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EN BANC

[G.R. No. 246027. June 21, 2022]

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*, *v.* **1ACCOUNTANTS PARTY-LIST, INC., REPRESENTED BY ITS PRESIDENT, CHRISTIAN JAY D. LIM, CHRISTIAN JAY D. LIM IN HIS CAPACITY AS CPA, FROILAN G. AMPIL, ALLAN M. BASARTE, VIRGILIO F. AGUNOD, AND JONAS P. MASCARIÑAS,** *Respondents*.

D E C I S I O N

ROSARIO, *J.*:

This resolves the Petition for Review[1] filed under Rule 45 of the Rules of Court by the Securities and Exchange Commission (SEC or petitioner) to assail the Decision[2] dated March 20, 2018 and Order[3] dated February 20, 2019 of the Regional Trial Court (RTC) of Davao City, Branch 15, in Civil Case No. R-DVO-15-02294-SC.

The case stems from a Petition for Declaratory Relief with Prayer for Preliminary Injunction and Temporary Restraining Order[4] filed by 1Accountants Party List, Inc. (respondent), represented by its President, Christian Jay D. Lim, who also filed the said petition in his personal capacity as a Certified Public Accountant (CPA), as well as fellow CPAs Froilan G. Ampil, Allan M. Basarte, Virgilio F. Agunod, and Jonas P. Mascariñas against the SEC before the RTC.

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1 *Rollo*, pp. 16–57.

2 Id. at 58–62. Penned by Presiding Judge Mario C. Duaves.

3 Id. at 63–65.

4 Id. at 255–269.

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Respondent is a non-stock and non-profit sectoral organization duly organized under the SEC.[5] Petitioner is a government regulatory agency with the mandate to supervise the corporate sector and to regulate the securities industry in the Philippines.[6]

Respondent's petition for declaratory relief assailed petitioner's regulations, particularly Rule 68, paragraph 3 of the Amended Implementing Rules and Regulations (IRR)[7] of the Securities Regulation Code[8] (SRC) and SEC Memorandum Circular (MC) No. 13-2009,[9] and all other similar memorandum circulars which, since 2002, have required the accreditation of CPAs acting as external auditors of corporations issuing registered securities and possessing secondary licenses (assailed issuances).[10]

Paragraph 3 of Rule 68 of the Revised SRC provides:

3. QUALIFICATIONS AND REPORTS OF INDEPENDENT AUDITORS

x x x x

B. **Additional** Requirements for Independent Auditors of SEC-Regulated Entities and Other Entities

(1) Accreditation Categories

The accreditation of independent auditors serves as a quality control mechanism or quality assurance review by the Commission on the work of the accredited external auditors.

The following entities shall have independent auditors **accredited by the Commission**[11] x x x. (Emphases and underscorings supplied)

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[5] Id. at 255.

[6] Id. at 256.

[7] Amended SRC Rules dated December 30, 2003.

[8] Republic Act No. 8799.

[9] Revised Guidelines on Accreditation of Auditing Firms and External Auditors.

[10] *Rollo*, p. 266.

[11] https://www.sec.gov.ph/wp-content/uploads/2020/07/2019AccountantsInfo_RevisedRegulationCodeRule68.pdf (visited March 16, 2022) or Revised Securities Regulation Code (SRC) Rule 68 dated August 19, 2019.

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On the other hand, SEC MC No. 13-2009 provides that:

x x x x

4.1. Only an external auditor and his auditing firm (if applicable) who is **accredited by the Commission**[12] shall be engaged by corporations covered by this Circular for the statutory audit of their financial statements.

x x x x

6.3. Applications for initial or renewal of accreditation of external auditors or partners of auditing firms shall be assessed the following filing fees:

i.	Group A	~~₱~~5,000.00
ii.	Group B	3,000.00
iii.	Group C or D	2,000.00

x x x x

7.3. Applications for initial or renewal of accreditation of auditing firms shall be assessed the following filing fees:

iv.	Group A	~~₱~~20,000.00
v.	Group B	15,000.00
vi.	Group C or D	5,000.00

x x x x

SEC. 11. Grounds for Imposition of Penalties.

An external auditor or auditing firm shall be assessed a penalty under Section 12 hereof, after due notice and hearing by the Commission, for any of the following violations:

x x x x

12.4. Violation of Accreditation Requirement. Any auditing firm or responsible external auditor (individual practitioner) who enters into an engagement with a company under Group A, B, or C **without the appropriate accreditation from the Commission**[13] shall be subject to the following scale of fines:

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[12] *Rollo*, p. 372.

[13] Id. at 384.

