respondents cannot be faulted if they were not able to disclose information relative to the SMDRP to the public in general.

The other aspect of the people's right to know apart from the duty to disclose is the duty to allow access to information on matters of public concern under Sec. 7, Art. III of the Constitution. The gateway to information opens to the public the following: (1) official records; (2) documents and papers pertaining to official acts, transactions, or decisions; and (3) government research data used as a basis for policy development.

Thus, the duty to disclose information should be differentiated from the duty to permit access to information. There is no need to demand from the government agency disclosure of information as this is mandatory under the Constitution; failing that, legal remedies are available. On the other hand, the interested party must first request or even demand that he be allowed access to documents and papers in the particular agency. A request or demand is required; otherwise, the government office or agency will not know of the desire of the interested party to gain access to such papers and what papers are needed. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.[244]

IDEALS, Inc. v. PSALM Corp.[245] echoed this pronouncement:

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[244] *Id.* at 111–113.

[245] 696 Phil. 486 (1012) [Per J. Villarama, Jr., *En Banc*].

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The Court, however, distinguished the duty to disclose information from the duty to permit access to information on matters of public concern under [Art. III, Sec. 7] of the Constitution. Unlike the disclosure of information which is mandatory under the Constitution, the other aspect of the people's right to know requires a demand or request for one to gain access to documents and paper of the particular agency. Moreover, the duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency. Such relief must be granted to the party requesting access to official records, documents and papers relating to official acts, transactions, and decisions that are relevant to a government contract.[246] (Citation omitted)

In both cases, the Court recognized that while Article II, Section 28 requires the government to make a full disclosure "of all its transactions involving public interest[,]"[247] there is yet no law providing for the mechanics regarding this compulsory duty of the government. The Court then held that "pending the enactment of an enabling law, the release of information through postings in public bulletin boards and government websites satisfies the constitutional requirement[.]"[248]

Here, respondents DOTr and LRTA posted in their respective websites and bulletin boards the Invitation to Qualify and Bid for the LRT 1 Extension Project.[249] The Invitation to Qualify, which was also advertised in various newspapers, contained the following information relating to the project: first, estimated cost; second, description and components; third, bidding process; and fourth, bidders' qualifications.[250] They also posted and published various bid bulletins detailing the information regarding the project.[251]

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[246] *Id.* at 524.

[247] *Id.* at 520.

[248] *Id.* at 523.

[249] *Rollo*, pp. 1174, 1319.

[250] *Id.* at 937–939, 1174–1176.

[251] *Id.* at 1174–1176.

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Based on the foregoing, and in the absence of a law detailing the manner for the discharge of this constitutional duty, we find that respondents complied with their obligation under Article II, Section 28.

On the duty to permit access to information, this Court reiterates that individuals seeking to access the documents of a particular agency are required to submit a request or demand. This demand notifies the government office or agency of the information or documents which the requesting party needs.[252]

In this case, we find that petitioners failed to allege the demands they made for the requested documents.

Petitioners claim that respondents refused to provide them with information relating to the Concession Agreement,[253] yet made no mention of the requests they submitted nor of the actions they took. Further, while they sent the November 5, 2015 Letter to DOTr, there is no evidence on record that would show whether the request was granted or not. This is a factual question which is better addressed by the lower courts.

X

Similarly, the issue of whether the Concession Agreement is a lopsided contract is a question of fact which requires the presentation of evidence.

To start with, petitioners equate LRMC's obligation to deliver the concession payment with its commitment to finance the construction, operation, and maintenance of the LRT 1 Extension Project.[254] They then contend that while the BOT Law does not prohibit the installment delivery of the concession payment, it is a disadvantageous undertaking particularly when read with the balancing payment provision of the agreement.[255] They stress that

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[252] *Chavez v. National Housing Authority*, 557 Phil. 29 (2007) [Per J. Velasco, Jr., *En Banc*].

[253] *Rollo*, p. 1253.

[254] *Id.* at 1271.

[255] *Id.* at 1268.

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with the application of the balancing payment scheme, the amount of the concession payment to be received is not guaranteed.[256]

Petitioners' arguments are unmeritorious.

The delivery of the concession payment is an undertaking different from the obligation to finance the LRT 1 Extension Project. Section 10.1 of the Concession Agreement provides for the duty of the concessionaire to finance the project. Pursuant to this, the concessionaire is obligated to execute the necessary finance documents relating to the funding of the project.[257] The concessionaire shall also pay the grantors PHP 9,350,103,900.00, representing the concession payment, which shall be delivered in installment as laid down in Schedule 9, Part 2[258] of the Concession Agreement:

Part 2: Concession Payments

. . . .

2. The Concessionaire has, on or before the Signing Date, paid Nine Hundred Thirty-five Million Ten Thousand Three Hundred Ninety Pesos ([PHP] 935,010,390.00), inclusive of VAT, to the Grantors which is the equivalent of ten percent (10%) of the Total Concession Payments.

3. The Concessionaire shall on or before the Effective Date pay Nine Hundred Thirty-five Million Ten Thousand Three Hundred Ninety Pesos ([PHP] 935,010,390.00), inclusive of VAT, to the Grantors which is the equivalent of ten percent (10%) of the Total Concession Payments.

