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Bureau of Investigation, the incumbent Chiefs of the Armed Forces of the Philippines, the Philippine National Police and the Philippine National Police-Criminal Investigation and Detection Group, and all the respondents, within sixty (60) days from receipt of this Resolution.

(7) **DECLARE** this Writ of *Amparo* proceeding closed and terminated, without prejudice to the concerned parties' compliance with the above directives and subject to the Court's continuing jurisdiction to enforce compliance with this Resolution.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe and *Leonen, JJ.*, concur.

EN BANC

[G.R. No. 193462. February 4, 2014]

DENNIS A.B. FUNA, *petitioner, vs.* **MANILA ECONOMIC AND CULTURAL OFFICE and the COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; SUPERVENING EVENT THAT RENDERED THE PETITION FOR *MANDAMUS* MOOT AND ACADEMIC, PRESENT.— A case is deemed moot and academic when, by reason of the occurrence of a supervening event, it ceases to present any justiciable controversy. Since they lack an actual controversy otherwise cognizable by courts, moot cases are, as a rule,

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dismissible. x x x In this case, We find that the issuance by the COA of *Office Order No. 2011*-698 indeed qualifies as a supervening event that effectively renders moot and academic the main prayer of the instant *mandamus* petition. A writ of *mandamus* to compel the COA to audit the accounts of the MECO would certainly be a mere superfluity, when the former had already obliged itself to do the same.

2. **ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE THAT REQUIRES DISMISSAL OF MOOT CASES, APPLIED.—** Be that as it may, this Court refrains from dismissing outright the petition. We believe that the *mandamus* petition was able to craft substantial issues presupposing the **commission of a grave violation of the Constitution** and involving **paramount public interest**, which need to be resolved nonetheless: *First*. The petition makes a serious allegation that the COA had been remiss in its constitutional or legal duty to audit and examine the accounts of an otherwise auditable entity in the MECO. *Second*. There is paramount public interest in the resolution of the issue concerning the failure of the COA to audit the accounts of the MECO. The propriety or impropriety of such a refusal is determinative of whether the COA was able to faithfully fulfill its constitutional role as the guardian of the public treasury, in which any citizen has an interest. *Third*. There is also paramount public interest in the resolution of the issue regarding the legal status of the MECO; a novelty insofar as our jurisprudence is concerned. We find that the status of the MECO—whether it may be considered as a government agency or not—has a direct bearing on the country's commitment to the *One China* policy of the PROC. An allegation as serious as a violation of a constitutional or legal duty, coupled with the pressing public interest in the resolution of all related issues, prompts this Court to pursue a definitive ruling thereon, if not for the proper guidance of the government or agency concerned, then **for the formulation of controlling principles for the education of the bench, bar and the public in general**. For this purpose, the Court invokes its *symbolic function*.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT SUSTAINS THE LEGAL STANDING OF A PARTY AS A CONCERNED CITIZEN TO FILE A PETITION FOR *MANDAMUS* THAT RAISES ISSUES OF TRANSCENDENTAL IMPORTANCE.—**

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We rule that the instant petition raises issues of **transcendental importance**, involved as they are with the performance of a constitutional duty, allegedly neglected, by the COA. Hence, We hold that the petitioner, as a concerned citizen, has the requisite legal standing to file the instant *mandamus* petition. To be sure, petitioner does not need to make any prior demand on the MECO or the COA in order to maintain the instant petition. The duty of the COA sought to be compelled by *mandamus*, emanates from the Constitution and law, which explicitly require, or "*demand*," that it perform the said duty. To the mind of this Court, petitioner already established his cause of action against the COA when he alleged that the COA had neglected its duty in violation of the Constitution and the law.

4. REMEDIAL LAW; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; THE COURT WAIVES THE APPLICATION OF THE PRINCIPLE IN VIEW OF THE TRANSCENDENTAL IMPORTANCE OF THE ISSUES RAISED IN THE PETITION FOR *MANDAMUS*.— The last preliminary issue is concerned with the petition's non-observance of the principle of hierarchy of courts. The COA assails the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or any Regional Trial Court. The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court. In view of the **transcendental importance** of the issues raised in the *mandamus* petition, as earlier mentioned, this Court waives this last procedural issue in favor of a resolution on the merits.

5. COMMERCIAL LAW; CORPORATIONS; THE MANILA ECONOMIC AND CULTURAL OFFICE (MECO) IS ORGANIZED AS A NON-STOCK CORPORATION.— The organization of the MECO as a non-stock corporation cannot at all be denied. Records disclose that the MECO was incorporated as a non-stock corporation under the Corporation Code on 16 December 1977. The incorporators of the MECO were Simeon R. Roxas, Florencio C. Guzon, Manuel K. Dayrit, Pio K. Luz and Eduardo B. Ledesma, who also served as the corporation's original members and directors. x x x The purposes for which the MECO was organized are somewhat analogous to those of a *trade, business or industry chamber*,

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but only on a much larger scale *i.e.*, instead of furthering the interests of a particular line of business or industry within a local sphere, the MECO seeks to promote the general interests of the Filipino people in a foreign land.

6. ID.; ID.; ID.; MECO PERFORMS FUNCTIONS WITH A PUBLIC ASPECT.— The public character of the functions vested in the MECO cannot be doubted either. Indeed, to a certain degree, the functions of the MECO can even be said to partake of the nature of *governmental* functions. As earlier intimated, it is the MECO that, on behalf of the people of the Philippines, currently facilitates unofficial relations with the people in Taiwan. Consistent with its corporate purposes, the MECO was "*authorized*" by the Philippine government to perform certain "*consular and other functions*" relating to the promotion, protection and facilitation of Philippine interests in Taiwan. x x x The functions of the MECO, in other words, are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO. Evidently, the functions vested in the MECO are impressed with a public aspect.

7. ID.; ID.; ID.; MECO IS NOT OWNED OR CONTROLLED BY THE GOVERNMENT.— Organization as a non-stock corporation and the mere performance of functions with a public aspect, however, are not by themselves sufficient to consider the MECO as a GOCC. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government. x x x In a non-stock corporation, like the MECO, jurisprudence teaches that the controlling interest of the government is affirmed when "*at least majority of the members are government officials holding such membership by appointment or designation*" or there is otherwise "*substantial participation of the government in the selection*" of the corporation's governing board. x x x The fact of the incorporation of the MECO under the Corporation Code is key. The MECO was correct in postulating that, as a corporation organized under the Corporation Code, it is governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws. In this case, it is the *by-laws* of the MECO that stipulates that its directors are elected by its members; its officers are elected by its directors; and its members, other than

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the original incorporators, are admitted by way of a unanimous board resolution. It is significant to note that *none* of the original incorporators of the MECO were shown to be government officials at the time of the corporation's organization. Indeed, none of the members, officers or board of directors of the MECO, from its incorporation up to the present day, were established as government appointees or public officers designated by reason of their office. There is, in fact, no law or executive order that authorizes such an appointment or designation. Hence, from a strictly legal perspective, it appears that the presidential "*desire letters*" pointed out by petitioner—if such letters even exist outside of the case of Mr. Basilio—are, no matter how strong its persuasive effect may be, merely recommendatory.