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Group A companies

	Auditing Firm
First offense	₱100,000.00
Second offense	200,000.00
Third offense	400,000.00

Group B companies

	Auditing Firm
First offense	₱ 50,000.00
Second offense	100,000.00
Third offense	200,000.00

Group C companies

	Auditing Firm	External Auditor
First offense	₱25,000.00	₱10,000.00
Second offense	50,000.00	20,000.00
Third offense	100,000.00	40,000.00

Any company covered by this Circular that engages the services of an external auditor who is **not accredited by the Commission**[14] under the appropriate category shall be subject to the following penalties without prejudice to the other administrative sanctions provided for in Section 54 of the SRC and its implementing rules and regulations:

Group A	₱100,000.00
Group B	50,000.00
Group C	25,000.00

(Emphases and underscorings supplied)

The foregoing provisions are assailed by respondent on the ground that these: (1) are issued without authority *(ultra vires)*; (2) contravene Republic Act No. 9298[15] (R.A. 9298) or the Philippine Accountancy Act of 2004; and (3) restrict the right of CPAs to

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[14] Id. at 385.

[15] AN ACT REGULATING THE PRACTICE OF ACCOUNTANCY IN THE PHILIPPINES, REPEALING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 692, OTHERWISE KNOWN AS THE REVISED ACCOUNTANCY LAW, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES; APPROVED MAY 13, 2004.

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practice accountancy. MC No. 13-2009, in particular: (4) violates the right to due process and (5) violates the right to equal protection of the law.[16]

In its Comment[17] dated March 10, 2016, filed before the RTC, petitioner SEC countered that: (1) it is authorized under pertinent laws to issue and adopt the herein assailed issuances; (2) the herein assailed issuances do not contravene R.A. No. 9298 nor restrict the right of CPAs to practice their profession; (3) MC No. 13-2009 did not violate respondent's due process rights because it was published in a newspaper of general circulation and filed with the UP Law Center; and (4) MC No. 13-2009 does not violate the equal protection clause because it rests on a valid and reasonable classification.[18]

In its Rejoinder[19] to the abovementioned Comment dated June 20, 2016, herein respondent reiterated that petitioner has no authority to regulate the accounting profession.[20] The laws cited by the petitioner as the source of its authority, the Corporation Code and the SRC, provide for general rule making powers, and are not specific grants of authority.[21] Respondent pointed out that the applicable law is RA 9298, which lodges the power to regulate accountants with the Professional Regulatory Board of Accountancy (Board) to wit:

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

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16 *Rollo*, pp. 543-550.

17 Id. at 273-298.

18 Id. at 276-277.

19 Id. at 299-307.

20 Id. at 301.

21 Id.

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including the fees and penalties for violation thereof. (Emphasis and underscoring supplied)

Thus, the mandatory accreditation imposed by petitioner usurps the Board's authority. Respondent added that financial reports submitted to the SEC are primarily the responsibility of the management of the reporting company and not the external auditor.[22]

In a Decision[23] dated March 20, 2018, the RTC declared Paragraph 3, Rule 68 of the IRR of the SRC and SEC MC No. 13-2009 null and void for being contrary to R.A. 9298, unconstitutional, and issued *ultra vires*. Petitioner moved for reconsideration but was likewise denied.

Hence, this Rule 45 petition before Us.

Petitioner argues that it is authorized by the SRC and the Corporation Code to impose the assailed issuances, that the said issuances do not contravene R.A. No. 9298 nor restrict the right of accountants to practice their profession, and that SEC MC No. 13-2009 does not violate the equal protection clause.[24]

With regard to its authority, petitioner cites the following provisions in the SRC:

SEC. 5. Powers and Functions of the Commission.

x x x x

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;

x x x x

(d) Regulate, investigate or supervise the activities of persons to ensure compliance;

x x x x

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[22] Id. at 304-305.

[23] Supra note 2.

[24] Id. at 23.

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(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

(g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

x x x x

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

x x x x

SEC. 68. Special Accounting Rules.

The Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of this Code, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this Code. Among other things, the Commission may prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and income statement, and the methods to be followed in the preparation of accounts, appraisal or valuation of assets and liabilities, determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with, the issuer. (Emphasis and underscoring supplied)

Petitioner also cites the Corporation Code:

SEC. 141. Annual report of corporations.

Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and **such other requirements as the Securities and Exchange Commission may require**. Such report shall be submitted within such

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period as may be prescribed by the Securities and Exchange Commission. (Emphasis and underscoring supplied)

Petitioner likewise emphasizes the Memorandum of Agreement (MOA) it jointly executed with the *Bangko Sentral ng Pilipinas* (BSP), the Insurance Commission (IC) where it was agreed that:

1. x x x BOA shall register only the firm or partnership but shall attach in the certificate of accreditation a list of the partners considered in its evaluation. **The firm and the individual partners thereof shall each apply for accreditation with SEC, BSP, or IC**.

x x x x

2. x x x For SEC, BSP, or IC accreditation, the firm and each partner who audits or who intends to audit regulated entities shall be the subject of such accreditation.[25] (Emphasis and underscoring supplied)

All of the foregoing are relied upon by the petitioner as bases for its authority to issue Rule 68 and SEC MC No. 13-2009.[26]