4. The remaining amount of the Total Concession Payments shall be payable in equal quarterly instalments, inclusive of VAT, over the Concession Period ("Quarterly CP"). The first of these instalments shall be paid on the date of the Balancing Payment first occurring after the fourth (4th) anniversary of the Effective Date. Each subsequent instalment shall be paid on the next following date on which a Balancing Payment is made and shall form a part of the Balancing Payment.

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[256] *Id.* at 1273.

[257] *Id.* at 148–150. Section 10.2 of the Concession Agreement.

[258] *Id.* at 468–469.

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Quarterly CP = (80% x Total Concession Payments) / 112 = [PHP] 66,786,456.43[259]

Based on the schedule of payments, the amount to be delivered is fixed at PHP 66,786,456.43 per quarter. This amount shall then be subject to the balancing payment system, which pertains to the netting off of certain payments due to the concessionaire and the grantors. Section 20.6 of the Concession Agreement provides for the guidelines on how the balancing payment system shall be effectuated:

20.6 Balancing Payment

20.6.a Every quarter (which for this purpose shall be a calendar quarter provided that the first (1st) such "quarter" be the period from and including the Effective Date until the Calendar Quarter Date first occurring thereafter), the Balancing Payment (reflecting a netting off of Deficit Payments, Grantors Compensation Payments, Surplus Payments, KPI Charges, Concession Payments, payments under Section 18.12 Variations and Adjustments), and any other payment under this Concession Agreement expressed to be paid through the Balancing Payments) shall be calculated by the Concessionaire who shall deliver its calculation and statement to the Grantors quarterly no later than thirtieth (30th) of each January, April, July and October (i.e. in the month following the end of the quarter in question). Each invoice shall attach reasonable supporting evidence of all amounts claimed and shall be determined as set out below.

20.6.b The calculation of the Balancing Payment ("BP") shall be as follows:

BP = (DP+GCmP+GOP) - (SP+KPIC+CCP+COP)

where

DP is the Deficit Payment (if any) payable in respect of the period in question pursuant to Section 20.4.a (*Deficit Payment and Surplus Payment*);

GCmP is the Grantors Compensation Payment (if any) payable in respect of the period in question pursuant to Section 30 (*Grantors Compensation*);

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[259] *Id.* at 468.

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GOP is the aggregate of any other agreed payments payable by the Grantors to the Concessionaire in the relevant three (3) month period pursuant to this Concession Agreement;

SP is the Surplus Payment (if any) payable in respect of the period in question pursuant to Section 20.4.b (*Deficit Payment and Surplus Payment*);

KPIC is the aggregate of KPI Charges payable in respect of the period in question pursuant to Section 18.5 (*Key Performance Indicators*);

CCP is any Concession Payment in respect of the period in question pursuant to Section 20.5 (Concession Payment); and

COP is the aggregate of any other agreed payments payable by the Concessionaire to the Grantors in the relevant three (3) month period pursuant to this Concessionaire Agreement.

20.6.c If IPB is a positive number the Grantors shall, subject to Section 20.9 (*Grantors Payment*), pay that amount to the Concessionaire ("Grantors Balancing Payment"). If BP is a negative number, the Concessionaire shall pay that amount to the Grantors ("Concessionaire Balancing Payment").

20.6.d On receipt of the Concessionaire's statement under Section 20.6.a (*Balancing Payment*) and the reports required under Section 25.2.b(3) (*Reports*), the Grantors shall have twenty (20) days starting on the date on which the reports required under Section 25.2.b(3) are delivered in which to (i) approve or (ii) require recalculations and amendments. Both parties shall maintain sufficient records to enable verification of all invoices. Failure by the Grantors to comment on the invoice within the above twenty (20)-day period shall be deemed to constitute approval. Payment shall be made within seven (7) Business Days of approval (or deemed approval) of the statement, subject to Section 20.9 (*Grantors Payment*).

20.6.e Where the Grantors have exercised their rights under Section 20.9 (*Grantors Payment*) to defer any payment then, notwithstanding the exercise of such rights, the Concessionaire shall be entitled to set off any amounts payable by it under this Section 20.6 (*Balancing Payment*) against such amounts.

20.6.f In addition to the Balancing Payment provided in this Section 20 (*Concessionaire Revenues*), there shall be a final Balancing Payment made on the earlier of the Transfer Date or the Termination Date. This

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Balancing Payment shall cover the period from the last Calendar Quarter Date until the Transfer Date or the Termination Date as applicable). No Concession Payment shall be payable in respect of the period covered by this Balancing Payment. This Balancing Payment ("Final Balancing Payment") shall be invoiced no later than twenty (20) days following the Transfer Date or Termination Date (as applicable). The payment under this Final Balancing Payment shall be reconciled with any payments that may be due pursuant to Schedule 10 (*Financial Consequences of Termination*).[260]

Apart from the concession payment, the obligations covered by this arrangement are the "[d]eficit [p]ayments, [g]rantors [c]ompensation [p]ayments, [s]urplus [p]ayments, KPI Charges . . . payments under Section 18.12 (*Variations and Adjustments*)" and those payments which are expressly covered by the balancing payment method.