8. ID.; ID.; ID.; MECO IS NOT A GOVERNMENT INSTRUMENTALITY; IT IS A *SUI GENERIS* ENTITY.— The categorical exclusion of the MECO from a GOCC makes it easier to exclude the same from any other class of government instrumentality. The other government instrumentalities *i.e.*, the regulatory agencies, chartered institutions and GCE/GICP are all, by explicit or implicit definition, creatures of the law. The MECO cannot be any other instrumentality because it was, as mentioned earlier, merely incorporated under the Corporation Code. x x x [F]rom the peculiar circumstances surrounding its incorporation, that the MECO was not intended to operate as any other ordinary corporation. And it is not. Despite its private origins, and perhaps deliberately so, the MECO was "*entrusted*" by the government with the "*delicate and precarious*" responsibility of pursuing "*unofficial*" relations with the people of a foreign land whose government the Philippines is bound not to recognize. The intricacy involved in such undertaking is the possibility that, at any given time in fulfilling the purposes for which it was incorporated, the MECO may find itself engaged in dealings or activities that can directly contradict the Philippines' commitment to the *One China* policy of the PROC. Such a scenario can only truly be avoided if the executive department exercises some form of oversight, no matter how limited, over the operations of this otherwise private entity. Indeed, from hindsight, it is clear that the MECO is uniquely situated as compared with other private corporations. From its over-reaching corporate objectives, its

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special duty and authority to exercise certain consular functions, up to the oversight by the executive department over its operations—**all the while maintaining its legal status as a non-governmental entity**—the MECO is, for all intents and purposes, *sui generis*.

9. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; *"VERIFICATION FEES"* AND *"CONSULAR FEES"* COLLECTED BY MECO SHOULD BE AUDITED BY THE COMMISSION ON AUDIT.— Section 14(1), Book V of the Administrative Code authorizes the COA to audit accounts of non-governmental entities "*required to pay xxx or have government share*" but only with respect to "*funds xxx coming from or through the government*." x x x [T]he 27 February 2008 Memorandum of Agreement between the DOLE and the MECO and Section 2(6) of EO No. 15, s. 2001, *vis-à-vis*, respectively, the "*verification fees*" and the "*consular fees*," grant and at the same time limit the authority of the MECO to collect such fees. That grant and limit require the audit by the COA of the collections thereby generated. x x x The MECO is not a GOCC or government instrumentality. It is a *sui generis* private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the *One China* policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "*verification fees*" it collects on behalf of the DOLE and the "*consular fees*" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "*verification fees*" and "*consular fees*" should be audited by the COA.

APPEARANCES OF COUNSEL

Funa Balayan Fortes Galandines & Villagonzalo Law Offices for petitioner.

Eduardo J. Berenguer Manuel C. Fausto, Jr. and Charles Ian O. Saturnino for MECO.

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D E C I S I O N

PEREZ, *J.*:

This is a petition for *mandamus*[1] to compel:

1.) the Commission on Audit (COA) to audit and examine the funds of the Manila Economic and Cultural Office (MECO), *and*

2.) the MECO to submit to such audit and examination.

The antecedents:

Prelude

The aftermath of the Chinese civil war[2] left the country of China with two (2) governments in a stalemate espousing competing assertions of sovereignty.[3] On one hand is the communist People's Republic of China (PROC) which controls the mainland territories, and on the other hand is the nationalist

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[1] Under Rule 65 of the Rules of Court; *rollo*, pp. 3-89.

[2] Refers to the war fought between the forces loyal to the government of the Republic of China (ROC) and the Communist Party of China (CPC), from 1927 to 1936 and 1946 to 1949. The war reached its defining point in 1949, when the CPC—buoyed by significant military victories—was able to wrest control of the mainland territories from the ROC. On 1 October 1949, Mao Zedong, leader of the CPC, proclaimed the birth of a new Chinese state, the *People's Republic of China* (PROC). On the other hand, the remaining loyalists of the ROC government, led by Chiang Kai Shek and the *Kuomintang* party, escaped the mainland and relocated to the island of Taiwan. In December 1949, Chiang Kai Shek declared the continued sovereignty of the ROC over China and designated the city of Taipei in Taiwan as its temporary capital. Subsequently, in 1955, the ROC and the United States of America entered into the *Sino-American Mutual Defense Treaty* that essentially deterred the CPC from launching any significant attempt of seizing Taiwan from the ROC. A cessation of hostilities between the CPC and ROC forces then followed, and eventually prevailed, although an official agreement ending the civil war between the two belligerents had never been forged.

[3] D' Amato, Anthony, *Purposeful Ambiguity as International Legal Strategy: The Two China Problem*, 2010; (http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/94).

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Republic of China (ROC) which controls the island of Taiwan. For a better part of the past century, both the PROC and ROC adhered to a policy of "*One China*" *i.e.*, the view that there is only one legitimate government in China, but differed in their respective interpretation as to which that government is.[4]

With the existence of two governments having conflicting claims of sovereignty over one country, came the question as to which of the two is deserving of recognition as that country's legitimate government. Even after its relocation to Taiwan, the ROC used to enjoy diplomatic recognition from a majority of the world's states, partly due to being a founding member of the United Nations (UN).[5] The number of states partial to the PROC's version of the *One China* policy, however, gradually increased in the 1960s and 70s, most notably after the UN General Assembly adopted the monumental *Resolution 2758* in 1971.[6] Since then, almost all of the states that had erstwhile recognized the ROC as the legitimate government of China, terminated their official relations with the said government, in favor of establishing diplomatic relations with the PROC.[7] The Philippines is one of such states.

The Philippines formally ended its official diplomatic relations with the government in Taiwan on 9 June 1975, when the country and the PROC expressed mutual recognition thru the *Joint Communiqué of the Government of the Republic of the Philippines and the Government of the People's Republic*

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[4] Benson, Brett V. and Niou, Emerson M.S., *Comprehending Strategic Ambiguity: US Security Commitment to Taiwan*, 2001.

[5] Jumamil-Mercado, Gloria, *Philippine-Taiwan Relations in a One China Policy: An Analysis of the Changing Relational Pattern*, 2007.

[6] On 25 October 1971, the UN General Assembly passed *Resolution 2758* expelling the "*representatives of Chiang Kai Shek*" from the UN and giving recognition to the representatives of the PROC as the "*only legitimate representatives of China.*" In passing such resolution, the UN General Assembly, in substance, considered the PROC as the lawful *successor state* of the ROC.

[7] Jumamil-Mercado, Gloria, *Philippine-Taiwan Relations in a One China Policy: An Analysis of the Changing Relational Pattern*, 2007.

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of China (Joint Communiqué).[8]

Under the Joint Communiqué, the Philippines categorically stated its adherence to the *One China* policy of the PROC. The pertinent portion of the Joint Communiqué reads:[9]

> The Philippine Government recognizes the **Government of the People's Republic of China as the sole legal government of China**, fully understands and respects the position of the Chinese Government that there is but **one China and that Taiwan is an integral part of Chinese territory**, and **decides to remove all its official representations from Taiwan within one month from the date of signature of this communiqué**. (Emphasis supplied)

The Philippines' commitment to the *One China* policy of the PROC, however, did not preclude the country from keeping *unofficial* relations with Taiwan on a "*people-to-people*" basis.[10] Maintaining ties with Taiwan that is permissible by the terms of the Joint Communiqué, however, necessarily required the Philippines, and Taiwan, to course any such relations thru offices outside of the *official* or governmental organs.

Hence, despite ending their diplomatic ties, the people of Taiwan and of the Philippines maintained an unofficial relationship facilitated by the offices of the Taipei Economic and Cultural Office, for the former, and the MECO, for the latter.[11]

The MECO[12] was organized on 16 December 1997 as a non-stock, non-profit corporation under Batas Pambansa Blg.

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[8] A copy of the document may be accessed in the Department of Foreign Affairs official website under the link: https://www.dfa.gov.ph/treaty/scanneddocs/580.pdf.

[9] *Id.*

[10] Third Whereas clause of Executive Order No. 4, s. 1998; Third Whereas clause of Executive Order No. 490, s 1998; Third Whereas clause of Executive Order No. 15, s. 2001.

[11] Third Whereas clause of Executive Order No. 15, s. 2001.

[12] Originally known as Asian Exchange Center, Incorporated (AECI). On 1 January 1993, AECI amended its articles of incorporation and adopted the name Manila Economic and Cultural Office (MECO).

