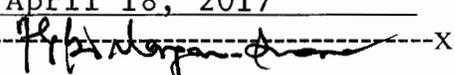


EN BANC

G.R. No. 207246: JOSE M. ROY III, *petitioner*, v. CHAIRPERSON TERESITA J. HERBOSA, et al., *respondents*; WILSON C. GAMBOA, JR., et al., *petitioners-in-intervention*; PHILIPPINE STOCK EXCHANGE and SHAREHOLDERS' ASSOCIATION OF THE PHILIPPINES, INC., *respondents-in-intervention*.

Promulgated:

April 18, 2017

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DISSENTING OPINION

CARPIO, J.:

I dissent.

Section 11, Article XII of the Constitution provides: “No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least **sixty per centum of whose capital is owned by such citizens**, x x x.”

In the *Gamboa Decision*,¹ the threshold issue before the Court was “whether the term ‘capital’ in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of **PLDT**, a public utility.”

In resolving this issue, the Court looked into PLDT’s capital structure at the time and found the glaring anomaly in treating the total outstanding capital stock as a single class of shares. The Court showed how control and beneficial ownership of PLDT rest solely with the common shares, thus:

x x x (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the sole right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT’s common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn; (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and

¹ *Gamboa v. Teves*, 668 Phil. 1 (2011).



common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.

Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share, while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share, is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.²

Clearly, PLDT's capital structure then, where 64.27% of the common shares were in the hands of foreigners, warranted the Court's ruling that the term "capital" refers to shares of stock that can vote in the election of directors. The Court further stated that "in the present case (in the case of PLDT), [the term 'capital' refers] only to common shares, and not to the total outstanding capital stock." The dispositive portion of the *Gamboa Decision* reads:

WHEREFORE, we PARTLY GRANT the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.³

Moreover, in the *Gamboa Decision*, the Court stated that "[m]ere legal title is insufficient to meet the 60 percent Filipino-owned 'capital' required in the Constitution."⁴ Full beneficial ownership of 60 percent of the total outstanding capital stock, coupled with 60 percent of the voting rights, is the minimum constitutional requirement for a corporation to operate a public utility, thus:

x x x. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. **The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate.** Otherwise, the corporation is "considered as non-Philippine national[s]."⁵ (Emphasis supplied)

² Id. at 63-64.

³ Id. at 69-70.

⁴ Id. at 57.

⁵ Id.



Significantly, in the 9 October 2012 *Gamboa Resolution*⁶ denying the motion for reconsideration, the Court reiterated the requirement of full beneficial ownership by Filipinos of at least 60 percent of the outstanding capital stock and at least 60 percent Filipino ownership of the voting rights. This is consistent with the Foreign Investments Act, as well as its Implementing Rules, thus:

This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by “a trustee of funds for pension or other employee retirement or separation benefits,” the trustee is a Philippine national if “at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals.” Likewise, Section 1(b) of the Implementing Rules of the FIA provides that “for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential.**”⁷ (Emphasis in the original)

The Court clarified, in no uncertain terms, that the 60 percent constitutional requirement of Filipino ownership applies uniformly and across the board to all classes of shares comprising the capital of a corporation. The 60 percent Filipino ownership requirement applies to each class of share, not to the total outstanding capital stock as a single class of share.

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

x x x x

x x x. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to

⁶ 696 Phil. 276 (2012).

⁷ Id. at 338-339.

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corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.

Moreover, such uniform application to each class of shares insures that the “controlling interest” in public utilities always lies in the hands of Filipino citizens. x x x.

As we held in our 28 June 2011 Decision, to construe broadly the term “capital” as the total outstanding capital stock, treated as a single class regardless of the actual classification of shares, grossly contravenes the intent and letter of the Constitution that the “State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.” We illustrated the glaring anomaly which would result in defining the term “capital” as the total outstanding capital stock of a corporation, treated as a single class of shares regardless of the actual classification of shares, to wit:

Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term “capital,” such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.