With regard to R.A. No. 9298 and the right of CPAs to practice their profession, petitioner insists that these are not contravened by its issuances, which merely regulate the practice of accountancy pursuant to the State's police power. Petitioner's authority to impose the accreditation requirement falls under police power since the purpose of its issuances is to ensure the quality of financial reporting for the protection of the investing public.[27]

As for the equal protection clause, petitioner argues that SEC MC 13-2009 satisfies the four-pronged test of reasonableness: (1) it rests on a substantial distinction as it requires accreditation only for the class of CPAs employed as external auditors of corporations issuing registered securities and possessing secondary licenses; (2) the classification is germane to the purpose of the law, the SRC, in that it serves the purpose of promoting control and discipline in the financial environment for the protection of the investing

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[25] Id. at 28.

[26] Id. at 24-36.

[27] Id. at 44-49.

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public; (3) the classification is not limited to existing conditions only as it is meant to be applied not only to current but also to future CPAs; and (4) the circular applies equally to all members of the same class as all CPAs acting as external auditors of the companies concerned are required to get accreditation.[28]

In a Comment[29] dated September 28, 2019, respondent maintains that: (1) petitioner has no legal authority to regulate the accounting profession and thus (2) acted *ultra vires* when it required additional accreditation, that (3) petitioner may not distinguish among CPAs when the law does not, and that (4) it misconstrued the role of CPAs engaged to conduct statutory audit of financial statements.[30]

With regard to the authority invoked by the SEC for its issuances, respondent points out that it conflated the covered corporate entities with individual CPAs. Section 5 (a) of the SRC, for one, grants the SEC "jurisdiction and supervision over **all corporations, partnerships or associations**[31] who are the grantees of primary franchises and/or a license or permit issued by the Government." Clearly, this does not include individual CPAs.[32]

Section 5 (d) of the SRC, which empowers the SEC to "regulate, investigate or supervise the activities of persons to ensure compliance" pertains to persons entrusted by law to manage **corporations**[33] that issue securities to the public, and not to the individual CPAs that audit the said corporations. It would be unethical for a CPA to audit a corporation if he or she is likewise managing it.

Section 5 (f) of the SRC, which imposes sanctions for violation of the subject laws, rules, regulations and orders, pertains to violations committed by corporate officers, and not by CPAs.

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28 Id. at 39-44.

29 Id. at 541-553.

30 Id. at 543-544.

31 Emphasis supplied.

32 *Rollo*, p. 544.

33 Emphasis supplied.

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Section 5 (n) of the SRC, which provides for the SEC's exercise of "such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the **express powers granted the Commission**[34] to achieve the objectives and purposes of these laws" cannot include a power already expressly granted by Congress to another body, namely the Board of Accountancy.[35]

Section 141 of the Corporation Code which requires every corporation doing business in the Philippines to submit annual reports to the SEC "and such other requirements as the Securities and Exchange Commission may require" pertains to corporations, and again does not extend to individual CPAs.[36]

In sum, petitioner's reliance on the foregoing provisions in the SRC and the Corporation Code are misplaced. The SEC's jurisdiction is only over juridical entities and their directors, officers and stockholders, as well as those that directly deal with the securities issued by said entities, such as brokers, dealers, salesmen, underwriters and promoters. Individual CPAs are not under petitioner's authority and jurisdiction, and thus cannot be governed by the same rules.

Petitioner also anchors its authority on the MOA it executed with the BSP and the IC. Respondent contends that the said MOA is void as it contravenes Section 31 of the Philippine Accountancy Act,[37] which exclusively lodged the power to promulgate rules and regulations for the accreditation of CPAs with the Board:

Sec. 31. Accreditation to Practice Public Accountancy- Certified Public Accountants, firms and partnerships of certified public

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[34] Emphasis supplied.

[35] *Rollo*, p. 545.

[36] Id.

[37] AN ACT REGULATING THE PRACTICE OF ACCOUNTANCY IN THE PHILIPPINES, REPEALING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 692, OTHERWISE KNOWN AS THE REVISED ACCOUNTANCY LAW, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, otherwise known as the "Philippine Accountancy Act of 2004." Approved MAY 13, 2004.

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accountants, engaged in the practice of public accountancy, including partners and staff members thereof, shall register with the Commission and the Board, such registration to be renewed every three (3) years; Provided, That subject to the approval of the Commission, **the Board shall promulgate rules and regulations for the implementation of registration requirements including the fees and penalties for violation thereof**. (Emphasis and underscoring supplied)

The Board cannot delegate to another body what Congress has delegated to it absent a provision to the contrary, pursuant to the rule "*potestas delegate non delegare potest*."[38] Thus, petitioner acted *ultra vires* when it issued the assailed regulations.