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68 or the Corporation Code.[13] The purposes underlying the incorporation of MECO, as stated in its articles of incorporation,[14] are as follows:

1. **To establish and develop the commercial and industrial interests of Filipino nationals here and abroad, and assist on all measures designed to promote and maintain the trade relations of the country with the citizens of other foreign countries**;
2. To receive and accept grants and subsidies that are reasonably necessary in carrying out the corporate purposes provided they are not subject to conditions defeatist for or incompatible with said purpose;
3. To acquire by purchase, lease or by any gratuitous title real and personal properties as may be necessary for the use and need of the corporation, and to dispose of the same in like manner when they are no longer needed or useful; and
4. To do and perform any and all acts which are deemed reasonably necessary to carry out the purposes. (Emphasis supplied)

From the moment it was incorporated, the MECO became the corporate entity "*entrusted*" by the Philippine government with the responsibility of fostering "*friendly*" and "*unofficial*" relations with the people of Taiwan, particularly in the areas of trade, economic cooperation, investment, cultural, scientific and educational exchanges.[15] To enable it to carry out such responsibility, the MECO was "*authorized*" by the government to perform certain "*consular and other functions*" that relates to the promotion, protection and facilitation of Philippine interests in Taiwan.[16]

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[13] *See* Fourth Whereas clause of Executive Order No. 490, s. 1998.

[14] *Rollo*, pp. 100-102.

[15] *See* First, Sixth and Seventh Whereas clause of Executive Order No. 931, s. 1984; First Whereas clause of Executive Order No. 490, s. 1998; Fifth Whereas clause of Executive Order No. 15, s. 2001.

[16] Executive Order No. 15 s. 2001.

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At present, it is the MECO that oversees the rights and interests of Overseas Filipino Workers (OFWs) in Taiwan; promotes the Philippines as a tourist and investment destination for the Taiwanese; and facilitates the travel of Filipinos and Taiwanese from Taiwan to the Philippines, and *vice versa*.[17]

Facts Leading to the Mandamus Petition

On 23 August 2010, petitioner sent a letter[18] to the COA requesting for a "*copy of the latest financial and audit report*" of the MECO invoking, for that purpose, his "*constitutional right to information on matters of public concern*." The petitioner made the request on the belief that the MECO, being under the "*operational supervision*" of the Department of Trade and Industry (DTI), is a government owned and controlled corporation (GOCC) and thus subject to the audit jurisdiction of the COA.[19]

Petitioner's letter was received by COA Assistant Commissioner Jaime P. Naranjo, the following day.

On 25 August 2010, Assistant Commissioner Naranjo issued a *memorandum*[20] referring the petitioner's request to COA Assistant Commissioner Emma M. Espina for "*further disposition*." In this *memorandum*, however, Assistant Commissioner Naranjo revealed that the MECO was "*not among the agencies audited by any of the three Clusters of the Corporate Government Sector*."[21]

On 7 September 2010, petitioner learned about the 25 August 2010 *memorandum* and its contents.

Mandamus Petition

Taking the 25 August 2010 *memorandum* as an admission that the COA had never audited and examined the accounts of

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[17] *Id.*

[18] *Rollo*, p. 90.

[19] *Id.*

[20] *Id.* at 91.

[21] *Id.*

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the MECO, the petitioner filed the instant petition for *mandamus* on 8 September 2010. Petitioner filed the suit in his capacities as "*taxpayer, concerned citizen, a member of the Philippine Bar and law book author*."[22] He impleaded both the COA and the MECO.

Petitioner posits that by failing to audit the accounts of the MECO, the COA is neglecting its duty under Section 2(1), Article IX-D of the Constitution to audit the accounts of an otherwise *bona fide* GOCC or government instrumentality. It is the adamant claim of the petitioner that the MECO is a GOCC *without* an original charter or, at least, a government instrumentality, the funds of which partake the nature of public funds.[23]

According to petitioner, the MECO possesses all the essential characteristics of a GOCC and an instrumentality under the Executive Order No. (EO) 292, s. 1987 or the Administrative Code: it is a non-stock corporation *vested with governmental functions relating to public needs*; it is *controlled by the government thru a board of directors appointed by the President of the Philippines*; and while not integrated within the executive departmental framework, it is nonetheless *under the operational and policy supervision of the DTI*.[24] As petitioner substantiates:

1. The MECO is vested with government functions. It performs functions that are equivalent to those of an embassy or a consulate of the Philippine government.[25] A reading of the authorized functions of the MECO as found in EO No. 15, s. 2001, reveals that they are substantially the same functions performed by the Department of Foreign Affairs (DFA), through its diplomatic and consular missions, per the Administrative Code.[26]

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[22] Petition for *Mandamus*; *id.* at 7.

[23] *Id.* at 23-46.

[24] *Id.*

[25] *Id.* at 38-43.

[26] *Id.*

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2. The MECO is controlled by the government. It is the President of the Philippines that actually appoints the directors of the MECO, albeit *indirectly*, by way of "*desire letters*" addressed to the MECO's board of directors.[27] An illustration of this exercise is the assumption by Mr. Antonio Basilio as chairman of the board of directors of the MECO in 2001, which was accomplished when former President Gloria Macapagal-Arroyo, through a memorandum[28] dated 20 February 2001, expressed her "*desire*" to the board of directors of the MECO for the election of Mr. Basilio as chairman.[29]

3. The MECO is under the operational and policy supervision of the DTI. The MECO was placed under the operational supervision of the DTI by EO No. 328, s. of 2004, and again under the policy supervision of the same department by EO No. 426, s. 2005.[30]

To further bolster his position that the accounts of the MECO ought to be audited by the COA, the petitioner calls attention to the practice, allegedly prevailing in the United States of America, wherein the American Institute in Taiwan (AIT)—the counterpart entity of the MECO in the United States—is supposedly audited by that country's Comptroller General.[31] Petitioner claims that this practice had been confirmed in a decision of the United States Court of Appeals for the District of Columbia Circuit, in the case of *Wood, Jr., ex rel. United States of America v. The American Institute in Taiwan, et al.*[32]

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[27] *Id.* at 34-37.

[28] *Id.* at 129.

[29] *Id.* at 34-37.

[30] *Id.* at 37-38.

[31] *Id.* at 69-85.

[32] 286 F.3d 526 (D.C. Cir. 2002).

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The Position of the MECO

The MECO prays for the dismissal of the *mandamus* petition on procedural and substantial grounds.

On procedure, the MECO argues that the *mandamus* petition was prematurely filed.[33]

The MECO posits that a cause of action for *mandamus* to compel the performance of a ministerial duty required by law only ripens once there has been a refusal by the tribunal, board or officer concerned to perform such a duty.[34] The MECO claims that there was, in this case, no such refusal either on its part or on the COA's because the petitioner never made any demand for it to submit to an audit by the COA or for the COA to perform such an audit, prior to filing the instant *mandamus* petition.[35] The MECO further points out that the only "demand" that the petitioner made was his request to the COA for a copy of the MECO's latest financial and audit report—which request was not even finally disposed of by the time the instant petition was filed.[36]

On the petition's merits, the MECO denies the petitioner's claim that it is a GOCC or a government instrumentality.[37] While performing public functions, the MECO maintains that it is not owned or controlled by the government, and its funds are private funds.[38] The MECO explains:

1. It is *not* owned or controlled by the government. Contrary to the allegations of the petitioner, the President of the Philippines does not appoint its board of directors.[39] The "*desire letter*" that the President transmits is merely

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[33] Memorandum of the MECO; *rollo*, pp. 730-738.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* at 739-764.

[38] *Id.*

[39] *Id.* at 744-753.