In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. x x x.⁸ (Emphasis supplied)

Clearly, in both *Gamboa Decision* and *Resolution*, the Court categorically declared that the 60 percent minimum Filipino ownership refers not only to voting rights but likewise to full beneficial ownership of the stocks. Moreover, in the *Gamboa Resolution*, the Court explicitly stated that the 60 percent Filipino ownership applies uniformly to each class of shares. Such interpretation ensures effective control by Filipinos of public utilities, as expressly mandated by the Constitution.

⁸ Id. at 339, 341, 345.



Capital Structure of PLDT

Let us examine PLDT's capital structure to determine whether it complies with the *Gamboa Decision* and *Resolution* where the Court expressly held that the 60 percent minimum Filipino ownership refers not only to voting rights but also to full beneficial ownership of the stocks. Further, the 60 percent Filipino ownership applies uniformly to each class of shares.

In the 2011 General Information Sheet of PLDT, before the finality of the *Gamboa Decision* and *Resolution*, its shares were divided into common and preferred. **Filipinos owned 35.77% while foreigners owned 64.23% of the common shares.** Filipinos owned 99.67% while foreigners owned 0.33% of the preferred shares. Filipinos owned 86.30% while foreigners owned 13.70% of the total outstanding capital stock. There was no dispute that in 2011, before the *Gamboa Decision* and *Resolution* were promulgated, the common shares of PLDT had the right to vote in the election of the board of directors, whereas the preferred shares had no such right.

In the 2012 General Information Sheet of PLDT, after the promulgation of the *Gamboa Decision* and *Resolution*, the preferred shares were sub-classified into (a) voting preferred shares and (b) non-voting serial preferred shares. The newly-created voting preferred shares, which have voting rights in the election of directors, are fully owned by BTF Holdings, Inc. These voting preferred shares are not listed in the Philippine Stock Exchange. With the newly-created preferred shares, it appears that Filipinos owned 65.53% while foreigners owned 34.47% of the total voting shares. However, based on common shares only, Filipinos owned 41.60% while foreigners owned 58.40%. Based on PLDT's 2012 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2013 General Information Sheet of PLDT, it appears that Filipinos owned 67.32% while foreigners owned 32.68% of the total voting shares. However, based on common shares only, Filipinos owned 44.63% while 55.37% were owned by foreigners. Based on PLDT's 2013 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2014 General Information Sheet of PLDT, it appears that Filipinos owned 68.34% while foreigners owned 31.66% of the total voting shares. However, based on common shares only, Filipinos owned 46.35% while foreigners owned 53.65%. Based on PLDT's 2014 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.



In the 2015 General Information Sheet of PLDT, it appears that Filipinos owned 67.95% while foreigners owned 32.05% of the total voting shares. However, based on common shares only, Filipinos owned 45.70% while foreigners owned 54.30%. Based on PLDT's 2015 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2016 General Information Sheet of PLDT, it appears that Filipinos owned 69.82% while foreigners owned 30.18% of the total voting shares. However, based on common shares only, Filipinos owned 48.87% while foreigners owned 51.13%. Based on PLDT's 2016 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

To summarize, the table below shows that from 2011 to 2016, the majority of the common shares remained in the hands of foreigners and less than 60% of the common shares were owned by Filipinos.

Number of PLDT shares	2011 in %	2012 in %	2013 in %	2014 in %	2015 in %	2016 in %
COMMON						
A. Filipino	35.77	41.60	44.63	46.35	45.70	48.87
B. Foreigners	64.23	58.40	55.37	53.65	54.30	51.13
PREFERRED (NON- VOTING)						
A. Filipino	99.67	100	100	100	100	100
B. Foreigners	0.33	0	0	0	0	0
PREFERRED (VOTING)						
A. Filipino	–	100	100	100	100	100
B. Foreigners	–	0	0	0	0	0
TOTAL VOTING						
A. Filipino	35.77	65.53	67.32	68.34	67.95	69.82
B. Foreigners	64.23	34.47	32.68	31.66	32.05	30.18

To repeat, the issue in the *Gamboa Decision* was “whether the term ‘capital’ in Section 11, Article XII of the Constitution refers to the total **common shares only** or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility.”