Respondent also posits that SEC MC No. 13-2009's classification of CPAs into four (4) groups of A to D for accreditation purposes has no basis in law and is thus invalid.[39] Since no law provides for the classification of CPAs, the SEC has no legal mandate to impose its own classification.[40]

Lastly, respondent argues that petitioner misconstrued the role of external auditors as being responsible for the reliability of financial statements. However, respondent points out that this responsibility actually falls on the management of the company, and not the external auditors. Rule 68 of the Amended IRR of the SRC provides:

STATEMENT OF MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL STATEMENTS.

The management of (name of reporting company) is responsible for the preparation and fair presentation of the financial statements for the year(s) ended (date), in accordance with the prescribed financial reporting framework indicated therein. This responsibility includes designing and implementing internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies, and making accounting estimates that

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[38] Id. at 546-547.

[39] Id. at 547.

[40] Id. at 548.

are reasonable in the circumstances.[41] (Emphasis and underscoring supplied)

Thus, the accreditation requirement has no rational connection with ensuring the reliability of financial reports. The accreditation might better serve its purpose if it were imposed instead on the CPAs who prepare the financial statements, and not on the external auditors who merely render an audit opinion on the financial statements.[42]

Although both parties argue their stance on several points, We find that this case presents only one principal issue: did the RTC correctly declare Paragraph 3, Rule 68 of the IRR of the SRC and SEC MC No. 13-2009 null and void?

We rule in the affirmative.

Petitioner bases its authority to issue the assailed regulations on several provisions of the SRC and the Corporation Code. However, these all pertain to juridical entities such as corporations. We reiterate the said provisions:

SRC:

SEC. 5. Powers and Functions of the Commission.

x x x x

(a) Have jurisdiction and supervision over **all corporations**, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; x x x. (Emphasis and underscoring supplied)

Corporation Code:

SEC. 141. Annual report of corporations.

Every corporation,[43] domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement

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41 Id. at 549.

42 Id. at 550.

43 Id.

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of its assets and liabilities, certified by any independent certified public accountant in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (Emphasis and underscoring supplied)

Pursuant to the maxim of statutory construction that *"quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est"* or "when there is no ambiguity in the language of an instrument, no interpretation is to be made contrary to the words,"[44] it follows that the cited provisions clearly apply to juridical entities only. Nowhere does it provide that such should extend to individuals, moreso CPAs.

The other provisions cited by petitioner in the SRC must be read together with Section 5 (a):

> Courts have to take the thought conveyed by the statute as a whole; **construe the constituent parts together**; ascertain the legislative intent from the whole act; consider each and every provision thereof in light of the general purpose of the statute; and endeavor to make every part effective, harmonious, and sensible. (Emphasis and underscoring supplied)

Thus, all other powers granted by the SRC provisions relied upon by petitioner flow from the SEC's jurisdiction over **corporations**, and cannot be made to apply to individual CPAs. While petitioner may regulate corporations as well as the securities market, such regulation does not extend to an authority to restrict, even in the slightest degree, the practice of accountancy.

Moreover, the accreditation requirement imposed by the assailed issuances amounts to a licensing requirement which curtails the right of CPAs to practice their profession. In the case of *Airlift Asia Customs Brokerage, Inc. v. Court of Appeals (Airlift Asia)*,[45] the Court stated that:

> A license is a "**permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a**

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[44] Dante B. Gatmaytan. Legal Method Essentials 2.0. (2014).

[45] 739 Phil. 718 (2014).

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certain occupation." Since it is only by complying with CAO 3-2006 that a customs broker can practice his profession before the BOC, the accreditation takes the form of a licensing requirement proscribed by the law. It amounts to an **additional burden** on PRC-certified customs brokers and **curtails their right to practice their profession**.[46] (Emphases and underscorings supplied)

Similarly, in the case before Us, CPAs are burdened with the accreditation requirement which is in addition to their CPA license. Proof of this burden is the scale of fines (Section 12.4) imposed by SEC MC No. 13-2009 for violation of the said requirement. Thus, CPAs are left with no choice but to go through the accreditation process should they wish to conduct a statutory audit of corporate financial statements, when in fact, such is part of the practice of accountancy for which their CPA license already suffices.

At this juncture, the Court wishes to emphasize the following provisions in R.A. 9298 or the Philippine Accountancy Act of 2004:

Section 9. ***Powers and Functions of the Board.***- The Board shall exercise the following specific powers, functions and responsibilities:

(b) To **supervise** the registration, licensure and **practice of accountancy** in the Philippines;

x x x x

(g) To monitor the conditions affecting the practice of accountancy and adopt such measures, **including promulgation of accounting and auditing standards, rules and regulations and best practices**[47] as may be deemed proper for the enhancement and maintenance of high professional, ethical, accounting and auditing standards: That domestic accounting and auditing standards rules and regulations shall include the international accounting and auditing standards, and generally accepted best practices;

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[46] Id. at 730.

[47] Id.