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recommendatory and not binding on the corporation.[40] As a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws.[41] Thus, it is the directors who elect the corporation's officers; the members who elect the directors; and the directors who admit the members by way of a unanimous resolution. All of its officers, directors, and members are private individuals and are not government officials.[42]

2. The government merely has *policy* supervision over it. Policy supervision is a lesser form of supervision wherein the government's oversight is limited only to ensuring that the corporation's activities are in tune with the country's commitments under the *One China* policy of the PROC.[43] The day-to-day operations of the corporation, however, remain to be controlled by its duly elected board of directors.[44]

The MECO emphasizes that categorizing it as a GOCC or a government instrumentality can potentially violate the country's commitment to the *One China* policy of the PROC.[45] Thus, the MECO cautions against applying to the present *mandamus* petition the pronouncement in the *Wood* decision regarding the alleged auditability of the AIT in the United States.[46]

The Position of the COA

The COA, on the other hand, advances that the *mandamus* petition ought to be dismissed on procedural grounds and on

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 743-754.

[44] *Id.*

[45] *Id.* at 768.

[46] *Id.* at 763-765.

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the ground of mootness.

The COA argues that the *mandamus* petition suffers from the following procedural defects:

1. The petitioner lacks *locus standi* to bring the suit. The COA claims that the petitioner has not shown, at least in a concrete manner, that he had been aggrieved or prejudiced by its failure to audit the accounts of the MECO.[47]

2. The petition was filed in violation of the doctrine of hierarchy of courts. The COA faults the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or any Regional Trial Court.[48] The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court.[49]

At any rate, the COA argues that the instant petition already became *moot* when COA Chairperson Maria Gracia M. Pulido-Tan (Pulido-Tan) issued *Office Order No. 2011-698*[50] on 6 October 2011.[51] The COA notes that under *Office Order No. 2011-698*, Chairperson Pulido-Tan already directed a team of auditors to proceed to Taiwan, specifically for the purpose of auditing the accounts of, among other government agencies based therein, the MECO.[52]

In conceding that it has audit jurisdiction over the accounts of the MECO, however, the COA clarifies that it does *not* consider the former as a GOCC or a government instrumentality. On the contrary, the COA maintains that the MECO is a non-governmental entity.[53]

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[47] Memorandum of the COA; *id.* at 830-837.

[48] *Id.* at 841-844.

[49] *Id.*

[50] *Id.* at 688-689.

[51] Manifestation in lieu of Memorandum of the COA; *id.* at 684-687.

[52] *Id.*

[53] Memorandum of the COA; *id.* at 844-863.

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The COA argues that, despite being a non-governmental entity, the MECO may still be audited with respect to the "*verification fees*" for overseas employment documents that it collects from Taiwanese employers on behalf of the DOLE.[54] The COA claims that, under Joint Circular No. 3-99,[55] the MECO is mandated to remit to the Department of Labor and Employment (DOLE) a portion of such "*verification fees*."[56] The COA, therefore, classifies the MECO as a non-governmental entity "*required to pay xxx government share*" subject to a partial audit of its accounts under Section 26 of the Presidential Decree No. 1445 or the State Audit Code of the Philippines (Audit Code).[57]

OUR RULING

We grant the petition in part. We declare that the MECO is a non-governmental entity. However, under existing laws,

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[54] *Id.* at 863-867.

[55] Issued on 28 September 1999 by the Department of Labor and Employment, Department of Foreign Affairs, Department of Budget and Management, Department of Finance and the Commission on Audit; *id.* at 914-926.

[56] Memorandum of the COA; *id.* at 863-867.

[57] *Id.* Section 26 of Presidential Decree No. 1445 reads:

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

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the accounts of the MECO pertaining to the "*verification fees*" it collects on behalf of the DOLE **as well as** the fees it was authorized to collect under Section 2(6) of EO No. 15, s. 2001, are subject to the audit jurisdiction of the COA. Such fees pertain to the government and should be audited by the COA.

I

We begin with the preliminary issues.

Mootness of Petition

The first preliminary issue relates to the alleged mootness of the instant *mandamus* petition, occasioned by the COA's issuance of *Office Order No. 2011-698*. The COA claims that by issuing *Office Order No. 2011-698*, it had already conceded its jurisdiction over the accounts of the MECO and so fulfilled the objective of the instant petition.[58] The COA thus urges that the instant petition be dismissed for being moot and academic.[59]

We decline to dismiss the *mandamus* petition on the ground of mootness.

A case is deemed moot and academic when, by reason of the occurrence of a supervening event, it ceases to present any justiciable controversy.[60] Since they lack an actual controversy otherwise cognizable by courts, moot cases are, as a rule, dismissible.[61]

The rule that requires dismissal of moot cases, however, is not absolute. It is subject to exceptions. In *David v. Macapagal-Arroyo*,[62] this Court comprehensively captured these exceptions scattered throughout our jurisprudence:

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[58] Manifestation in lieu of Memorandum of the COA; *id.* at 684-687.

[59] *Id.*

[60] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).

[61] *Id.* at 754.

[62] *Supra* note 60.

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The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution;[63] *second*, the exceptional character of the situation and the paramount public interest is involved;[64] *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;[65] and *fourth*, the case is capable of repetition yet evading review.[66]

In this case, We find that the issuance by the COA of *Office Order No. 2011*-698 indeed qualifies as a supervening event that effectively renders moot and academic the main prayer of the instant *mandamus* petition. A writ of *mandamus* to compel the COA to audit the accounts of the MECO would certainly be a mere superfluity, when the former had already obliged itself to do the same.

Be that as it may, this Court refrains from dismissing outright the petition. We believe that the *mandamus* petition was able to craft substantial issues presupposing the **commission of a grave violation of the Constitution** and involving **paramount public interest**, which need to be resolved nonetheless:

First. The petition makes a serious allegation that the COA had been remiss in its constitutional or legal duty to audit and examine the accounts of an otherwise auditable entity in the MECO.

Second. There is paramount public interest in the resolution of the issue concerning the failure of the COA to audit the accounts of the MECO. The propriety or impropriety of such a refusal is determinative of whether the COA was able to faithfully fulfill its constitutional role as the guardian of the public treasury, in which any citizen has an interest.

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[63] *Id.*, citing *Province of Batangas v. Romulo*, 473 Phil. 806, 827 (2004).

[64] *Id.*, citing *Lacson v. Perez*, 410 Phil. 78, 118 (2001).

[65] *Supra* note 63, at 827.

[66] *Id.*, citing *Albaña v. Comelec*, 478 Phil. 941, 949 (2004); *Acop v. Guingona, Jr.*, 433 Phil. 62, 68 (2002); *SANLAKAS v. Reyes*, 466 Phil. 482, 506 (2004).

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Third. There is also paramount public interest in the resolution of the issue regarding the legal status of the MECO; a novelty insofar as our jurisprudence is concerned. We find that the status of the MECO—whether it may be considered as a government agency or not—has a direct bearing on the country's commitment to the *One China* policy of the PROC.[67]

An allegation as serious as a violation of a constitutional or legal duty, coupled with the pressing public interest in the resolution of all related issues, prompts this Court to pursue a definitive ruling thereon, if not for the proper guidance of the government or agency concerned, then **for the formulation of controlling principles for the education of the bench, bar and the public in general**.[68] For this purpose, the Court invokes its *symbolic function*.[69]

If the foregoing reasons are not enough to convince, We still add another:

Assuming that the allegations of neglect on the part of the COA were true, *Office Order No. 2011-698* does not offer the strongest certainty that they would not be replicated in the future. In the first place, *Office Order No. 2011-698* did not state any legal justification as to why, after decades of not

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[67] We take as cue the letter dated 24 May 2011 of DFA Secretary Albert Del Rosario addressed to several members of Congress and the Senate (*rollo*, pp. 546-551) involved in the deliberations of House Bill No. 4067 and Senate Bill No. 2640—the precursors of Republic Act No. 10149. As it was, both House Bill No. 4067 and Senate Bill No. 2640 included the MECO in the definition of a *Government Corporate Entity* or *Government Instrumentality with Corporate Powers*. Secretary Del Rosario wrote the letter to express his department's objection to such inclusion, explaining that: "*classifying MECO as a GICP, xxx will effectively accord MECO official status that will contravene the purpose for which it was originally created*." Hence, Secretary Del Rosario vouched for the exclusion of the MECO from R.A. No. 10149 "*so as not to adversely affect our bilateral relations with both China and Taiwan*."