Considering PLDT's capital structure at the time, indicating that control and ownership rest with the common shares, the Court stated in the dispositive portion of the *Gamboa Decision* that “the term ‘capital’ in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case

only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares).”

If we apply the term “capital” as referring only to common shares and not to the total outstanding capital stock of PLDT, as stated in the *Gamboa Decision*, then since 2011, before the promulgation of the *Gamboa Decision* and *Resolution*, until 2016, after the promulgation of the *Gamboa Decision* and *Resolution*, PLDT’s capital structure has failed to comply with the constitutional requirement that at least 60 percent of its common shares, which control PLDT, are Filipino-owned.

Voting Preferred Shares

In October 2012, PLDT created a new class of shares – the voting preferred shares – to comply allegedly with the *Gamboa Decision*. All the 150,000,000 newly-issued voting preferred shares were acquired by BTF Holdings, Inc., a wholly-owned company of the PLDT Beneficial Trust Fund (BTF). The voting preferred shares have a par value of ₱1.00 per share, while the common shares have a par value of ₱5.00 per share.

The BTF was established by the Board of Directors of PLDT as a retirement plan for PLDT’s employees. As stated in PLDT’s By-Laws, among the express powers of the Board of Directors of PLDT is to establish pension or retirement plans for the employees, and to determine the persons to participate in such plans and the amount of their participation.⁹ The Board of Directors appoints the BTF’s Board of Trustees, which manages the BTF and consists of two members of PLDT’s Board of Directors, a senior member of the executive staff of PLDT, and two persons who are neither executives nor employees of PLDT.¹⁰ Since the PLDT Board of Directors appoints the Board of Trustees of the BTF, in effect, it is PLDT’s management which controls the BTF.

In 2011, when the *Gamboa Decision* was promulgated, PLDT’s Board of Directors was elected by foreigners comprising more than 60 percent of the common shares who had the right to elect the Board of Directors. After the creation of the voting preferred shares in 2012, PLDT’s Board of Directors continued to be manned by the same set of persons, and the management of PLDT remained in the hands of the same persons.

The table¹¹ below shows that the total voting preferred shares of

⁹ Article V, Section 9(i) of the Amended By-Laws of PLDT dated 20 February 2015.

¹⁰ Page F-119 of SEC Form 17-A (Annual Report) for the fiscal year 2015 <<http://www.pds.com.ph/wp-content/uploads/2016/03/Disclosure-No.-490-2016-Annual-Report-for-Fiscal-Year-Ended-December-31-2015-SEC-FORM-17-A.pdf>> (accessed on 12 March 2017).

¹¹ Based on PLDT’s General Information Sheets from 2011 to 2016.

2011: <http://www.pldt.com/docs/default-source/general-information/pldt-2011-gis.pdf?sfvrsn=0> (accessed on 7 March 2017).

150,000,000 comprised 40.98% of the total voting capital of PLDT from 2012 until 2016. However, for the same period, the number of voting preferred shares comprised only 22.5% of the total paid-up capital of PLDT. The number of common shares, which was owned by a majority of foreigners, comprised 77.5% of the total paid-up capital of PLDT.

Number of PLDT Shares	2012 (as of 16 Oct. 2012)	2013 (as of 3 Oct. 2013)	2014 (as of 11 April 2014)	2015 (as of 10 April 2015)	2016 (as of 15 April 2016)
FILIPINO					
Common	89,882,436	96,429,568	100,150,726	98,743,500	105,577,491
Voting Preferred	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000
FOREIGNERS					
Common	126,173,339	119,626,207	115,905,049	117,312,275	110,478,284
Voting Preferred	0	0	0	0	0
TOTAL VOTING	366,055,775	366,055,775	366,055,775	366,055,775	366,055,775
% OF VOTING PREFERRED VS. TOTAL VOTING (PAID-UP CAPITAL)	40.98%	40.98%	40.98%	40.98%	40.98%
% OF VOTING PREFERRED VS. TOTAL PAID-UP CAPITAL¹²	22.52%	22.52%	22.52%	22.73%	22.52%

There is no question that the 150,000,000 voting preferred shares have the right to vote in the election of the Board of Directors. However, the Board of Trustees of the BTF is appointed by the Board of Directors of PLDT. The BTF controls how the voting preferred shares of BTF Holdings, Inc. are voted. In short, BTF Holdings, Inc. is controlled by the Board of Directors of PLDT, including how the voting preferred shares of BTF

2012: http://www.pldt.com/docs/default-source/general-information/amended-general-information-sheet_final-2012.pdf?sfvrsn=0 (accessed on 7 March 2017).