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(h) To conduct an oversight into the **quality of audits of financial statements though a review of the quality control measures**[48] instituted by auditors in order to ensure compliance with the accounting and auditing standards and practices;

x x x x

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

It appears from the foregoing that the power to supervise the accounting profession and to impose regulations on CPAs is exclusively delegated to the Professional Regulatory Board of Accountancy. Yet, this exclusive delegation is contravened by the provisions in MC No. 13-2009, in particular penal clauses such as the aforementioned scale of fines (Section 12.4) and the suspension or delisting of accreditation (Section 12.6), to wit:

12.6. Suspension or Delisting of Accreditation

i. After due notice and hearing, the accreditation of an auditing firm or external auditor shall be suspended for any of the following grounds:

x x x x

The delisted firm under item (b) above may re-apply for accreditation provided that two years have lapsed from the date of delisting, and the assessed penalty for each suspended or delisted partners or auditors is paid or the requirement is complied with. If the firm has a derogatory record with the Commission, it shall not be qualified for a higher category of accreditation (Group A or B).

While petitioner argues that there is no barrier preventing CPAs from applying for accreditation, the accreditation itself is the

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[48] Id.

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barrier, however flimsy, which prevents the practice of external auditing of covered entities.

Petitioner further argues that it executed a MOA with the Board which allows for such accreditation with the SEC. However, We remind petitioner of another legal maxim, *"delegata potestas non potest delegari"* or what has been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another:

> x x x having **been reposed by law exclusively with the respondent Board**, it has no choice but to exercise the same as mandated by law, i.e., as a collegial body, and **not transfer it elsewhere or discharge said power through the intervening mind of another**.[49] *Delegata potestas non potest delegari* — a delegated power cannot be delegated." (Emphases and underscorings supplied)

Moreover, a private agreement such as the MOA cannot operate to validate a transgression of a provision of law.[50] Thus, the MOA is void and cannot serve as authorization for the petitioner to make the assailed issuances.

WHEREFORE, the present petition for review on *certiorari* is **DENIED**. The Decision dated March 20, 2018 of the Regional Trial Court (RTC), Davao City, Branch 15, in Civil Case No. R-DVO-15-02294-SC is **AFFIRMED**. Paragraph 3, Rule 68 of the IRR of the SRC and SEC MC No. 13-2009 are declared null and void.

SO ORDERED.

Gesmundo, C.J., Leonen, Caguioa, Hernando, Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, Dimaampao, Marquez, Kho, Jr., and *Singh, JJ.*, concur.

Lazaro-Javier, J., see concurrence.

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[49] Id.

[50] Art. 1306 of the New Civil Code, provides:

> Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

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APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cunanan Law Office for respondents.

CONCURRENCE

LAZARO-JAVIER, *J.*:

I concur in the *ponencia* of Associate Justice Ricardo R. Rosario.

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

The assailed issuances are: (i) Rule 68, paragraph 3 of the Amended Implementing Rules and Regulations (*IRR*) to the Securities Regulation Code (*SRC*) and (ii) SEC Memorandum Circular (*MC*) No. 13-2009. These regulations require the SEC's accreditation of Certified Public Accountants (*CPAs*) as a condition precedent to being able to practice as external auditors of corporations issuing registered securities and possessing secondary licenses. They also impose penalties against CPAs for non-compliance. Thus:

Paragraph 3 of Rule 68:

3. QUALIFICATIONS AND REPORTS OF INDEPENDENT AUDITORS

x x x x

B. Additional Requirements for Independent Auditors of SEC-Regulated Entities and Other Entities

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(1) Accreditation Categories

The accreditation of independent auditors serves as a quality control mechanism or quality assurance review by the Commission on the work of the accredited external auditors.

The following entities shall have independent auditors accredited by the Commission x x x.[1]

SEC MC No. 13-2009:

x x x x

4.1. Only an external auditor and his auditing firm (if applicable) who is accredited by the Commission shall be engaged by corporations covered by this Circular for the statutory audit of their financial statements.

x x x x

6.3. Applications for initial or renewal of accreditation of external auditors or partners of auditing firms shall be assessed the following filing fees:

i. Group A	₱5,000.00
ii. Group B	3,000.00
iii. Group C or D	2,000.00

x x x x

7.3. Applications for initial or renewal of accreditation of auditing firms shall be assessed the following filing fees:

iv. Group A	₱20,000.00
v. Group B	15,000.00
vi. Group C or D	5,000.00

x x x x

Section 11. Grounds for Imposition of Penalties
An external auditor or auditing firm shall be assessed a penalty under Section 12 hereof, after due notice and hearing by the Commission, for any of the following violations:

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[1] Revised Securities Regulation Code Rule 68, As Amended.

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x x x x

12.4. Violation of Accreditation Requirement. Any auditing firm or responsible external auditor (individual practitioner) who enters into an engagement with a company under Group A, B, or C without the appropriate accreditation from the Commission shall be subject to the following scale of fines:

Group A companies	Auditing Firm
First offense	₱100,000.00
Second offense	200,000.00
Third offense	400,000.00

Group B companies	Auditing Firm
First offense	₱50,000.00
Second offense	100,000.00
Third offense	200,000.00

Group C companies	Auditing Firm	External Auditor
First offense	₱100,000.00	₱10,000.00
Second offense	200,000.00	20,000.00
Third offense	400,000.00	40,000.00

Any company covered by this Circular that engages the services of an external auditor who is not accredited by the Commission under the appropriate category shall be subject to the following penalties without prejudice to the other administrative sanctions provided for in Section 54 of the SRC and its implementing rules and regulations:

Group A	₱100,000.00
Group B	50,000.00
Group C	25,000.00[2]

In issuing these challenged regulations, SEC cites the following:

Section 5(a), SRC

(a) Have **jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit** issued by the Government;

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[2] Securities and Exchange Commission Memorandum Circular No. 13, Series of 2009, Revised Guidelines on Accreditation of Auditing Firms and External Editors, Signed on September 18, 2009, Took effect on October 15, 2009.

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x x x x

(d) Regulate, investigate or supervise the **activities of persons to ensure compliance**;

x x x x

(f) **Impose sanctions for the violation of laws and the rules**, regulations and orders issued pursuant thereto;

(g) **Prepare, approve, amend or repeal rules, regulations** and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

x x x x

(n) **Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental** to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.[3]

Section 68, SRC

The Commission shall have the **authority to make, amend, and rescind such accounting rules and regulations** as may be necessary to carry out the provisions of this Code, including rules and regulations governing **registration statements and prospectuses** for various classes of securities and issuers, and **defining accounting, technical and trade terms** used in this Code. Among other things, the Commission may **prescribe the form or forms in which required information shall be set forth**, the **items or details to be shown in the balance sheet** and **income statement**, and the **methods to be followed in the preparation of accounts**, appraisal or valuation of assets and liabilities, **determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of investment and operating income**, and in the **preparation**, where the Commission deems it necessary or desirable **of consolidated balance sheets** or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with, the issuer.[4] (Emphases supplied)

Section 141, Corporation Code - Annual report or corporations.

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[3] Republic Act No. 8799, The Securities Regulation Code, Approved on July 19, 2000.

[4] Id.

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Every corporation, domestic or foreign, lawfully doing business in the Philippines **shall submit** to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, **certified by *any* independent certified public accountant** in appropriate cases, covering the preceding fiscal year and such other requirements as the Securities and Exchange Commission may require. Such report shall be submitted within such period as may be prescribed by the Securities and Exchange Commission. (n)[5]

Memorandum of Agreement[6] jointly executed by the SEC, Bangko Sentral ng Pilipinas (*BSP*), Insurance Commission (*IC*), and Professional Regulatory Board of Accountancy (*PRBA*).

1. x x x BOA shall register only the firm or partnership but shall attach in the certificate of accreditation a list of the partners considered in its evaluation. The firm and the individual partners thereof **shall each apply for accreditation** with SEC, BSP, or IC.

x x x x

3. x x x For SEC, BSP, or IC accreditation, the firm and each partner who audits or who **intends to audit regulated entities shall be the subject of such accreditation.**[7] (Emphases supplied)

Can the SEC impose this accreditation requirement and impose penalties for non-compliance?

In resolving this issue, the instructions of Congress are paramount.

The starting point is Republic Act (*RA*) No. 9298, otherwise known as the Philippine Accountancy Act of 2004. Through this statute, Congress created and empowered PRBA, "[t]o supervise the registration, licensure and practice of accountancy in the Philippines," and generally—

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[5] Batas Pambansa Bilang 68, The Corporation Code of the Philippines, Approved on May 1, 1980 (As Amended).

[6] *Rollo*, pp. 489–495.

[7] Id. at 49–492.

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Section 9. *Powers and Functions of the Board*. - The Board shall exercise the following specific powers, functions and responsibilities:

(a) To prescribe and adopt the rules and regulations necessary for carrying out the provisions of this Act x x x

x x x x

(o) To exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted to the Board to achieve the objectives and purposes of this Act.[8]

Pursuant to RA 9298, the performance of the duties of an external auditor of corporations issuing registered securities and possessing secondary licenses is part and parcel of the practice of accountancy—

Section 4. *Scope of Practice*.- The practice of accountancy shall include, but not limited to, the following:

Practice of Public Accountancy – shall constitute in a person, be it his/her individual capacity, or as a partner or as a staff member in an accounting or auditing firm, holding out himself/herself as one skilled in the knowledge, science and practice of accounting, and as a qualified person **to render professional services as a certified public accountant; or offering or rendering, or both, to more than one client on a fee basis or otherwise, services such as the audit or verification of financial transaction and accounting records; or the preparation, signing, or certification for clients of reports of audit, balance sheet, and other financial, accounting** and related schedules, exhibits, statements or reports which are to be used for publication or for credit purposes, or to be filed with a court or government agency, or to be used for any other purpose; or the design, installation, and revision of accounting system; or the preparation of income tax returns when related to accounting procedures; or when he/she represents clients before government agencies on tax and other matters related to accounting

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[8] Republic Act No. 9298, an Act Regulating the Practice of Accountancy in the Philippines, Repealing for the Purpose Presidential Decree No. 692, Otherwise Known as the Revised Accountancy Law, Appropriating Funds Therefor and for Other Purposes, Approved on May 13, 2004.