[68] *David v. Macapagal-Arroyo, supra* note 60, at 754-755.

[69] The symbolic function of the Supreme Court has been described as its "*duty to formulate guiding and controlling principles, precepts, doctrines, or rules*." *See Salonga v. Hon. Paño*, 219 Phil. 402, 429-430 (1985).

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auditing the accounts of the MECO, the COA suddenly decided to do so. Neither does it state any determination regarding the true status of the MECO. The justifications provided by the COA, in fact, only appears in the memorandum[70] it submitted to this Court for purposes of this case.

Thus, the inclusion of the MECO in *Office Order No. 2011-698* appears to be entirely dependent upon the judgment of the incumbent chairperson of the COA; susceptible of being undone, with or without reason, by her or even her successor. Hence, the case now before this Court is dangerously **capable of being repeated yet evading review**.

Verily, this Court should not dismiss the *mandamus* petition on the ground of mootness.

Standing of Petitioner

The second preliminary issue is concerned with the standing of the petitioner to file the instant *mandamus* petition. The COA claims that petitioner has none, for the latter was not able to concretely establish that he had been aggrieved or prejudiced by its failure to audit the accounts of the MECO.[71]

Related to the issue of lack of standing is the MECO's contention that petitioner has no cause of action to file the instant *mandamus* petition. The MECO faults petitioner for not making any demand for it to submit to an audit by the COA or for the COA to perform such an audit, prior to filing the instant petition.[72]

We sustain petitioner's standing, as a concerned citizen, to file the instant petition.

The rules regarding legal standing in bringing public suits, or *locus standi*, are already well-defined in our case law. Again, We cite *David*, which summarizes jurisprudence on this point:[73]

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[70] *Rollo*, pp. 823-869.

[71] Memorandum of the COA; *rollo*, pp. 830-837.

[72] Memorandum of the MECO; *id.* at 730-738.

[73] *Supra* note 60, at 760.

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By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) the cases involve constitutional issues;

(2) for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for **voters**, there must be a showing of obvious interest in the validity of the election law in question;

(4) for **concerned citizens**, there must be a showing that the issues raised are of **transcendental importance** which must be settled early; and

(5) for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

We rule that the instant petition raises issues of **transcendental importance**, involved as they are with the performance of a constitutional duty, allegedly neglected, by the COA. Hence, We hold that the petitioner, as a concerned citizen, has the requisite legal standing to file the instant *mandamus* petition.

To be sure, petitioner does not need to make any prior demand on the MECO or the COA in order to maintain the instant petition. The duty of the COA sought to be compelled by *mandamus*, emanates from the Constitution and law, which explicitly require, or "*demand*," that it perform the said duty. To the mind of this Court, petitioner already established his cause of action against the COA when he alleged that the COA had neglected its duty in violation of the Constitution and the law.

Principle of Hierarchy of Courts

The last preliminary issue is concerned with the petition's non-observance of the principle of hierarchy of courts. The COA assails the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or

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any Regional Trial Court.[74] The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court.[75]

In view of the **transcendental importance** of the issues raised in the *mandamus* petition, as earlier mentioned, this Court waives this last procedural issue in favor of a resolution on the merits.[76]

II

To the merits of this petition, then.

The single most crucial question asked by this case is whether the COA is, under prevailing law, mandated to audit the accounts of the MECO. Conversely, are the accounts of the MECO subject to the audit jurisdiction of the COA?

Law, of course, identifies which accounts of what entities are subject to the audit jurisdiction of the COA.

Under Section 2(1) of Article IX-D of the Constitution,[77] the COA was vested with the "*power, authority and duty*"

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[74] Memorandum of the COA; *rollo*, pp. 841-844.

[75] *Id.*

[76] *Chavez v. Public Estates Authority*, 433 Phil. 506, 524 (2002).

[77] Constitution, Article IX-D, Section 2(1) reads:

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

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to "*examine, audit and settle*" the "*accounts*" of the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; *and*
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.[78]

The term "*accounts*" mentioned in the subject constitutional provision pertains to the "*revenue*," "*receipts*," "*expenditures*" and "*uses of funds and property*" of the foregoing entities.[79]

Complementing the constitutional power of the COA to audit accounts of "*non-governmental entities receiving subsidy or equity xxx from or through the government*" is Section 29(1)[80] of the Audit Code, which grants the COA *visitorial authority* over the following non-governmental entities:

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appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[78] The Constitution provides that the entities covered by items 1 and 2 above, are subject to the plenary auditing power of the COA, including *pre-audits*; whereas the entities covered by items 3, 4 and 5 are, generally, only subject to *post-audit* by the COA. *See* Constitution, Article IX-D, Section 2(1).

[79] Section 2(1), Article IX-D of the Constitution.

[80] Section 29(1) of Presidential Decree No. 1445 provides:

Visitorial authority. (1) The Commission shall have visitorial authority over non-government entities subsidized by the government, those required to pay levies or government share, those which have received counterpart funds from the government or are partly funded by donations through the

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1. Non-governmental entities "*subsidized by the government*";
2. Non-governmental entities "***required to pay** levy or **government share**"*;
3. Non-governmental entities that have "*received counterpart funds from the government*"; and
4. Non-governmental entities "*partly funded by donations through the government*."

Section 29(1) of the Audit Code, however, limits the audit of the foregoing non-governmental entities only to "*funds xxx coming from or through the government*."[81] This section of the Audit Code is, in turn, substantially reproduced in Section 14(1), Book V of the Administrative Code.[82]

In addition to the foregoing, the Administrative Code also empowers the COA to examine and audit "*the books, records and accounts*" of public utilities "*in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise tax*."[83]

Both petitioner and the COA claim that the accounts of the MECO are within the audit jurisdiction of the COA, but vary on the extent of the audit and on what type of auditable entity

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government, the said authority however pertaining only to the audit of those funds or subsidies coming from or through the government.

[81] *Id.*

[82] Section 14(1), Chapter Four, Subtitle B, Book V of the Administrative Code (1987) provides:

Visitorial authority. (1) The Commission shall have visitorial authority over non-government entities subsidized by the government, those required to pay levies or have government share, those which have received counterpart funds from the government or are partly funded by donations through the government. This authority, however, shall pertain only to the audit of these funds or subsidies coming from or through the government;

[83] Administrative Code (1987), Book V, Subtitle B, Chapter Four, Section 22(1).

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the MECO is. The petitioner posits that all accounts of the MECO are auditable as the latter is a *bona fide* GOCC or government instrumentality.[84] On the other hand, the COA argues that only the accounts of the MECO that pertain to the "*verification fees*" it collects on behalf of the DOLE are auditable because the former is merely a non-governmental entity "*required to pay xxx government share*" per the Audit Code.[85]

We examine both contentions.

The MECO Is Not a GOCC or Government Instrumentality

We start with the petitioner's contention.

Petitioner claims that the accounts of the MECO ought to be audited by the COA because the former is a GOCC or government instrumentality. Petitioner points out that the MECO is a non-stock corporation "*vested with governmental functions relating to public needs*"; it is "*controlled by the government thru a board of directors appointed by the President of the Philippines*"; and it operates "*outside of the departmental framework,*" subject only to the "*operational and policy supervision of the DTI.*"[86] The MECO thus possesses, petitioner argues, the essential characteristics of a *bona fide* GOCC and government instrumentality.[87]

We take exception to petitioner's characterization of the MECO as a GOCC or government instrumentality. The MECO is *not* a GOCC or government instrumentality.