2013: http://www.pldt.com/docs/default-source/general-information/amended-gis_decrease-in-capital-stock_10-03-13.pdf?sfvrsn=0 (accessed on 7 March 2017).

2014: <http://www.pldt.com/docs/default-source/general-information/2014-gis-with-certification.pdf?sfvrsn=0> (accessed on 7 March 2017).

2015: <http://www.pldt.com/docs/default-source/general-information/2015-pldt-gis-with-certification.pdf?sfvrsn=2> (accessed on 7 March 2017).

2016: [http://www.pldt.com/docs/default-source/general-information/pldt-2016-amended-general-information-sheet-\(gis\).pdf?sfvrsn=0](http://www.pldt.com/docs/default-source/general-information/pldt-2016-amended-general-information-sheet-(gis).pdf?sfvrsn=0) (accessed on 7 March 2017).

¹² The number of shares comprising the total paid-up capital for 2012 was 666,058,745; for 2013 it was 666,056,345; for 2014 it was 666,056,345; for 2015 it was 666,056,145; and for 2016 it was 666,057,015. Based on PLDT's General Information Sheets.

Holdings, Inc. will be voted. In essence, whoever controls PLDT also controls BTF and BTF Holdings, Inc. When the voting preferred shares were created and issued to BTF Holdings, Inc., PLDT, BTF, and BTF Holdings, Inc. were **all controlled by the same PLDT Board of Directors**, who was elected by the owners of the PLDT common shares. The majority of these PLDT common shares were then, and even up to now, foreign-owned and controlled.

In 2012, when the voting preferred shares were created and issued, the common shares with a par value of ₱5.00 were traded in the stock market for a price which reached ₱2,650.¹³ Meanwhile, the voting preferred shares with a par value of ₱1.00 were not traded or listed in the stock exchange. While voting rights had been extended to the newly-created voting preferred shares, the beneficial ownership of PLDT remained indisputably with the common shares.

Clearly, the issuance of the voting preferred shares is a farce. PLDT created and issued the voting preferred shares to “comply” allegedly with the *Gamboa Decision* and *Gamboa Resolution*. With its “modified” capital structure, PLDT ostensibly qualifies as a “Philippine national” with at least 60 percent of its voting stock in the hands of Filipinos. However, in truth and in fact, it is nothing but a “sweetheart deal,” a disingenuous device, which not only circumvents the ruling in *Gamboa*; but worse, illegally evades the constitutional mandate of 60-40 Filipino ownership of capital. This ploy is a plain and simple travesty of the Constitution.

Beneficial Ownership

The table below shows the disparity in the amounts of dividends declared from 2013 to 2016¹⁴ between PLDT’s common shares and voting preferred shares.

PLDT Shares	2013	2014	2015	2016
COMMON ¹⁵ (per share)	₱52 ₱60 ₱63	₱54 ₱62 ₱69	₱26 ₱61 ₱65	₱49 ₱57
VOTING PREFERRED STOCK ¹⁶ (per share)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)

¹³ On 23 October 2012. <http://edge.pse.com.ph/companyPage/stockData.do?cmpry_id=6> (accessed on 10 March 2017).

¹⁴ Based on PLDT’s dividend declaration from 2013 to 2016 <<http://www.pldt.com/investor-relations/shareholder-information/dividend-info>> (accessed on 12 March 2017).

¹⁵ Declared on various dates.

¹⁶ Quarterly.