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or renders professional assistance in matters relating to accounting procedures and the recording and presentation of financial facts or data.[9]

It is, thus, PRBA, as a result of its power to regulate the practice of accountancy, that is empowered to supervise, register and license those who can act as external auditors of all corporations including those issuing registered securities and possessing secondary licenses. Per RA 9298, PRBA is the gatekeeper for the supply of authorized external auditors.

The assailed SEC issuances requiring the added accreditation of CPAs, or those already supervised, registered, and licensed by the PRBA, before they could act as external auditors of the subject corporations are akin to supervising, registering, and licensing persons to exercise such duties, and by virtue of the definition of the practice of accountancy, are a form of regulating the practice of this facet of accountancy itself. As to this particular form of accountancy, the SEC is duplicating the powers of the PRBA.

The SEC can require accreditation only if empowered by Congress. Otherwise, the added accreditation by the SEC is superfluous, and its regulation of this aspect of accountancy is usurpation of authority.

As exhaustively analyzed by Justice Rosario, neither Section 5(a) and Section 68 of the SRC nor Section 141 of the CC entrusts regulatory powers to the SEC over this specie of accountancy. These cited provisions pertain to the regulation of certain activities of corporations or similar bodies and their thinking heads or managers, but not of CPAs or the practice of accountancy. The language of these provisions makes this meaning very clear. Their import cannot be mistaken for anything else.

True, RA 9298 does not expressly vest exclusive regulatory power in the PRBA over the practice of accountancy. But RA 9298 does not have to. For what has once been delegated by Congress can no longer be further delegated by the original delegate to another—*potestas delegata non delegare potest*.[10]

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[9] Id.

[10] See *United States v. Barrias*, 11 Phil. 327, 330 (1908).

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This legal doctrine is based upon the ethical principle that the delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of their own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.[11] This rule admits of recognized exceptions, but none of these has been invoked, much less applies, here:

a. Delegation of tariff powers to the President under Section 28 (2) of Article VI of the Constitution;
b. Delegation of emergency powers to the President under Section 23 (2) of Article VI of the Constitution;
c. Delegation to the people at large;
d. Delegation to local governments; and,
e. Delegation to administrative agencies of rule-making power.[12]

The legal doctrine does not apply either where Congress itself authorized further delegation by the PRBA as expressed by or necessarily implied from the statute. Unfortunately, nothing in RA 9298 gives such directive expressly or even by necessary implication. In this light, the PRBA is not authorized to delegate or share this power to or with others.

Thus, pursuant to the legal doctrine of non-delegation, the grant to the PRBA of the power to regulate the practice of accountancy is *deemed exclusive*. It is lodged undoubtedly and *exclusively* with the PRBA.

In any event, regardless of the nature of the PRBA's power to regulate the practice of accountancy, the SEC must still point to a grant of jurisdiction to justify its requirement of accreditation. Since the PRBA cannot delegate the power to regulate the practice of accountancy, the SEC must be able to show an *independent* grant of power, not one that the PRBA could have delegated, invalidly that is, to it.

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[11] See *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 416 (2009).

[12] Id.

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As observed, the SEC failed to show that independent grant of power. Section 5(a) and Section 68 of the SRC and Section 141 of the CC do not empower the SEC over the practice of accountancy. The MOA is similarly inconsequential. Even if it were a party to this MOA with the SEC, BSP, IC, the PRBA cannot delegate its power to regulate any or all aspects of the practice of accountancy to any other government entity. *Potestas delegata non delegare potest*. Congress entrusted the mandate to PRBA, so it must and by no other.

In *Philippine Lawyer's Association v. Agrava*,[13] the Director of Patent Office (*DPO*) pursued a line of arguments similar to what the SEC has echoed here.

In *Agrava*, the DPO issued a circular mandating lawyers, engineers, and other persons with sufficient scientific and technical training to pre-qualify as patent attorneys by passing the examinations to be administered by the Patent Office.[14] The DPO referred to Section 78 of RA No. 165[15] as allowing him to promulgate rules and regulations for the conduct of all business in the Patent Office.

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

> Respondent Director concludes that Section 78 of Republic Act No. 165 being similar to the provisions of law just reproduced, then he is authorized to prescribe the rules and regulations requiring that persons desiring to practice before him should submit to and pass an examination. We reproduce said Section 78, Republic Act No. 165, for purposes of comparison:

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[13] 105 Phil. 173–184 (1959).

[14] Id. at 174.

[15] Republic Act No. 165, An Act Creating A Patent Office, Prescribing Its Powers and Duties, Regulating the Issuance of Patents, and Appropriating Funds Therefor, Approved on June 20, 1947.

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SEC. 78. Rules and Regulations. - The Director subject to the approval of the Secretary of Justice, shall promulgate the necessary rules and regulations, not inconsistent with law, for the conduct of all business in the Patent Office.

The above provisions of Section 78 certainly and by far, are different from the provisions of the United States Patent Law as regards authority to hold examinations to determine the qualifications of those allowed to practice before the Patent Office. While the U.S. Patent Law authorizes the Commissioner of Patents to require attorneys to show that they possess the necessary qualifications and competence to render valuable service to and advise and assist their clients in patent cases, which showing may take the form of a test or examination to be held by the Commissioner, our Patent Law, Section 78, is silent on this important point. **Our attention has not been called to any express provision of our Patent Law, giving such authority to determine the qualifications of persons allowed to practice before the Patent Office**.

Section 551 of the Revised Administrative Code authorizes every chief of bureau to prescribe forms and make regulations or general orders not inconsistent with law, to secure the harmonious and efficient administration of his branch of the service and to carry into full effect the laws relating to matters within the jurisdiction of his bureau. Section 608 of Republic Act 1937, known as the Tariff and Customs Code of the Philippines, provides that the Commissioner of Customs shall, subject to the approval of the Department Head, make all rules and regulations necessary to enforce the provisions of said code. Section 338 of the National Internal Revenue Code, Commonwealth Act No. 466 as amended, states that the Secretary of Finance, upon recommendation of the Collector of Internal Revenue, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of the code. **We understand that rules and regulations have been promulgated not only for the Bureau of Customs and Internal Revenue, but also for other bureaus of the Government, to govern the transaction of business and to enforce the law for said bureaus**.

Were we to allow the Patent Office, in the absence of an express and clear provision of law giving the necessary sanction, to require lawyers to submit to and pass an examination prescribed by it before they are allowed to practice before said Patent Office, then there would be no reason why other bureaus specially the Bureau of Internal Revenue and Customs, where the business in the same area are more or less complicated, such as the presentation of books of accounts, balance sheets, etc., assessments exemptions, depreciation,

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these as regards the Bureau of Internal Revenue, and the classification of goods, imposition of customs duties, seizures, confiscation, etc., as regards the Bureau of Customs, **may not also require that any lawyer practicing before them or otherwise transacting business with them on behalf of clients, shall first pass an examination to qualify**.

In conclusion, **we hold that under the present law, members of the Philippine Bar authorized by this Tribunal to practice law, and in good standing, may practice their profession before the Patent Office**, for the reason that much of the business in said office involves the interpretation and determination of the scope and application of the Patent Law and other laws applicable, as well as the presentation of evidence to establish facts involved; that part of the functions of the Patent director are judicial or quasi-judicial, so much so that appeals from his orders and decisions are, under the law, taken to the Supreme Court.[16] (Emphases supplied)

In *Airlift Asia Customs Brokerage, Inc. et al. v. Court of Appeals*,[17] the Commissioner of Customs required the accreditation of customs brokers who intend to practice before the Bureau of Customs (*BOC*) through Customs Administrative Order (*CAO*) No. 3-2006.

In nullifying the CAO, this Court ruled that the CAO amounted to a licensing requirement that restricted the practice of profession of customs brokers, a role which Congress had given to the Professional Regulatory Board for Customs Brokers under Section 5, RA 9280, the *Customs Brokers Act of 2004*. Further, this Court also favored the specific provisions of RA 9280 over the general grant of power to the Customs Commissioner to enforce the provisions of the *Tariff and Customs Code of the Philippines* (TCCP):

Although we cannot deny that **the BOC Commissioner has the mandate to enforce tariff laws and prevent smuggling, these powers do not necessarily include the power to regulate and supervise the customs broker profession** through the issuance of CAO 3-2006.

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[16] Supra note 12 at 183–183.

[17] 739 Phil. 718, 727–728, (2014).

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The **BOC Commissioner's power under Section 608 of the TCCP** is a **general grant of power to promulgate rules and regulations** necessary to enforce the provisions of the TCCP. Under the rules of statutory construction, **this general rule-making power gives way to the specific grant of power to promulgate rules and regulations on the practice of customs brokers profession** to the CSC Commissioner under Section 3409 of the TCCP. Indeed, in the exercise of this specific power, the Board of Examiners (of which the BOC Commissioner serves as ex-officio chairman) was to perform only a recommendatory role. With the repeal of Section 3409 of the TCCP by RA 9280, **this specific rule-making power was transferred to the PRBCB to complement its supervisory and regulatory powers over customs brokers**. (Emphases supplied)

In fine, as the *ponencia* correctly holds, the petition should be denied for lack of merit.