Government instrumentalities are agencies of the national government that, by reason of some "*special function or jurisdiction*" they perform or exercise, are allotted "*operational autonomy*" and are "*not integrated within the department*

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[84] Petition for *Mandamus*; *rollo*, p. 23-46.

[85] Memorandum of the COA; *id.* at 863-867.

[86] Petition for *Mandamus*; *id.* at 23-46.

[87] *Id.*

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framework."[88] Subsumed under the rubric "government instrumentality" are the following entities:[89]

1. regulatory agencies,
2. chartered institutions,
3. *government corporate entities* or *government instrumentalities with corporate powers* (GCE/GICP),[90] and
4. GOCCs

The Administrative Code defines a GOCC:[91]

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: x x x.

The above definition is, in turn, replicated in the more recent Republic Act No. 10149 or the GOCC Governance Act of 2011, to wit:[92]

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[88] Section 2(10), Introductory Provisions of the Administrative Code (1987) reads:

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

x x x x x x x x x

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

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[89] *Id.*

[90] Republic Act No. 10149, Section 3(n). *See* also *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 237 (2006).

[91] Administrative Code (1987), Introductory Provisions, Section 2(13).

[92] Republic Act No. 10149, Section 3(o).

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(o) Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: x x x.

GOCCs, therefore, are "*stock or non-stock*" corporations "*vested with functions relating to public needs*" that are "*owned by the Government directly or through its instrumentalities*."[93] By definition, three attributes thus make an entity a GOCC: *first*, its organization as stock or non-stock corporation;[94] *second*, the public character of its function; and *third*, government ownership over the same.

Possession of *all* three attributes is necessary to deem an entity a GOCC.

In this case, there is not much dispute that the MECO possesses the *first* and *second* attributes. It is the *third* attribute, which the MECO lacks.

The MECO Is Organized as a Non-Stock Corporation

The organization of the MECO as a non-stock corporation cannot at all be denied. Records disclose that the MECO was incorporated as a non-stock corporation under the Corporation Code on 16 December 1977.[95] The incorporators of the MECO were Simeon R. Roxas, Florencio C. Guzon, Manuel K. Dayrit, Pio K. Luz and Eduardo B. Ledesma, who also served as the corporation's original members and directors.[96]

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[93] Administrative Code (1987), Introductory Provisions, Section 2(13); Republic Act No. 10149, Section 3(o).

[94] *Manila International Airport Authority v. Court of Appeals*, *supra* note 89, at 210.

[95] *See* Fourth Whereas clause of Executive Order No. 490, s. 1998.

[96] *Rollo*, pp. 100-102.

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The purposes for which the MECO was organized also establishes its *non-profit* character, to wit:[97]

1. **To establish and develop the commercial and industrial interests of Filipino nationals here and abroad and assist on all measures designed to promote and maintain the trade relations of the country with the citizens of other foreign countries**;
2. To receive and accept grants and subsidies that are reasonably necessary in carrying out the corporate purposes provided they are not subject to conditions defeatist for or incompatible with said purpose;
3. To acquire by purchase, lease or by any gratuitous title real and personal properties as may be necessary for the use and need of the corporation, and in like manner when they are
4. To do and perform any and all acts which are deemed reasonably necessary to carry out the purposes. (Emphasis supplied)

The purposes for which the MECO was organized are somewhat analogous to those of a *trade, business or industry chamber*,[98] but only on a much larger scale *i.e.*, instead of furthering the interests of a particular line of business or industry within a local sphere, the MECO seeks to promote the general interests of the Filipino people in a foreign land.

Finally, it is not disputed that none of the income derived by the MECO is distributable as dividends to any of its members, directors or officers.

Verily, the MECO is organized as a non-stock corporation.

The MECO Performs Functions with a Public Aspect.

The public character of the functions vested in the MECO cannot be doubted either. Indeed, to a certain degree, the

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[97] *Id.*

[98] *See* Corporation Code, Section 88.

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functions of the MECO can even be said to partake of the nature of *governmental* functions. As earlier intimated, it is the MECO that, on behalf of the people of the Philippines, currently facilitates unofficial relations with the people in Taiwan.

Consistent with its corporate purposes, the MECO was "*authorized*" by the Philippine government to perform certain "*consular and other functions*" relating to the promotion, protection and facilitation of Philippine interests in Taiwan.[99] The full extent of such authorized functions are presently detailed in Sections 1 and 2 of EO No. 15, s. 2001:

> *SECTION 1*. Consistent with its corporate purposes and subject to the conditions stated in Section 3 hereof, MECO is hereby authorized to assist in the performance of the following functions:
>
> 1. Formulation and implementation of a program to attract and promote investments from Taiwan to Philippine industries and businesses, especially in manufacturing, tourism, construction and other preferred areas of investments;
>
> 2. Promotion of the export of Philippine products and Filipino manpower services, including Philippine management services, to Taiwan;
>
> 3. Negotiation and/or assistance in the negotiation and conclusion of agreements or other arrangements concerning trade, investment, economic cooperation, technology transfer, banking and finance, scientific, cultural, educational and other modes of cooperative endeavors between the Philippines and Taiwan, on a people-to-people basis, in accordance with established rules and regulations;
>
> 4. Reporting on, and identification of, employment and business opportunities in Taiwan for the promotion of Philippine exports, manpower and management services, and tourism;
>
> 5. Dissemination in Taiwan of information on the Philippines, especially in the fields of trade, tourism, labor, economic cooperation, and cultural, educational and scientific endeavors;
>
> 6. Conduct of periodic assessment of market conditions in Taiwan, including submission of trade statistics and commercial

[99] Executive Order No. 15 issued on 16 May 2001.

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reports for use of Philippine industries and businesses; and

7. Facilitation, fostering and cultivation of cultural, sports, social, and educational exchanges between the peoples of the Philippines and Taiwan.

*SECTION 2***.** In addition to the above-mentioned authority and subject to the conditions stated in Section 3 hereof, MECO, through its branch offices in Taiwan, is hereby authorized to perform the following functions:

1. Issuance of temporary visitors' visas and transit and crew list visas, and such other visa services as may be authorized by the Department of Foreign Affairs;

2. Issuance, renewal, extension or amendment of passports of Filipino citizens in accordance with existing regulations, and provision of such other passport services as may be required under the circumstances;

3. Certification or affirmation of the authenticity of documents submitted for authentication;

4. Providing translation services;

5. Assistance and protection to Filipino nationals and other legal/juridical persons working or residing in Taiwan, including making representations to the extent allowed by local and international law on their behalf before civil and juridical authorities of Taiwan; and

6. Collection of reasonable fees on the first four (4) functions enumerated above to defray the cost of its operations.

A perusal of the above functions of the MECO reveals its uncanny similarity to some of the functions typically performed by the DFA itself, through the latter's diplomatic and consular missions.[100] The functions of the MECO, in other words, are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO.

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[100] *See* Administrative Code (1987), Book IV, Chapter 7, Sections 20-21.

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Evidently, the functions vested in the MECO are impressed with a public aspect.

The MECO Is Not Owned or Controlled by the Government

Organization as a non-stock corporation and the mere performance of functions with a public aspect, however, are not by themselves sufficient to consider the MECO as a GOCC. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government.

The government *owns* a stock or non-stock corporation if it has controlling interest in the corporation. In a stock corporation, the controlling interest of the government is assured by its ownership of *at least* fifty-one percent (51%) of the corporate capital stock.[101] In a non-stock corporation, like the MECO, jurisprudence teaches that the controlling interest of the government is affirmed when "*at least majority of the members are government officials holding such membership by appointment or designation*"[102] or there is otherwise "*substantial participation of the government in the selection*" of the corporation's governing board.[103]

In this case, the petitioner argues that the government has controlling interest in the MECO because it is the President of the Philippines that *indirectly* appoints the directors of the corporation.[104] The petitioner claims that the President appoints directors of the MECO thru "*desire letters*" addressed to the corporation's board.[105] As evidence, the petitioner cites the assumption of one Mr. Antonio Basilio as chairman of the board of directors of the MECO in 2001, which was allegedly

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[101] Administrative Code (1987), Introductory Provisions, Section 2(13); Republic Act No. 10149, Section 3(o).

[102] *Liban v. Gordon*, G.R. No. 175352, 15 July 2009, 593 SCRA 68, 88.

[103] *Boy Scouts of the Philippines v. NLRC*, G.R. No. 80767, 22 April 1991, 196 SCRA 176, 186.

[104] Petition for *Mandamus*; *rollo*, p. 34-37.

[105] *Id.*

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accomplished when former President Macapagal-Arroyo, through a memorandum dated 20 February 2001, expressed her "*desire*" to the board of directors of the MECO for the election of Mr. Basilio as chairman.[106]

The MECO, however, counters that the "*desire letters*" that the President transmits are merely recommendatory and not binding on it.[107] The MECO maintains that, as a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are ultimately governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws.[108]

As between the contrasting arguments, We find the contention of the MECO to be the one more consistent with the law.

The fact of the incorporation of the MECO under the Corporation Code is key. The MECO was correct in postulating that, as a corporation organized under the Corporation Code, it is governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws. In this case, it is the *by-laws*[109] of the MECO that stipulates that its directors are elected by its members; its officers are elected by its directors; and its members, other than the original incorporators, are admitted by way of a unanimous board resolution, to wit:

SECTION II. MEMBERSHIP

Article 2. Members shall be classified as (a) Regular and (b) Honorary.

(a) Regular members – shall consist of the original incorporators and such other members who, upon application for membership, are unanimously admitted by the Board of Directors.

(b) Honorary member – A person of distinction in business who as sympathizer of the objectives of the corporation, is invited

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[106] *Id.*

[107] Memorandum of the MECO; *id.* at 744-753.

[108] *Id.*

[109] *Id.* at 296-304.

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by the Board to be an honorary member.

SECTION III. BOARD OF DIRECTORS

Article 3. At the first meeting of the regular members, they shall organize and constitute themselves as a Board composed of five (5) members, including its Chairman, each of whom as to serve until such time as his own successor shall have been elected by the regular members in an election called for the purpose. The number of members of the Board shall be increased to seven (7) when circumstances so warrant and by means of a majority vote of the Board members and appropriate application to and approval by the Securities and Exchange Commission. Unless otherwise provided herein or by law, a majority vote of all Board members present shall be necessary to carry out all Board resolutions.

During the same meeting, the Board shall also elect its own officers, including the designation of the principal officer who shall be the Chairman. In line with this, the Chairman shall also carry the title Chief Executive Officer. The officer who shall head the branch or office for the agency that may be established abroad shall have the title of Director and Resident Representative. He will also be the Vice-Chairman. All other members of the Board shall have the title of Director.

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SECTION IV. EXECUTIVE COMMITTEE

Article 5. There shall be established an Executive Committee composed of at least three (3) members of the Board. The members of the Executive Committee shall be elected by the members of the Board among themselves.

x x x x x x x x x

SECTION VI. OFFICERS: DUTIES, COMPENSATION

Article 8. The officers of the corporation shall consist of a Chairman of the Board, Vice-Chairman, Chief Finance Officer, and a Secretary. Except for the Secretary, who is appointed by the Chairman of the Board, other officers and employees of the corporation shall be appointed by the Board.

The Deputy Representative and other officials and employees of a branch office or agency abroad are appointed solely by the Vice Chairman and Resident Representative concerned. All such

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appointments however are subject to ratification by the Board.

It is significant to note that *none* of the original incorporators of the MECO were shown to be government officials at the time of the corporation's organization. Indeed, none of the members, officers or board of directors of the MECO, from its incorporation up to the present day, were established as government appointees or public officers designated by reason of their office. There is, in fact, no law or executive order that authorizes such an appointment or designation. Hence, from a strictly legal perspective, it appears that the presidential "*desire letters*" pointed out by petitioner—if such letters even exist outside of the case of Mr. Basilio—are, no matter how strong its persuasive effect may be, merely recommendatory.

The MECO Is Not a Government Instrumentality; It Is a Sui Generis Entity.

The categorical exclusion of the MECO from a GOCC makes it easier to exclude the same from any other class of government instrumentality. The other government instrumentalities *i.e.*, the regulatory agencies, chartered institutions and GCE/GICP are all, by explicit or implicit definition, creatures of the law.[110] The MECO cannot be any other instrumentality because it was, as mentioned earlier, merely incorporated under the Corporation Code.

Hence, unless its legality is questioned, and in this case it was not, the fact that the MECO is operating under the *policy supervision* of the DTI is no longer a relevant issue to be reckoned with for purposes of this case.

For whatever it is worth, however, and without justifying anything, it is easy enough for this Court to understand the

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[110] *See* Administrative Code (1987), Introductory Provisions, Section 2(11) and (12). *See* also Republic Act No. 10149, Section 3(o). A GCE/GICP is, under the case of *Manila International Airport Authority v. Court of Appeals* (G.R. No. 155650, 20 July 2006), described as a government instrumentality exercising corporate powers but is not organized as a stock or non-stock corporation. Necessarily, a GCE/GICP must be created by law.

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rationale, or necessity even, of the executive branch placing the MECO under the *policy supervision* of one of its agencies.

It is evident, from the peculiar circumstances surrounding its incorporation, that the MECO was not intended to operate as any other ordinary corporation. And it is not. Despite its private origins, and perhaps deliberately so, the MECO was "*entrusted*"[111] by the government with the "*delicate and precarious*"[112] responsibility of pursuing "*unofficial*"[113] relations with the people of a foreign land whose government the Philippines is bound not to recognize. The intricacy involved in such undertaking is the possibility that, at any given time in fulfilling the purposes for which it was incorporated, the MECO may find itself engaged in dealings or activities that can directly contradict the Philippines' commitment to the *One China* policy of the PROC. Such a scenario can only truly be avoided if the executive department exercises some form of oversight, no matter how limited, over the operations of this otherwise private entity.

Indeed, from hindsight, it is clear that the MECO is uniquely situated as compared with other private corporations. From its over-reaching corporate objectives, its special duty and authority to exercise certain consular functions, up to the oversight by the executive department over its operations—**all the while maintaining its legal status as a non-governmental entity**—the MECO is, for all intents and purposes, *sui generis*.

Certain Accounts of the MECO May Be Audited By the COA.

We now come to the COA's contention.

The COA argues that, despite being a non-governmental entity, the MECO may still be audited with respect to the

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[111] Sixth Whereas clause of Executive Order No. 931, s. 1984.

[112] *Id.* The duty of the MECO was described in the Sixth Whereas clause of Executive Order No. 490, s. 1998 and the Fifth Whereas clause of Executive Order No. 15, s. 2001 as "*important and sensitive*."

[113] Seventh Whereas clause of Executive Order No. 931, s. 1984.

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"*verification fees*" for overseas employment documents that the latter collects from Taiwanese employers on behalf of the DOLE.[114] The COA claims that, under Joint Circular No. 3-99, the MECO is mandated to remit to the national government a portion of such "*verification fees*."[115] The COA, therefore, classifies the MECO as a non-governmental entity "*required to pay xxx government share*" per the Audit Code.[116]

We agree that the accounts of the MECO pertaining to its collection of "*verification fees*" is subject to the audit jurisdiction of the COA. However, We digress from the view that such accounts are the only ones that ought to be audited by the COA. Upon careful evaluation of the information made available by the records *vis-à-vis* the spirit and the letter of the laws and executive issuances applicable, We find that the accounts of the MECO pertaining to the **fees it was authorized to collect under Section 2(6) of EO No. 15, s. 2001**, are likewise subject to the audit jurisdiction of the COA.