% DIVIDENDS OF VOTING PREFERRED VS. COMMON SHARES	0.04%	0.04%	0.03%	0.06%
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Clearly, such disparity highlights the anomaly in the treatment of the total outstanding voting stock as a single class of shares. From 2013 to 2016, the declared dividends on the common shares ranged from ₱26 to ₱69 per share per annum with a par value of ₱5.00 per share, whereas the dividend on the 150,000,000 voting preferred shares amounted to ₱0.065¹⁷ per annum with a par value of ₱1.00 per share.

In short, the voting preferred shares comprised 40.98% of all voting shares but received only 0.04%¹⁸ of the dividends for 2013, 0.04%¹⁹ for 2014, 0.03%²⁰ for 2015, and 0.06%²¹ for 2016, compared with the dividends received by the common shares for the same period.

Clearly, the voting preferred shares are mere “mickey mouse” voting shares, created just to ostensibly comply with the 60 percent Filipino ownership requirement of the voting stock. In reality, the voting preferred shares have insignificant beneficial returns to whoever owns it.

Significantly, in the *Gamboa Decision*, the Court cited the disparity in the beneficial ownership between common shares and preferred shares of PLDT, to wit:

Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share, while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share, is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.²²

It must be noted that as of 10 March 2017, the last traded price of PLDT’s common shares with a par value of ₱5.00 is ₱1,544.00,²³ whereas the voting preferred shares with a par value of ₱1.00 are not listed or traded. This further confirms that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares, either voting or non-

¹⁷ For 2013, 2014, and 2016.

¹⁸ ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱175.065 (sum of the dividends of each common share and voting preferred share).

¹⁹ ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱185.065 (sum of the dividends of each common share and voting preferred share).

²⁰ ₱0.049 (sum of the dividends of each voting preferred share) divided by ₱152.049 (sum of the dividends of each common share and voting preferred share).

²¹ ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱106.065 (sum of the dividends of each common share and voting preferred share).

²² *Gamboa v. Teves*, supra note 1, at 64.

²³ As of 1:27 p.m. of 10 March 2017 <http://edge.pse.com.ph/companyPage/stockData.do?cmpy_id=6>.

voting.

Moreover, as I have previously stated, SEC Memorandum Circular No. 8 can be considered valid only if (1) the stocks with voting rights and (2) the stocks without voting rights, which comprise the capital of a corporation operating a public utility, have **equal** par values. If the shares of stock have different par values, then applying SEC Memorandum Circular No. 8 would contravene the *Gamboa Decision* that the **“legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate.”** I illustrated the resulting anomaly in this wise:

For example, assume that class “A” voting shares have a par value of ₱1.00, and class “B” non-voting preferred shares have a par value of ₱100.00. If 100 outstanding class “A” shares are all owned by Filipino citizens, and 80 outstanding class “B” shares are owned by foreigners and 20 class “B” shares are owned by Filipino citizens, the 60-40 percent ownership requirement in favor of Filipino citizens for voting shares, as well as for the total voting and non-voting shares, will be complied with. If dividends are declared equivalent to the par value per share for all classes of shares, only 20.8 percent of the dividends will go to Filipino citizens while 79.2 percent of the dividends will go to foreigners, an absurdity or anomaly that the framers of the Constitution certainly did not intend. Such absurdity or anomaly will also be contrary to the *Gamboa Decision* that the **“legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate.”** (Emphasis in the original)

PLDT’s capital structure, as well as the disparity in the declared dividends between common and voting preferred shares, illustrates clearly the anomaly which will result in the interpretation by the SEC of the *Gamboa Decision* and *Resolution*. Applying the 60 percent Filipino ownership to the total voting stock and to the total outstanding stock, whether voting or non-voting, and not to each class of shares of PLDT clearly amounts to a blatant mockery of the Constitution.

Clarification of the Gamboa Decision and Resolution

While the Court did not explicitly state in the dispositive portion of the *Gamboa Decision* and *Resolution* that the minimum 60 percent Filipino ownership must be uniformly applied to each class of shares, the body of the *Gamboa Resolution* categorically declared that “the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.”