Deficit payment pertains to the amount the grantors shall pay to the concessionaire in instances where the approved fare is lower than the notional fare. Surplus payment, on the other hand, refers to the sum which the concessionaire shall deliver to the grantors when the approved fare is higher than the notional fare. Section 20.4 of the Concession Agreement governs the computation and settlement of these figures, and states that the actual ridership over a certain period shall be taken into account in determining the deficit and surplus payments.[261]

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[260] *Id.* at 210–212.

[261] *Id.* at 209–210. Section 20.4 of the Concession Agreement states:
20.4 Deficit Payment and Surplus Payment
20.4.a In any period, where the Approved Fare is lower than the Notional Fare, the Grantors shall pay to the Concessionaire a Deficit Payment ("DP") (adjusted to take account of ridership when Concessionaire introduced promotional fares are in operation as indicated below), to reflect the difference between the Notional Fare (NF) and the Approved Fare (AF), computed as follows:
$DPn = Rn_x (NF_{ATn} – AF_{ATn})$
where
DP_n is the Deficit Payment for the three (3)–month period n to be paid by the Grantors to the Concessionaire

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Meanwhile, Section 30[262] of the Concession Agreement states that the grantors shall give the concessionaire compensation

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R_n is the actual ridership (in terms of passenger journeys over period n) (but excluding for this purpose (i) all journeys originating during the IDFRP and (ii) in respect of the second (2nd) and subsequent periods after a Deficit Payment first (1st) becomes due, all journeys made on promotional fares or special discounts introduced by the Concessionaire)

NF_{ATn} is the Notional Fare computed on the basis of the actual Average Trip (AT) length over the period n where AT is as determined below

AF_{ATn} is the Approved Fare computed on the basis of the actual Average Trip (AT) length over the period n where AT is as determined below

$AT=TM_n / R_n$

where TM_n is the actual total passenger–kilometres travelled over the period n

20.4.b In any period, where the Approved Fare is higher than the Notional Fare, the Concessionaire shall pay to the Grantors a "Surplus Payment" ("SP"), computed as follows:

$SP_n = 90\% [R_{nx} (ACF_{ATn} – NF_{ATn})]$

where

SP_n is the Surplus Payment for the three (3) month period n to be paid by the Concessionaire to the Grantors;

ACF_{ATn} is the Actual Fare computed on the basis of the actual Average Trip (AT) length over the period where AT is as determined in Section 20.4.a above; and

R_n, NF_{ATn} and TM_n are as set out in Section 20.4a (*Deficit Payment and Surplus Payment*).

20.4.c For the purposes of the calculation above in respect of the first Balancing Payment to be made and the Final Balancing Payment (as defined in Section 20.6. (Balancing Payment)) referenced above to a "three (3) month period" shall be deemed to refer to the period covered by the relevant Balancing Payment.

[262] *Id.* at 252–253. Section 30 of the Concession Agreement states:

Section 30 GRANTORS COMPENSATION

30.1 If the Concessionaire is delayed in the completion of the Works or is prevented from operating any part of the System or incurs additional cost or loss of revenue by reason of:

30.1.a a Material Adverse Government Action;

30.1.b a Grantors Delay Event;

30.1.c subject to Section 5.3(b) (*Grantors Obligations*), the failure of the Existing System to meet the Existing System Requirements on the Effective Date; or

30.1.d any other cause in respect of which this Concession Agreement provides for the provision of Grantors Compensation, the Grantors shall be

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payments when the latter incurs delay in fulfilling its Concession Agreement duties by reason of material adverse government action, or grantors delay events, among others.[263] In determining the amount of compensation payments, the parties shall be guided by the principle that "it should restore the [Concessionaire's] cash flow position to what it would have been had . . . [the reasons for delay] not occurred[.]"[264]

Key performance charges shall be imposed when the concessionaire fails to meet the key performance indicators laid down in Schedule 6, Part 3 of the Concession Agreement. These indicators relate to the system's operational performance, and customer service, among others. Particularly for operational performance, "KPI [c]harges shall be incurred where the Concessionaire fails to achieve the target levels of performance established on the KPIs as fully described in paragraph 3 (*Operation – Primary Key Performance Indicators ('Primary KPIs')*)[.]"[265] Whether key performance charges shall be imposed depends on certain aspects such as the number of actual trips completed as compared to the number of scheduled train trips.[266]

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liable (subject to Section 20.9 (*Grantors Payment*)) to provide compensation to the Concessionaire ("Grantors Compensation").

30.2 The Grantors shall pay the mutually agreed Grantors Compensation (or in default of agreement as determined pursuant to Section 35 (*Dispute Resolution*), which shall be calculated on the principle that, subject as provided below, it should restore the Concesionaire in the cashflow position to what it would have been had above event not occured, subject to the provisions of Section 20.9 (*Grantors Payment*).

For this purpose the Grantors Compensation shall be through an adjustment to the Concession Payment an increase in Notional Fares or Approved Fares, the making of additional payments to the Concessionaire ("Grantors Compensation Payment") or (by agreement between the Parties) an extension to the Concession Period or a combination of the above.

30.3 The Grantors shall determine the method in which Grantors Compensation is to be provided which shall be subject to the principles set out in Section 30.2 (Grantors Compensation).

[263] *Id.* at 252.

[264] *Id.*

[265] *Id.* at 344, Schedule 6, Part 3, sec. 1.1 of the Concession Agreement.

[266] *Id.* at 350–354, Schedule 6, Part 3, sec. 3 of the Concession Agreement.

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Clearly, various factors need consideration in effectuating the balancing of payment scheme. These factors pertain to the ridership,[267] cashflow position of the concessionaire[268] and number of actual train trips,[269] among others. All these details require the presentation of evidence, the consideration of which is a function best performed by trial courts and the appellate court.

Further, this Court notes that other than the general allegation that the balancing payment method is disadvantageous, petitioners have failed to allege the facts and the law on which this contention is based. *GIOS-SAMAR* explained the consequence of a party's failure to allege the facts supporting one's claim:

> Here, petitioner has not alleged ultimate facts to support its claim that bundling will create a monopoly, in violation of the Constitution. By merely stating legal conclusions, petitioner did not present any sufficient allegation upon which the Court could grant the relief petitioner prayed for. In *Zuñiga-Santos v. Santos-Gran*, we held that "[a] pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair, and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, *ultra vires*, or against public policy, without stating facts showing its invalidity, are mere conclusions of law." The present action should thus be dismissed on the ground of failure to state cause of action.[270]

Likewise, while petitioners contend that "the contract variation payments contemplated by the Concession Agreement" are prohibited by the Revised IRR,[271] they failed to allege the facts demonstrating the infraction. Section 12.11 of the Revised IRR provides for the requisites for a valid contract variation:

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[267] *Id.* at 209–210, Section 20.4 of the Concession Agreement.

[268] *Id.* at 252–253, Section 30.2 of the Concession Agreement.

[269] *Id.* at 350–354, Schedule 6, Part 3, sec. 3 of the Concession Agreement.

[270] *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 142–143 (2019) [Per J. Jardeleza, *En Banc*].

[271] *Rollo*, p. 1273.

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SECTION 12.11. *Contract Variation*. —

A contract variation may be allowed by the Head of the Agency/LGU, Provided, that:

a. There is no impact on the basic parameters, terms and conditions as approved by the Approving Body; or

b. There is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself; or

c. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or

d. There is no additional Government Undertaking, or increase in the financial exposure of the Government under the project.

Upon due diligence and recommendation of the Head of Agency/LGU, contract variations not covered by above shall undergo approval by the Approving Body in terms of the impacts on government undertakings/ exposure, performance standards and service charges. Failure to secure clearance/approval of the Head of Agency/LGU or Approving Body as provided in this section shall render the contract variation void.

The Agency/LGU shall report to the Approving Body and the PPP Center on any contract variations including those approved by the Head of Agency/LGU.

In *Ocampo v. Mendoza*,[272] this Court invalidated the Radio Frequency Identification (RFID) Memorandum of Agreement entered into by Stradcom Corporation and the Department of Transportation and Communication/Land Transportation Office, noting that since the project will subject motor vehicles to an additional charge of PHP 300.00, the RFID project is a prohibited contract variation involving "an increase in the agreed fees, tolls, and charges to be exacted upon the public."[273] Unlike

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[272] 804 Phil. 638 (2017) [Per C.J. Sereno, *En Banc*].

[273] *Id.* at 672.

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in *Ocampo*, however, petitioners in this case failed to lay down the factual circumstances illustrating the claim that the Concession Agreement's contract variation payments impose additional government undertakings or increase the government's financial exposure.

Finally, we stress that variation proposals are subject to "[r]elevant [r]ules and [p]rocedures"[274] as well as "[l]egal [r]equirements,"[275] which include Section 12.11 of the Revised IRR on contract variation.

X (A)

According to petitioners, that the Concession Agreement is lopsided is further demonstrated by the grantors' assumption of prejudicial financial risks and its granting of unconscionable financial guarantees. Among these guarantees, petitioners emphasize the establishment of a PHP 500,000,000.00 "Blocked Account" which allegedly ensures the payment of the concessionaire's revenue under Section 20.1 of the Agreement. They claim that through this arrangement, the concessionaire has a guaranteed stream of revenue which it can use to pay the concession payments and other liabilities under the Concession Agreement.[276]

As with the balancing payment method, petitioners also failed to state the factual details supporting the claim that the blocked account will guarantee the payment of the concessionaire's revenue, or that it will provide the concessionaire a guaranteed stream of revenue. Their argument is a general allegation unsupported by factual and legal foundations.

Further, we agree with respondent DOTr that not all components of the concessionaire revenue may be collected from the blocked account. Section 20.10 of the Concession Agreement states that the grantors are permitted to make withdrawals from the blocked account only for the following:

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[274] *Rollo*, p. 201, Section 18.12.f of the Concession Agreement.

[275] *Id.* at 202, Section 18.12.g of the Concession Agreement.

[276] *Id.* at 1274–1276.

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(i) to make payments due to the Concessionaire under this Concession Agreement; or (ii) with the Concessionaire's consent; or (it) if after such withdrawal the remaining balance on the Blocked Account will be no less than five hundred million Pesos ([PHP] 500,000,000) (Indexed); or (iv) following the Transfer Date or Payment Date; or (v) upon the posting of standby letters of credit as provided in Section 20.10.d (*Blocked Account*).[277]

Section 20.1 provides that the concessionaire, during the concession period, may collect and receive concessionaire revenue consisting of farebox revenue, deficit payments, grantors compensation payments, and commercial revenue. Among these components, only the deficit and grantors compensation payments may be charged from the blocked account.

Farebox revenue refers to the profit generated from the fares paid for using the light rail system.[278]

Commercial revenue, on the other hand, pertains to profits which are not considered as farebox revenue, deficit payments, or grantors compensation payments, and are generated from: (1) utilizing "the System and parts thereof to generate advertising and similar revenue streams"; (2) the "payments (whether by way of rent, licence fee or otherwise) from shops, stalls and other retail outlets or other enterprises at Stations"; (3) the "payments made by telecommunications providers for use of the ROW and/or the System"; and (4) "property development on the Project[.]"[279]

Based on this, farebox and commercial revenue cannot be collected from the blocked account considering that these are revenues charged to individuals who utilize the system and are not party to the Concession Agreement.

Lastly, as discussed earlier, not only are the deficit and grantors compensation payments subject to the balancing payment scheme,

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[277] *Id.* at 215.

[278] *Id.* at 207, Scction 20.2 of the Concession Agreement; 704, Schedule 22 of the Concession Agreement.

[279] *Id.* at 96, Section 1.1 of the Concession Agreement.

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but their amounts and payments are also contingent upon various factors which require factual foundation.

X (B)

Similarly, that the provision on differential generation cost did not undergo public hearing and therefore detrimental to the grantors is a factual question which cannot be raised for the first time before this Court.

We stress that the process of calculating the differential generation cost is influenced by factual components such as actual Manila Electricity Company (Meralco) invoices and the parties' ridership projection, among others.

Section 20.13.b of the Concession Agreement permits the concessionaire to calculate and claim the differential generation cost for the system. The arrangement aims to "take into account extreme fluctuations in generation costs . . . and allows as applicable a temporary upward adjustment of the Notional Fare and Approved Fare to enable either the Concessionaire to recover incremental costs or the Government to benefit from savings resulting from such extreme fluctuations."[280]

The principles and formulas for computing the differential generation cost are laid down in Schedule 9, Part 3 of the Concession Agreement:

1. Introduction and Principles

. . . .

1.2. A 5% annual increase, which is the effective annual increase to the Notional Fare (the "Base Adjustment Index"), shall be applied over the Concession Period, from the Year 0 (base) figures of the Lower Limit Index and Upper Limit Index. The Lower Limit lndex and Upper Limit Index define the inclusive range of fluctuation of generation charges beyond which extreme fluctuation shall be deemed to have occurred. The table in Section 3 in this Part 3 of Schedule 9, lists the Lower Limit Index and Upper Limit Index applicable annually from Effective Date.

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[280] *Id.* at 470–475, Schedule 9, Part 3 of the Concession Agreement.

1.3. Notwithstanding the procurement of power by the Concessionaire from a different power supplier and at a different cost, Manila Electricity Company ("MERALCO") or its successor's power generation selling price to the Concessionaire (the Concessionaire's "Generation Cost," where the Concessionaire is purchasing power from Meralco on actual Meralco invoices) shall be used in the calculation of the Differential Generation Costs outlined in this Part 3 of Schedule 9. The Concessionaire shall be compensated for Differential Generation Cost through fare adjustment in accordance with this Part 3 Schedule 9 only in relation to purchases of electric power from Meralco or its successor company on the basis of actual Meralco invoices, and not in relation to electric power purchased from (a) Meralco or its successor company on a bilateral supply contract and (b) suppliers other than Meralco.[281]

Under Schedule 9, Part 3, the period for computing the differential generation cost shall be on every anniversary of the effective date. During this time, the parties shall determine the lower, upper, and actual generation charges which shall be used as bases to ascertain the amount of differential generation cost, if any. Section 3 provides:

3. Differential Generation Cost

3.1. On Power Cost Computation $Date_n$, if the Actual Generation $Charge_n$ falls on or within the range of the Notional Generation $Charges_n$ then no adjustments to the Notional Fare or Approved Fare shall be made. Otherwise, a fare adjustment shall be applied in accordance with Section 4 below using the Differential Generation Cost that shall be computed as follows[.][282]

Meanwhile, Section 4 dictates how the parties shall be indemnified for the differential generation cost. Primarily, it states that the amount due to the Concessionaire shall be satisfied "through an adjustment of the Notional Fare and the Approved Fare," otherwise called the "Fare Adjustment Amount." On the other hand, the amount due to the grantors shall be used "to offset against future amounts that it could owe the Concessionaire

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[281] *Id.* at 470, Schedule 9, Part 3, sec. 1 of the Concession Agreement.

[282] *Id.* at 472.

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through the Fare Adjustment Amount[.]"[283] The provision further provides:

4. Fare Adjustment Based on Differential Generation Cost

. . . .

4.2. The Fare Adjustment Amount shall be calculated based on ridership projections mutually agreed by the Grantors and the Concessionaire. The maximum allowable **Fare Adjustment Amount** shall be 5% of the Notional Fare. The new Notional Fare shall be the sum of the existing Notional Fare and Fare Adjustment Amount. The new Approved Fare shall be the sum of the existing Approved Fare and the Fare Adjustment Amount For the avoidance of doubt, if the Concessionaire elects not to increase the Actual Fare to the level of the Approved Fare, the Concessionaire will be deemed to have recovered the full amount that it would have recovered had it done so.

4.3 No later than sixty (60) days after each Power Cost Computation Date, the Concessionaire shall give a written notice to the Grantors with supporting calculations and invoices stating if any Fare Adjustment Amount is to be implemented, the amount (if any) of the Fare Adjustment Amount and the revised Notional Fare and Approved Fare to be implemented. The Grantors shall, no later than sixty (60) days after the above notice approve the Fare Adjustment Amount and the revisions to the Notional Fare and the Approved Fare. The revision to the Notional Fare shall take effect on the earlier of (a) the actual implementation of the adjustment to the Approved Fare or (b) the expiry of this sixty (60) day period. If the Grantors continue to disagree with the Concessionaire's calculation of the Fare Adjustment Amount they shall be entitled to refer the matter to the Expert pursuant to Section 35 of this Concession Agreement and no adjustment to the Notional Fare shall be made until the Expert has made his decision. Any such adjustment to the Notional Fare and Approved Fare shall also take into account any interest that would have accrued following the expiry of the sixty (60) day period. Furthermore, any such adjustment to the Notional Fare and Approved Fare shall not be made within a period of six (6) months prior to or after a Periodic Adjustment of the Notional Fare.

4.4. Actual compensation for the Differential Generation Cost shall be determined monthly based on actual ridership multiplied by the

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[283] *Id.* at 474, Schedule 9, Part 3, sec. 4.1 of the Concession Agreement.

Approved Fare Adjustment. During the Differential Generation Cost adjustment period, the Concessionaire shall provide the details of the total Differential Generation Cost recovered during the month and the estimated time period the Concessionaire will require to recover the outstanding Differential Generation Cost and this information shall be submitted no later than fifteen (15) days after the end of the relevant month.

4.5. The adjustment in the Approved Fare shall be in effect until the Concessionaire has fully recovered the Differential Generation Cost.

4.6. Upon the recovery of the entire Differential Generation Cost, the Concessionaire shall inform the Grantors and the Grantors may reduce the Approved Fare and the Notional Fare, by no more than the deduction of the Fare Adjustment Amount therefrom. Any such adjustment to the Notional Fare and Approved Fare shall not be made within a period of six (6) months prior to or after a Periodic Adjustment of the Notional Fare.

4.7. If there remains an outstanding balance on any unpaid Differential Generation Cost ("Remaining Differential Generation Cost") on the Transfer Date or the Termination Date (as applicable) that is due to the Concessionaire, the Grantors shall settle this outstanding amount through the Final Balancing Payment. If there is an outstanding amount that is due to the Grantors, the Concessionaire shall likewise compensate the Grantors through the Final Balancing Payment.[284]

Ascertaining whether the differential generation cost would injure the grantors and the public requires the consideration of various factors which necessitate supporting documents such as invoices from Meralco, "ridership projections" agreed upon by both parties, and actual monthly ridership, among others.

X (C)

Petitioners also compare the grantors' guarantees to those put up by the concessionaire. According to them, the concessionaire's guarantees are rendered nugatory by the PHP 600,000,000.00 limit on its duty to pay damages for a concessionaire delay event. In essence, petitioners insist that the securities set up by the

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[284] *Id.* at 473–475, Schedule 9, Part 3, sec. 4 of the Concession Agreement.

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concessionaire are negligible as compared to those assumed by the grantors.[285]

Petitioners' arguments are unavailing.

Section 9.2 of the Concession Agreement provides for the concessionaire's duty to deliver to the grantors "an executed original of the Operation Performance Security[.]"[286] This security serves as a guarantee for the concessionaire's obligation under the Concession Agreement. Initially, the amount shall be maintained at PHP 650,000,000.00, and will later be modified upon the occurrence of the events stated in the agreement.

Among the obligations which may be enforced against the operation performance security is the concessionaire's liability to pay damages caused by "concessionaire delay event[.]"[287]

Under Section 17.5 of the Concession Agreement, the grantors shall be entitled to PHP 1,000,000.00 for each day of delay, though it cannot exceed PHP 600,000,000.00. The amount of damages to be received pursuant to this provision shall be "the Concessionaire's sole financial liability for delay in achieving the completion of the Cavite Extension[.]"[288] This notwithstanding, the provision provides that the liability for a concessionaire delay event "shall not affect any of the Grantors' rights or the Concessionaire's other obligations"[289] under the agreement.

Therefore, while the Concession Agreement provides for a ceiling as to the amount of damages to be received in case of a concessionaire delay event, this undertaking shall not alter the other obligations of the concessionaire under the Concession Agreement.

Further, this Court notes that the parties put forward opposing contentions unsupported by evidentiary foundation.

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[285] *Id.* at 33, 1274.

[286] *Id.* at 145, Section 9.2.a of the Concession Agreement.

[287] *Id.* at 188, Section 17.5 of the Concession Agreement.

[288] *Id.*

[289] *Id.*

For their part, respondents DOTr and LRMC deny petitioners' assertion and insist that the concessionaire had assumed substantial financial obligations.[290] They emphasize that petitioners disregarded the following financial undertakings shouldered by the concessionaire:[291] (1) cost for the operations of the existing system;[292] (2) share escrow;[293] (3) operation performance security;[294] (4) construction performance security;[295] (5) handback security;[296] (6) concessionaire funding;[297] (7) cost of acquiring additional right of way;[298] (8) damages for concessionaire delay event;[299] and (9) charges for failure to meet the Key Performance Indicators,[300] among others.

Notably, whether the financial guarantees extended by the grantors are more significant than those shouldered by the concessionaire cannot be determined by a mere comparison of the numerical amounts of the parties' obligations. Various factors must be considered which require the presentation of evidence.

The factual nature of this issue is further illustrated by the table presented by petitioners, which laid down the indicative amounts of the parties' financial obligations but failed to demonstrate how these amounts were determined and computed. As correctly observed by respondent LRMC, the values indicated in the table are mere estimates without any basis. Granting that the Concession Agreement provides for the formula for these financial obligations, the equation takes into consideration factual circumstances which petitioners failed to substantiate.

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[290] *Id.* at 1092, 1178.

[291] *Id.* at 1178–1192.

[292] *Id.* at 115–116.

[293] *Id.* at 142–143.

[294] *Id.* at 145–146.

[295] *Id.* at 146–147.

[296] *Id.* at 148.

[297] *Id.*

[298] *Id.* at 153.

[299] *Id.* at 188.

[300] *Id.* at 192–193.

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To be sure, the Concession Agreement provides that the assessment of an independent consultant shall be considered in determining the "ability of the Existing System to meet the Existing System Requirements."[301] Likewise, the liability for

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[301] *Id.* at 118–122. Section 5.3 of the Concession Agreement states:

5.3 Grantors Obligations

5.3.a The relevant obligations of the Grantors prior to the Effective Date are set out in paragraphs 1 and 2 of Schedule 4 (Grantors' Responsibilities). All obligations of the Grantors shall be carried out in accordance with this Concession Agreement, Relevant Rules and Procedures and Prudent Industry Practice.

The achievement of all the conditions set out in this Section 5.3.a (Grantors Responsibilities) is a condition precedent to the Effective Date.

5.3.b The Grantor shall operate and maintain the Existing System prior to the Effective Date with the intent that the Existing System will, on the Effective Date, meet the Existing System Requirements.

No earlier than thirty (30) days prior to the then anticipated Effective Date and no later than ten (10) days before the then anticipated Effective Date, the Concessionaire shall provide to the Grantors and the Independent Consultant its assessment of the ability of the Existing System to meet the Existing System Requirements including the number of LRVs it reasonably believes are in good working condition and its estimate of the Cycle Time. The Grantors shall procure that the Independent Consultant shall, within a period of ten (10) days of receipt of the assessment provided by the Concessionaire certify whether or not the Existing System will meet the Existing System Requirements on the Effective Date.

The Grantors must, between the Bid Submission Date and the Effective Date, continue to inspect, maintain, monitor and report on the performance of the Existing System to the same frequency and quality and across the same indicators as undertaken prior to the Bid Submission Date.

The table set out below shall be used to asses the level of adherence by the Grantors to the existing System Requirements from the Bid Submission Date to the Effective Date. The baseline Existing System Requirement parameters will be set at midnight on 28 April 2014 and will be in accordance with Schedule 4 (Grantors Responsibilities). The information used to establish the baseline measurement is as detailed in the table below.

If the Existing System does not meet the baseline Existing System Requirements parameters (as set out in the Existing System Requirements table below), as certified by the Independent Consultant, the Grantors shall compensate the Concessionaire for the unavoidable incremental cost (as determined by agreement or failing agreement by the Expert) that the Concessionaire will incur to restore the Existing System to the level necessary to meet all of the baseline Existing System Requirements taking into

Light Rail Vehicle (LRV) Shortfall Payments depends on the "average number of LRVs available for revenue generating services[,]"[302] and the system's average cycle time, factors which are derived from the parties' operating reports certified by the independent consultant.[303]

The same goes to the determination of other liabilities for noncompliance with obligations relating to the existing system's operation and maintenance,[304] fare deficit payment,[305] land reclamation,[306] LRV procurement,[307] and right of way acquisition,[308] among others. The amount to be expended for these obligations depends on the presentation and evaluation of evidence, which cannot be done for the first time before this Court. The parties raise factual allegations which this Court cannot resolve at the first instance.[309]

X (D)

We likewise find unavailing the Concession Agreement's alleged failure to address the issues raised in the COA's 2017 AAR.

Among the significant observations made by COA in its 2017 AAR are the absence of certain documents required in COA Circular No. 2009-001 and the "non-clarification of the comments on the issues raised in the contract review by the Office of the Government Counsel (OGCC) dated May 26, 2014[.]" The AAR provides:

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consideration any Emergency Upgrade Contract executed by the Grantors for the same purpose. (*Id.* at 118–119.)

302 *Id.* at 120–121.

303 *Id.*

304 *Id.* at 126–131, 221.

305 *Id.* at 209–210.

306 *Id.* at 1280.

307 *Id.* at 161.

308 *Id.* at 154–157.

309 *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120 (2019) [J. Jardeleza, *En Banc*].

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6. The auditorial, legal and technical review of Concession Agreement for the LRT 1 Cavite Extension and Operations and Maintenance Project with contract amount of ₱65 billion could not be completed due to absence of documents required in COA Circular No. 2009-001 and non-clarification of the comments on the issues raised in the contract review by the Office of the Government Counsel (OCCC) dated May 26, 2014.

6.1 LRTA the Grantor/Implementing Agency of the PPP Project has no complete documentation of the project and all the related documents that will ensure project history and better retention of information over the life of the Concession Agreement of 32 years which during the project implementation staff turnover and change of administration is inevitable.

6.2 On October 2, 2014, the Department of Transportation and Communications (DOTC) and the LRTA entered into Concession Agreement with the Light Rail Manila Corporation (LRMC) for the ₱65 billion Light Rail Transit Line 1 Cavite Extension and Operations and Maintenance Project for a period of 32 years. The Concessionaire took over the operations and maintenance of the Line 1 System on September 1, 2015.

6.3 In the initial review of the Concession Agreement, a Memorandum dated July 22, 2015 was sent to the Office of the Administrator requesting for the submission of the listed documents required under COA Circular No. 2009-001 dated February 12, 2009 and additional information/ documents/comments on several Sections of the Agreement, which we deemed necessary in the conduct of the auditorial and legal review of the agreement; but as of this writing, no reply has been received:

. . . .

6.5 In the same Memorandum, Management was requested to comment on the issues raised in the contract review by the OGCC dated May 26, 2014, particularly on the following items/issues:

a. On Differential Generation Cost

> "The Grantors shall be liable for the differential generation cost (DGC) brought about by extreme fluctuations in power and the Concessionaire is merely required to inform Grantors of these events. Although the Grantors are given leeway to validate the materiality of the Concessionaire's claim and computation of the DGC, "extreme fluctuations in power" should be defined to avoid arbitrariness in the determination of what it constitutes."

b. On the Allowance of Negative Bid and a Maximum Capital Subsidy (Viability Gap Financing)

"It is assumed that the Revised Concession Agreement (RCA) provisions on viability of the project are in consonance with the BOT pertinent provisions (Section 1.(b); Sec.6) of RA 6958 as amended by RA 7718.

"There was reservation on the cost recovery scheme as provided in the RCA in that it provided for Deficit Payments. Thus, where the Approved Fare is lower than the Notional Fare, the Grantors shall pay the concessionaire the difference, if any. Assuring the Concessionaire that any variance shall be paid may be construed as a government subsidy in the form of guarantee of revenue during the entire concession period which the BOT Law did not envision this."

c. Other Issues

"The provisions on Variations and Adjustments should be strictly adhered to if only to obviate possible variations not within those allowed under the BOT Law and the corresponding Revised IRR on Variation Orders."

Based on these findings, COA recommended the submission of the following:

a) the documents required in COA Circular No. 2009-001; b) information/documents/comments to clarify the issues raised in the following: b1) initial auditorial and legal review; b2) contract review by the OGCC; b3) Special Bulletin No. 06-2014 dated May 16, 2014 in order for us to complete the review/evaluation of the Concession Agreement, and c) the required additional documents to provide complete documentation of the project. Management should have in their possession the complete documentation of the project to ensure retention of information over the life cycle of the PPP project and preserve the project history.

Notably, in COA's 2020 AAR of LRTA, it was reported that the recommendations relating to the submission of the required contract review documents have been fully implemented and referred to COA-DOTr.[310]

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[310] Commission on Audit, *Light Rail Transit Authority Annual Audit Report 2020, available at* https://www.coa.gov.ph/reports/annual-audit-reports/aar-government-owned-and-or-controlled-corporations/#199-3839-light-rail-transit-authority-1656752712 (last accessed, June 1, 2023).

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Considering that COA's recommendations have been fully implemented by the parties, this Court need not address the allegations by petitioners.

In any case, it must be stressed that the COA made no observation regarding the validity of the agreement. The same applies to the OGCC's statements, which observations, petitioners failed to prove to affect the validity of the Concession Agreement.

ACCORDINGLY, the Petition for *Certiorari* and Prohibition is **DISMISSED** for lack of merit.

SO ORDERED.

Gesmundo, C.J., Caguioa, Hernando, Lazaro-Javier, Zalameda, Gaerlan, Dimaampao, Marquez, and *Kho, Jr., JJ.*, concur.

Inting, *M. Lopez*, *Rosario*, *J. Lopez*, and *Singh*, *JJ.*, on official business.

APPEARANCES OF COUNSEL

National Union of Peoples' Lawyer for petitioners.
Jeffrey G. Aguilar for petitioner Colmenares.
Sycip Salazar Hernandez and Gatmaitan for respondent Light Rail Manila Corporation.
Office of the Government Corporate Counsel for LRTA.
The Solicitor General for respondent.