Verification Fees Collected by the MECO

In its *comment*,[117] the MECO admitted that roughly 9% of its income is derived from its share in the "*verification fees*" for overseas employment documents it collects on behalf of the DOLE.

The "*verification fees*" mentioned here refers to the "*service fee for the verification of overseas employment contracts, recruitment agreement or special powers of attorney*" that the DOLE was authorized to collect under Section 7 of EO No. 1022,[118] which was issued by President Ferdinand E. Marcos on 1 May 1985. These fees are supposed to be collected by the DOLE from the foreign employers of OFWs and are intended

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[114] Memorandum of the COA; *rollo*, pp. 863-867.

[115] *Id.*

[116] *Id.*

[117] Comment of the MECO; *id.* at 190-231, 221.

[118] Entitled *On Strengthening the Administrative and Operational Capabilities of the Overseas Employment Program.*

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to be used for "*the promotion of overseas employment and for welfare services to Filipino workers within the area of jurisdiction of* [concerned] *foreign missions under the administration of the* [DOLE]."[119]

Joint Circular 3-99 was issued by the DOLE, DFA, the Department of Budget Management, the Department of Finance and the COA in an effort to implement Section 7 of Executive Order No. 1022.[120] Thus, under Joint Circular 3-99, the following officials have been tasked to be the "*Verification Fee Collecting Officer*" on behalf of the DOLE:[121]

1. The labor attaché or duly authorized overseas labor officer at a given foreign post, as duly designated by the DOLE Secretary;
2. In foreign posts where there is no labor attaché or duly authorized overseas labor officer, the finance officer or collecting officer of the DFA duly deputized by the DOLE Secretary as approved by the DFA Secretary;
3. In the absence of such finance officer or collecting officer, the alternate duly designated by the head of the foreign post.

Since the Philippines does not maintain an official post in Taiwan, however, the DOLE entered into a "*series*" of Memorandum of Agreements with the MECO, which made the latter the former's collecting agent with respect to the "*verification fees*" that may be due from Taiwanese employers of OFWs.[122] Under the 27 February 2004 Memorandum of Agreement between DOLE and the MECO, the "*verification*

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[119] Item 7 of Executive Order No. 1022, s. 1985.

[120] DOLE, DFA, DBM, DOF and the COA Joint Circular No. 3-99, Section 1.0.

[121] DOLE, DFA, DBM, DOF and the COA Joint Circular No. 3-99, Section 3.4.

[122] Items 49 of the COA Annual Audit Report dated 4 September 2009, on the audit of the Department of Labor and Employment; *rollo*, p. 890.

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fees" to be collected by the latter are to be allocated as follows: (a) US$ 10 to be retained by the MECO as administrative fee, (b) US $10 to be remitted to the DOLE, and (c) US$ 10 to be constituted as a common fund of the MECO and DOLE.[123]

Evidently, the entire "*verification fees*" being collected by the MECO are **receivables** of the DOLE.[124] Such receipts pertain to the DOLE by virtue of Section 7 of EO No. 1022.

Consular Fees Collected by the MECO

Aside from the DOLE "*verification fees*," however, the MECO also collects "*consular fees*," or fees it collects from the exercise of its delegated consular functions.

The authority behind "*consular fees*" is Section 2(6) of EO No. 15, s. 2001. The said section authorizes the MECO to collect "*reasonable fees*" for its performance of the following consular functions:

1. Issuance of temporary visitors' visas and transit and crew list visas, and such other visa services as may be authorized by the DFA;
2. Issuance, renewal, extension or amendment of passports of Filipino citizens in accordance with existing regulations, and provision of such other passport services as may be required under the circumstances;
3. Certification or affirmation of the authenticity of documents submitted for authentication; *and*
4. Providing translation services.

Evidently, and just like the peculiarity that attends the DOLE "*verification fees*," there is no consular office for the collection

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[123] Items 56 of the COA Annual Audit Report dated 4 September 2009, on the audit of the Department of Labor and Employment; *id.* at 892.

[124] Notably, Section 4.1.1 of Joint Circular No. 3-99 of the DOLE, DFA, DBM, DOF and the COA provides that the verification fee collections of all posts shall be "*recorded as income in the DOLE-[Central Office] books under the Special Account in the General Fund (Fund 151).*"

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of the "*consular fees*." Thus, the authority for the MECO to collect the "*reasonable fees*," vested unto it by the executive order.

The "*consular fees*," although held and expended by the MECO by virtue of EO No. 15, s. 2001, are, without question, derived from the exercise by the MECO of consular functions—functions it performs by and only through special authority from the government. There was never any doubt that the visas, passports and other documents that the MECO issues pursuant to its authorized functions still emanate from the Philippine government itself.

Such fees, therefore, are received by the MECO to be used strictly for the purpose set out under EO No. 15, s. 2001. They must be reasonable as the authorization requires. It is the government that has ultimate control over the disposition of the "*consular fees*," which control the government did exercise when it provided in Section 2(6) of EO No. 15, s. 2001 that such funds may be kept by the MECO "*to defray the cost of its operations*."

The Accounts of the MECO Pertaining to theVerification Fees and Consular Fees May Be Audited by the COA.

Section 14(1), Book V of the Administrative Code authorizes the COA to audit accounts of non-governmental entities "*required to pay xxx or have government share*" but only with respect to "*funds xxx coming from or through the government*." This provision of law perfectly fits the MECO:

First. The MECO receives the "*verification fees*" by reason of being the collection agent of the DOLE—a government agency. Out of its collections, the MECO is required, by agreement, to remit a portion thereof to the DOLE. Hence, the MECO is accountable to the government for its collections of such "*verification fees*" and, for that purpose, may be audited by the COA.

Second. Like the "*verification fees*," the "*consular fees*" are also received by the MECO *through* the government, having

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been derived from the exercise of consular functions entrusted to the MECO by the government. Hence, the MECO remains accountable to the government for its collections of "*consular fees*" and, for that purpose, may be audited by the COA.

Tersely put, the 27 February 2008 Memorandum of Agreement between the DOLE and the MECO and Section 2(6) of EO No. 15, s. 2001, *vis-à-vis*, respectively, the "*verification fees*" and the "*consular fees*," grant and at the same time limit the authority of the MECO to collect such fees. That grant and limit require the audit by the COA of the collections thereby generated.

Conclusion

The MECO is not a GOCC or government instrumentality. It is a *sui generis* private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the *One China* policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "*verification fees*" it collects on behalf of the DOLE and the "*consular fees*" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "*verification fees*" and "*consular fees*" should be audited by the COA.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Manila Economic and Cultural Office is hereby declared a non-governmental entity. However, the accounts of the Manila Economic and Cultural Office pertaining to: the *verification fees contemplated by Section 7 of Executive Order No. 1022 issued 1 May 1985*, that the former collects on behalf of the Department of Labor and Employment, **and** the *fees it was authorized to collect under Section 2(6) of Executive Order No. 15 issued 16 May 2001*, are subject to the audit jurisdiction of the COA.

No costs.

SO ORDERED.

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Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe and *Leonen, JJ.*, concur.

EN BANC

[G.R. No. 197676. February 4, 2014]

REMMAN ENTERPRISES, INC. and CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATION, *petitioners, vs.* **PROFESSIONAL REGULATORY BOARD OF REAL ESTATE SERVICE and PROFESSIONAL REGULATION COMMISSION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUIREMENT OF JUSTICEABLE CONTROVERSY, EXPLAINED.— The Constitution requires as a condition precedent for the exercise of judicial power the existence of an actual controversy between litigants. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution. The controversy must be justiciable – definite and concrete – touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. An