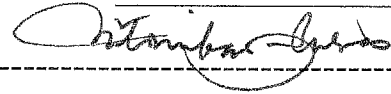


EN BANC

G.R. No. 246027 – Securities and Exchange Commission v. Accountants Party-List Inc., rep. by its President, Christian Jay D. Lim, Christian Jay D. Lim in his personal capacity as CPA, Froilan G. Ampil, Allan M. Basarte, Virgilio F. Agunod, and Jonas F. Mascariñas

Promulgated:
June 21, 2022



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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

(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	P5,000.00
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	P20,000.00
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:

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	P100,000.00
Second offense	200,000.00
Third offense	400,000.00

¹ Revised Securities Regulation Code Rule 68, As Amended.

Group B companies	Auditing Firm	
First offense	P50,000.00	
Second offense	100,000.00	
Third offense	200,000.00	
Group C companies	Auditing Firm	External Auditor
First offense	P100,000.00	P10,000.00
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	P100,000.00
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;

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

² Security 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.

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

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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.

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 Agreement⁶ 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)

⁴ Id.

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.

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—

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 or renders professional assistance in matters

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.

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

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:

⁹ Id.

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

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

- 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.

As observe, 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

¹² Id.

¹³ 105 Phil. 173-184 (1959).

Office.¹⁴ The DPO referred to Section 78 of RA No. 165¹⁵ 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:

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**

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.

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, 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.

¹⁶ Supra note 12 at 183–183.

¹⁷ 739 Phil. 718, 727–728, (2014).

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.



AMY C. LAZARO-JAVIER