Is the Court perpetually precluded from refining the dispositive portion of the *Gamboa Decision and Resolution* to harmonize with the Court's pronouncements in the body of the decision? Is the Court absolutely barred from clarifying the dispositive portion of the *Gamboa Decision and Resolution* and stating that the 60-40 Filipino ownership applies to each class of shares, as declared in the body of the *Gamboa Resolution*?

Definitely, no.

To avoid absurdity, and more importantly, to uphold the spirit and language of the Constitution, the Court is not only allowed, but is bound, to clarify, even rectify, any apparent conflict in its decisions. To grasp and delve into the true intent and meaning of a decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety.²⁴ In *Reinsurance Company of the Orient, Inc. v. Court of Appeals*,²⁵ the Court stated:

It is true that even a judgment which has become final and executory may be clarified under certain circumstances. The dispositive portion of the judgment may, for instance, contain an error clearly clerical in nature (perhaps best illustrated by an error in arithmetical computation) or an ambiguity arising from inadvertent omission, which error may be rectified or ambiguity clarified and the omission supplied by reference primarily to the body of the decision itself. Supplementary reference to the pleadings previously filed in the case may also be resorted to by way of corroboration of the existence of the error or of the ambiguity in the dispositive part of the judgment. x x x.

To refuse to clarify the dispositive portion of the *Gamboa Decision*, invoking conclusiveness of judgment and *obiter dictum*, among other things, is to shirk from this Court's sworn duty to uphold the Constitution. Consequently, the Court must reject the SEC's flimsy argument that the SEC's task is merely to implement the Court's directive as contained in the dispositive portion of the *Gamboa Decision*. Following such contention, the SEC deliberately ignores the crucial pronouncements of the Court in the body of the *Gamboa Decision and Resolution*.

Possible Economic Consequences

Agreeing with the Philippine Stock Exchange, the majority voiced fears of an economic disaster if the term "capital" would be "re-interpreted." The PSE claims that "[a]dopting a new definition of 'capital' will prove disastrous [to] the Philippine stock market." The majority opined that "a restrictive interpretation – or rather, re-interpretation, of 'capital' x x x directly affects the well-being of the country."

²⁴ *Gulang v. Court of Appeals*, 360 Phil. 435, 450 (1998), citing *Valderrama v. NLRC*, 326 Phil. 477, 484 (1996).

²⁵ 275 Phil. 20, 34 (1991). Cited in *Gulang v. Court of Appeals*, *id.*



Suffice it to state that the possible economic repercussions resulting from the definition of the term “capital” in Section 11, Article XII of the Constitution can never justify a blatant violation of the Constitution. It is utterly dangerous to hold that possible economic repercussions justify junking the Constitution. The solution is to properly amend the Constitution, not to start violating it every time it becomes inconvenient to comply with the Constitution.

To repeat, the Constitution expressly mandates an economy effectively controlled by Filipinos. To sustain the glaringly anomalous and absurd situation which will result from the SEC’s interpretation of the term “capital” contravenes the *Gamboa Decision* and *Resolution*, and worse, contradicts the Constitution.

The majority’s decision now allows foreigners to control all nationalized industries, whether nationalized under the Constitution or existing statutes. Under these existing laws, foreign ownership is limited to less than a controlling interest. With the majority’s decision, the mere expedient of creating “mickey mouse” voting preferred shares will turn over control of nationalized industries, particularly strategic industries like telecommunications and energy distribution, to foreigners. This is what the majority’s decision is all about. This has, of course, far-reaching ramifications to the country’s national economy, national security, and even the future of our country as a sovereign state.

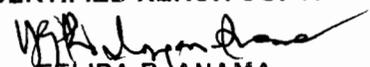
ACCORDINGLY, I vote to **GRANT** the motion for reconsideration. The minimum 60 percent Filipino ownership requirement under Section 11, Article XII of the Constitution must be applied to each class of shares, which comprises “capital,” as used in the Constitution, in determining whether a corporation can validly operate a public utility.



ANTONIO T. CARPIO

Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT