

# **POLITICAL LAW AND PUBLIC INTERNATIONAL LAW**

# **COMMERCIAL AND TAXATION LAWS**

September 17, 2023

# POLITICAL LAW AND PUBLIC INTERNATIONAL LAW

<b>PART ONE: POLITICAL LAW .....</b>	<b>1</b>
<b>POWERS AND STRUCTURES OF GOVERNMENT .....</b>	<b>1</b>
I. Preliminary Concepts .....	1
A. Nature of a Constitution .....	1
B. The Philippines as a State .....	2
C. Fundamental Powers of the State .....	3
D. Relevance of the Declaration of Principles and State Policies .....	4
E. Dynamics Among the Branches of Government .....	5
F. State Immunity .....	6
G. The National Territory .....	7
II. Legislative Department .....	7
A. Nature of Legislative Power .....	7
B. Bicameral Congress .....	8
C. Legislative Privileges, Disclosure of Financial and Business Affairs, Prohibitions, Inhibitions, and Disqualifications .....	9
D. Quorum and Voting Majorities .....	10
E. Discipline of Members .....	10
F. Process of Law-Making .....	10
G. Rules on Appropriation and Re-Alignment .....	11
H. Electoral Tribunals and Commission on Appointments .....	12
I. Powers of Congress .....	12
III. Executive Department .....	14
A. Nature of Executive Power .....	14
B. Concept of Presidential Immunity .....	14
C. Concept of Executive Privilege .....	14
D. Qualifications, Election, Term of the President and Vice-President, and Rules on Succession .....	14
E. Other Privileges, Inhibitions, and Disqualifications .....	15
F. Powers of the President .....	15
IV. Judicial Department .....	19
A. Concept of Judicial Power .....	19
B. Judicial Review .....	19
C. Judicial Independence and Fiscal Autonomy .....	21
D. Appointments to the Judiciary .....	21
E. The Supreme Court .....	21
V. Constitutional Commissions (COMELEC, COA, CSC) .....	23
A. Constitutional Safeguards to Ensure Independence of Commissions .....	23
B. Common Provisions .....	23
C. Powers, Functions, and Jurisdiction .....	23
D. Composition and Qualifications of Members .....	24
E. Prohibited Offices and Interests .....	24
F. Judicial Review of Final Orders, Resolutions, and Decisions .....	24
<b>THE CITIZEN IN RELATION TO THE STATE .....</b>	<b>25</b>
I. Citizenship .....	25
A. Who are Filipinos .....	25
B. Modes of Acquiring Citizenship .....	25
C. Loss and Re-Acquisition of Philippine Citizenship .....	25
D. Dual Citizenship and Dual Allegiance .....	25
E. Foundlings .....	26
II. Bill of Rights .....	26
A. Private Acts and the Bill of Rights .....	26
B. Due Process .....	26
C. Equal Protection .....	27
D. Arrests, Searches, and Seizures .....	28
E. Privacy of Communications and Correspondence .....	30
F. Freedom of Speech and Expression .....	31
G. Freedom of Religion .....	33
H. Liberty of Abode and Right to Travel .....	34
I. Right to Information .....	35
J. Eminent Domain .....	35
K. Right to Association .....	36
L. Non-Impairment of Contracts .....	36
M. Free Access to Courts and Adequate Legal Assistance .....	36
N. Custodial Investigation .....	37
O. Rights of the Accused .....	37
P. Right to Speedy Trial and Speedy Disposition of Cases .....	40

Q. Right Against Self-Incrimination .....	40
R. Right Against Double Jeopardy.....	40
S. Right Against Involuntary Servitude .....	40
T. Right Against Excessive Fines, and Cruel and Inhuman Punishments .....	40
U. Non-Imprisonment for Debts.....	40
V. Ex Post Facto Laws and Bills of Attainder .....	40
W. Writs of Habeas Corpus, Kalikasan, Habeas Data, and Amparo .....	41
<b>III. Social Justice and Human Rights .....</b>	<b>41</b>
A. Concept of Social Justice .....	41
B. Economic, Social, and Cultural Rights .....	41
C. Commission on Human Rights.....	41
<b>IV. Education, Science, Technology, Arts, Culture, and Sports .....</b>	<b>41</b>
A. Academic Freedom .....	42
<b>NATIONAL ECONOMY AND PATRIMONY .....</b>	<b>42</b>
I. Regalian Doctrine.....	42
II. Public Trust Doctrine [See <i>Maynilad Water Services, Inc. v. Secretary of the DENR</i> , G.R. No. 202897 and companion cases, August 6, 2019] .....	43
III. Nationalist and Citizenship Requirement Provisions.....	43
IV. Exploration, Development, and Utilization of Natural Resources .....	43
V. Acquisition, Ownership, and Transfer of Public and Private Lands.....	44
VI. Concept of Ancestral Domain (Including Ancestral Lands) .....	44
VII. Practice of Professions.....	45
<b>LAW ON PUBLIC OFFICERS, ADMINISTRATIVE LAW, ELECTION LAW, AND LOCAL GOVERNMENT .....</b>	<b>45</b>
<b>I. Law on Public Officers .....</b>	<b>45</b>
A. General Principles .....	45
B. Modes of Acquiring Title to Public Office.....	45
C. Modes and Kinds of Appointment .....	45
D. Eligibility and Qualification Requirements.....	46
E. Disabilities and Inhibitions of Public Officers.....	46
F. Powers and Duties of Public Officers .....	47
G. Rights of Public Officers .....	47
H. Liabilities of Public Officers .....	47
I. Immunity of Public Officers .....	48
J. Distinguish: De Facto and De Jure Officers .....	48
K. Termination of Official Relation.....	48
L. The Civil Service .....	49
M. Accountability of Public Officers .....	50
N. Term Limits.....	52
<b>II. Administrative Law .....</b>	<b>52</b>
A. General Principles .....	52
B. Administrative Agencies .....	52
C. Powers of Administrative Agencies .....	53
D. Judicial Recourse and Review .....	54
<b>III. Election Law .....</b>	<b>55</b>
A. Suffrage .....	55
B. Candidacy.....	56
C. Campaign .....	58
D. Remedies and Jurisdiction .....	59
E. Prosecution of Election Offenses [Exclude: Penal Provisions] .....	61
<b>IV. Local Government.....</b>	<b>61</b>
A. Public Corporations.....	61
B. Principles of Local Autonomy.....	62
C. Autonomous Regions and Their Relation to the National Government.....	62
D. Local Government Unit (LGU).....	63
<b>PART TWO: PUBLIC INTERNATIONAL LAW .....</b>	<b>66</b>
<b>I. Sources of Obligations.....</b>	<b>66</b>
A. Treaties.....	66
B. Customary International Law.....	68
C. General Principles of Law.....	68
D. Application of International Law by Domestic Courts .....	68
<b>II. International Legal Person.....</b>	<b>69</b>
A. States .....	69
B. Non-State Entities .....	69
C. International Organizations.....	69
D. Status of Individuals and Corporations .....	70

<b>III. Jurisdiction.....</b>	<b>70</b>
A. Bases of Jurisdiction .....	70
B. Title to Territory .....	71
C. Adjacent Maritime Seas .....	71
D. Jurisdiction Over Persons and Economic Activity .....	71
<b>IV. International Responsibility.....</b>	<b>74</b>
A. Concept of Imputability of Internationally Wrongful Act or Omission .....	74
B. Reparation .....	74
C. International Protection of Human Rights (Including Refugees and Stateless Persons) .....	74
D. International Minimum Standard and National Treatment (Including Expropriation of Foreign-Owned Properties) .....	76
E. Environmental Harm .....	76
F. International Claims .....	76
<b>V. Dispute Resolution.....</b>	<b>76</b>
A. Legality of the Use of Force.....	76
B. Concept of International and Non-International Armed Conflicts .....	77
C. Judicial and Arbitral Settlement.....	78

## PART ONE: POLITICAL LAW POWERS AND STRUCTURES OF GOVERNMENT

### I. Preliminary Concepts

#### A. Nature of a Constitution

##### 1. Parts

###### GLS

###### (a) Constitution of government

1. Prescribes the: (i) permanent structure of government, (ii) allocation of powers, (iii) administration, (iv) defines the electorate.
2. VI – XI

###### (b) Constitution of liberty

1. (i) Guarantees basic civil and political rights of people, (ii) limits the exercise of state powers to secure the enjoyment of such rights.
2. II – V, XII

###### (c) Constitution of sovereignty

1. Modes of formally amending the constitution.
2. II, XVII

### 2. Manner of Interpretation (Self-Executing and Non-Executing Character)

Principles of constitutional interpretation: (a) Verba legis, (b) Ratio legis et anima, (c) Ut magis valeat quam pereat

#### (a) Verba legis

1. If there is no ambiguity, the words in the constitution shall be given their ordinary or literal meaning, except when technical terms are employed.
2. Courts must apply the law as written, not interpret.

#### (b) Ratio legis et anima

1. If there is ambiguity, it shall be interpreted according to the intent of the Framers.
2. The object sought to be accomplished and the evils sought to be prevented and remedied should be borne in mind.
3. The historical context, circumstances and conditions at the time of enactment should also be taken into account.

#### (c) Ut magis valeat quam pereat

1. Sections bearing on a particular subject matter must be interpreted together to effectuate the objective of the constitution as a whole.
2. Interpretation to give effect to all provisions.

**\*\* The application of the manners of interpreting the constitution is graded or in order of priority.**

Constitutional provisions based on efficacy: (d) Self-executing provisions, (d) Not self-executing provisions

1. Constitutional provisions are **deemed self-executing** unless the contrary is clearly intended. Otherwise, the Constitution is subordinated to the will of Congress.

#### (d) Self-executing provisions

1. Operative without the need of enabling legislation. (i) the nature and extent of the right granted, and the liability imposed are fixed, (ii) which are determinable by an examination and construction of its terms, (iii) and there is no language indicating that the subject is referred to the legislature for action.
2. II(2). Renunciation of war as instrument of national policy **INP**; adoption of GAPIL as part of the law of the land; adherence to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. **PEC JFA**.
3. II(12). Recognition of the sanctity of family life; protection and strengthening of family as basic

autonomous social institution; protection of the life of the mother and the life of the unborn from conception.

4. II(15) + (16). Right to health; right of the people to a balanced and healthful ecology. – Basis for the issuance of continuing mandamus, rules on environmental cases.
5. II(28) + III(7). “Splendid symmetry” – policy of full public disclosure of all its transactions involving public interest **FTIPI**; right of the people to information on matters of public concern. **RIMPuC**. (i) applies even to executory government transactions; (ii) the confidentiality clause in a government transaction cannot prevail of the peoples **RIMPuC**; (iii) basis to compel COMELEC to disclose the name of the nominees of party list representatives.
6. XII(10)(2). Preference to qualified Filipinos in the grant of rights, privileges, and concessions covering the national economy and patrimony (Filipino first policy).
7. XII(11). Franchise for operation of a public utility – (i) **citizens** or domestic corporations (60%); (ii) **non-exclusive**; (iii) **≤50y**; (iv) subject to **amendment**, alteration, or repeal by the Congress when the common good requires AARC CGR; (v) **limitation** of the participation to governing body of foreign investors to their proportionate share in capital; (vi) **executive** and managing officers must be Filipinos. **CEFALE**

#### (d) Not self-executing provisions

1. II(26). Prohibition political dynasties “as may be defined by law”.
2. II(28). Policy of FTIPI, **not self-executing in part** with respect to the manner of disclosure “reasonable conditions prescribed by law”.
3. XVII(2). People’s initiative to amend the Const – there is not effective enabling law to date.
4. VI(28)(1). Evolution of a progressive system of taxation. This is considered mere guideline for legislation but does not bar the Congress from prescribing taxes that are regressive in character.
5. VII(20). When the President contracts or guarantees foreign loans on behalf of RP, prior concurrence of the Monetary Board is required “subject to such limitations as may be provided by law”. General approval in principle, without any formalities is sufficient absent a detailed implementing law prescribing the same.

#### Other rules of interpretation

#### (e) Prospective application

1. Mining rights granted to foreign corporations prior to the effectivity of the 1935 Const.<sup>1</sup> are vested rights.
2. TCTs issued to qualified Filipino corporations during the 1973 Const. cannot be questioned despite limitation in the 1987 Const. limiting the disposition in their favor by way of lease.
3. Appellate jurisdiction of SC over CIAC arbitral awards does not violate the provision prohibiting the increase in its appellate jurisdiction without its advice and concurrence since the law prescribing such jurisdiction was passed before adoption of 1987 Const.
4. Laws executed prior to the effectivity of a Const. shall considered of continuing effect until shown that it is contrary to specific constitutional provisions.

#### (f) Expressio unius est exclusio alterius

<sup>1</sup> Reserved EDU of natural resources of qualified Filipinos.

1. The Congress may not add.
2. The qualifications and eligibilities of constitutional officers are exclusive. The requirement of prior drug testing with respect to elective officials was declared: (i) unconstitutional for the Constitutional officials since their qualifications under the Const. are exclusive; (ii) constitutional as to other officials since the Congress may prescribe their qualifications; (iii) however, Congress may prescribe as penalty, disqualification from public office.
3. The list of impeachable officer<sup>2</sup> is exclusive – (i) that the grounds for disciplining of deputy OMB are the same as the impeachable grounds does not make OMB an impeachable officer.
4. Grounds for impeachment are exclusive<sup>3</sup> – (i) however, Congress may determine what acts may constitute the grounds.
5. List of officers who may transfer appropriations is exclusive. However, in GAAs two officers were added, the OMB, and CHR Chairman. (i) Argument in favor: they also enjoy fiscal autonomy; (ii) Argument against: the list in the Const. is exclusive.

### 3. Process of Change (Amendments and Revisions)

Constituent power is the power to amend the Constitution or to propose amendments thereto.

1. Inherent power of the people.
2. May be exercised by the Congress by virtue of an authority derived from the Const (derivative).

Changes to the Const.: (a) Amendment, (b) Revision

(a) Amendment

1. Affects only one of few specific and separable provisions through addition, reduction, or deletion, without altering basic or underlying principles.
2. May be effected through: Constituent Assembly, Constitutional Convention, or People's Initiative.

(b) Revision

1. Substantially changes the entirety of the Const. either (i) by affecting a substantial number provisions (quantitative test), or (ii) by altering its basic or underlying principles as the (a) structure of government, (b) separation of powers, (c) system of checks-and-balances (qualitative test).
2. Constituent Assembly, Constitutional Convention, but not People's Initiative.

Modes: (c) ConAss, (d) ConCon, (e) People's Initiative

1. Two stages: Proposal + Ratification
2. Whether to propose amendment or revision is a political question. Congress can vote separately, JSA is not required.
3. The voting requirement is for the approval of the proposed amendments or revisions. Only the voting requirement is justiciable.
4. Piecemeal ratification is not allowed.
5. The ratification may be conducted simultaneously with the conduct or general or special elections.
6. Although the Congress may propose changes to the Const., these changes do not take effect until ratified by the people.

(c) ConAss

1. Proposals: 3/4s vote of all members of the Congress.
2. Ratification: majority of the votes cast in a plebiscite held not earlier than 60d nor later than 90d after the approval of the amendment or revision.

(d) ConCon

1. Proposals: (i) to call a ConCon, 2/3s vote of all members of the Congress; (ii) to submit to the electorate the question of calling a ConCon, majority vote of all members of the Congress.
2. Ratification: same with ConAss.
3. Only the call to constitute a ConCon is done in constituent capacity. Its implementation can be undertaken by Congress by way of ordinary legislation.
4. The acts of the convention, its officers and members are not immune from attack on constitutional grounds.

Three theories:

1. Theory of conventional sovereignty: ConCon is superior to the three (3) branches of the government.
2. Convention is independent of and co-equal with the other branches.
3. Convention is inferior to the other branches, being mere creature of Congress.

(e) People's Initiative

1. Proposals: Petition by (i) at least 12% of the total registered voters, (ii) where at least 3% of the registered voters in every legislative district is represented.
2. Ratification: majority of the votes cast in a plebiscite which held not earlier than 60d nor later than 90d after the certification by the COMELEC of the sufficiency of the petition.
3. Allowed only once every 5y.
4. RA 6735 is inadequate to implement the provision on People's Initiative to amend the Constitution (adequate only on initiative to propose laws or ordinances). There is no effective law implementing this provision to date.
5. Two basic requirements: (i) the people themselves must be the petitioners who must be the signatories to the petition, (ii) the draft amendment itself shall be attached to the petition.

## B. The Philippines as a State

### 1. Elements

(a) People

1. Determined by the rules on citizenship, which is determined by the person's national law.

(b) Territory

1. Ph territory: (i) Ph archipelago with all the islands and waters embraced therein, (ii) other territories over which the Ph has sovereignty or jurisdiction.
2. Composition: (i) terrestrial, fluvial, and aerial domains, (ii) territorial sea, (iii) submarine areas – seabed, subsoil, insular shelves, others.
3. Internal waters are waters around, between, and connecting the islands regardless of their breadth and dimensions. **ABC BD**

On Ph adherence to UNCLOS

1. UNCLOS is a formalization of GAPIL on the maritime rights of coastal, archipelagic states, etc.
2. It has nothing to do with the loss or acquisition of territory. Ph's adherence did not operate to abandon our continuing claim over Sabah by virtue of historic right or legal title.
3. Both internal and archipelagic waters are those landward from the baselines.
4. Ph adopted the Straight Baselines Method wherein the outermost points of the outermost islands are joint by straight baselines.

<sup>2</sup> Pres., VP, Members of SC, Members of Constitutional Commission, OMB. **PVSCO**

<sup>3</sup> Culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **TCG BOB**



(c) Government

1. Democratic and republican
2. Unitary, c.f.: Federal
3. Decentralized
4. Presidential form of government – (i) Horizontal allocation of powers among the three great branches; (ii) characterized by separation of powers and the corollary principle of checks and balances

(d) Capacity to enter into relations with other states

1. The waiver of immunity under the VFA covered only criminal cases but not other suits. This does not cover an action for the issuance of Writ of Kalikasan against US due to the damage caused in the Tubataha reefs by its military personnel.

## 2. Distinction Between Internal and External Self-Determination

Internal self-determination.

1. Right of indigenous peoples to self-government without outside interference.
2. Recognized in Ph jurisdiction. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. **NUD**

External self-determination

1. The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people.
2. Not recognized in Ph jurisdiction.
3. Province of North Cotabato v. GRP: the MOA-AD provides for the creation of the Bangsamoro juridical entity (BJE), which had the attributes of a state. This is external self-determination which is not sanctioned by the Ph Const. It violates country's sovereignty and territorial integrity.

## C. Fundamental Powers of the State

1. All are essentially legislative in character.
2. Inherent. Reference to them in the constitution is by way of limitation.

### 1. Police Power

1. The power of the state to enact laws which restricts or regulates liberty, or the use of property for the promotion of public welfare or the common good.
2. The most insistent and least limitable of all the inherent powers.
3. Limitations: (i) Procedural: law-making; (ii) Substantive: Bill of rights, Due process.

Tests: the exercise of police power requires the concurrence of

1. Lawful subject – (i) the promotion of public welfare or the common good as opposed to a particular class; (ii) e.g., regulation of retail trade, ban on deployment of OFWs, regulation commercial documents, (BP 22), choice of profession (3-flunk rule is valid to insulate the medical profession from incompetents).
2. Lawful means – (i) must be reasonably necessary for the attainment of the object sought and not unreasonably oppressive upon individuals; (ii) e.g., the prohibition of inter-provincial transportation of carabaos has no rational connection with the objective of preventing their indiscriminate slaughter.

In LGUs

1. Formal test – (i) must be within the powers of the LGU to enact; (ii) must follow the prescribed procedures.
2. Substantive test – **CUPGUP** (i) not contrary to Const., or laws, (ii) not unreasonable, (iii) not partial or discriminatory, (iv) general and consistent with public policy, (v) not unjust or oppressive, (vi) may not prohibit but may regulate trade.

As implement of Taxation

1. If primarily for regulation, the imposition is limited only to cover the cost of regulation, and revenue is incidental – PP.
2. If primarily to raise revenue, or it is one of the real and substantial reasons – Taxation.
3. "The power to tax includes the power to destroy" – in the context of PP regulation.
4. "Power to is not the power to destroy as long as this court sits" – as revenue raising measure.

As complement of Eminent Domain

1. PP cannot be used to implement ED, but ED may be used as complement of PP. E.g., the Agrarian Law prescribes a limit of agricultural land ownership to qualified farmers, the excess is taken upon payment of JC.
2. Contradictory character: (i) PP involves the taking of noxious objects for destruction (regulatory taking), (ii) ED involves the taking of wholesome objects for public use (compensable taking).
3. Requiring owners of banana plantation to maintain a 30m buffer zone where they can only plant tall trees does not constitute compensable taking since landowners may is not deprived of the land's beneficial use. It is a police power exercise akin to a zoning ordinance.
4. Law changing the treatment of SC discount from tax credit to tax deduction is a valid PP exercise akin to price control law which merely regulates business profits.

## 2. Eminent Domain

Taking of private property for public use upon payment of JC.

1. Political question if: (i) exercised by Congress, (ii) exercised by delegate under specific delegation.
2. Justiciable if exercised by delegate under general delegation.
3. ED is the power; expropriation is the process through which it is exercised.

Taking

1. Requisites: (i) entry to private property; (ii) more than a momentary period; (iii) under warrant or color of legal authority; (iv) for public use; (v) deprivation of owner of all beneficial use.
2. An ordinance prohibiting property owners from constructing anything that will block the view of the plaza constitutes taking with respect to the property adjoining since the owner is required to maintain the idle condition of his land and is deprived of all its beneficial use.
3. In the case where private property is leased by the government but despite expiration of the lease agreement, the government remain in possession of the property, afterwards it filed a complaint for expropriation. (i) no taking upon commencement of lease since possession is merely temporary; (ii) no taking upon expiration of lease since not under color of authority (trespasser); (iii) there is taking upon commencement of the expropriation proceeding.

#### Limitations

1. Only private property – (i) including private property attached on government land, (ii) services cannot be expropriated as it will constitute involuntary servitude, except services of public utilities. XII(17)<sup>4</sup>
2. For public use – (i) public advantage, whether in/directly; (ii) the expropriation of the birthplace of Manalo, the founder of INC is public use due to its historical value.
3. Just compensation

#### Just compensation

1. Fixed at date of taking.
2. Property owners are not estopped from questioning the accuracy of assessed value of the property for purposes of JC – (i) this is fixed by assessors without participation of landowner; (ii) based on generalities not on specific circumstances of the land; (iii) fixed before taking at time of taking.
3. Judicial function. An EO fixing the basis of JC constitutes encroachment upon judicial authority. The basis cannot be held conclusive but may be considered as guidelines in fixing JC.
4. Prompt payment is an element of JC. In case of inordinate delay (i) GR: the owner is not entitled to recover the property; his only right is to be compensated with interest; (ii) XPN: the owner may demand the return of the property if (a) there is failure to pay JC in full within 5y from finality of order fixing JC, and (b) there is implied or express abandonment of public use.
5. Full payment of JC is condition for the transfer of title to the government. Despite order of expropriation, ownership remains with property owner until full payment of JC. In case the demand for return is proper, there is no need for reconveyance.

### 3. Taxation

Power of the government to demand proportionate contribution from persons or property to raise revenue and defray the necessary expenses of the government.

1. Limitations: inherent and constitutional.
2. Public purpose is an inherent limitation – levy of tax on sugar to be used for the support of the sole player in the field is not a valid imposition as it will not benefit the public but the private player.
3. Appropriation of public funds – (i) public purposes must be direct and exclusive not merely indirect or incidental; (ii) it is only required that the objective must be public in character even if it benefits only certain private individuals or groups, e.g., 4Ps; (iii) the construction of feeder road inside a subdivision owned by a senator is not valid subject of appropriation since public purpose is only incidental.
4. There is no constitutional proscription against double taxation. Its validity is determined by the same test applied for single taxation.

#### Constitutional limitations

1. Uniformity – (i) all persons and things belonging to the same class shall be taxed at the same rate wherever they may be found; (ii) it does not require the imposition of a single tax rate for all persons and things; (iii) Congress may provide reasonable classification of TPs on the basis of substantial distinctions which account for real differences; (iv) the classification of pure compensation income earner and business earner is valid.

2. Equitability – (i) burden of taxation shall rest on those who have the capacity to pay.
3. Evolve a progressive system – (i) This is considered mere guideline for legislation but does not bar the Congress from prescribing taxes that are regressive in character.

#### a) Constitutional Exemption Principles

1. Strict construction.
2. The power to grant tax exemption is exclusively vested with Congress.
3. Laws granting tax exemption shall be concurred by a majority of all the Members of the Congress.

#### Exemptions:

1. From RPT – (i) charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, ADE used for REC purposes; (ii) the engagement of a charitable institution in commercial activities does not change its character as such, it only operates to remove the RPT exemption. In such case, the beneficial use shall be liable.
2. Educational institutions – (i) All revenues and assets of NSNP EI ADE for educational purposes; (ii) all revenues and assets of proprietary EI ADE for educational purposes, subject to limitations provided by law; (iii) all grants, endowments, donations, or contributions ADE for educational purposes. ADE use includes incidental use.

### D. Relevance of the Declaration of Principles and State Policies

Generally, not self-executing. They serve as aid or guide in (i) the Courts in the exercise of their power of judicial review, (ii) the Congress in the enactment of laws, and (iii) the Executive in the implementation of provisions directed to it by the Constitution, or of laws enacted by the Congress.

II(1) – (i) democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

1. Reservation of legislative power to the people by initiative (propose and enact) and referendum (approve or reject). RA 6735 implements this right.
2. People can directly propose amendments to the Constitution through a People's initiative petition. RA 6735 is inadequate to implement this right.
3. Citizens suit to question the sufficiency of the factual basis of the (i) proclamation of ML or suspension of PWHC, or (ii) its extension.
4. Essence of republican State: (i) representation + renovation (periodic election); (ii) doctrine of separation of powers; (iii) principle of checks and balances.

II(2) Ph as member of international community

1. Renunciation of war as INP
2. Adoption of GAPIL as part of the law of the land – doctrine of incorporation. c.f.: doctrine of incorporation is implemented by Senate's concurrence in treaties.
3. Adherence to the principles of peace, equity, cooperation, justice, freedom, amity of all nations PEC JFA

II(3) Civilian supremacy over the military

1. The AFP is the protector of the people and of the State – (i) the duty of the AFP is not only to the President, but the people and the State; (ii) it

<sup>4</sup> In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or

direct the operation of any privately owned public utility or business affected with public interest.



<p>prohibits the armed forces from committing abuses against the people.</p> <ol style="list-style-type: none"> <li>2. AFP is a distinct entity from the PNP (civilian).</li> <li>3. A law that makes military service for women merely voluntary is constitutional – (i) F, since by express provision of the Const., the State may, by law, require all citizens to render personal, military or civil service in defense of the State, without distinction as to gender; (ii) T, since the Congress may provided for reasonable classifications.</li> </ol> <p>III(7) Independent foreign policy</p> <ol style="list-style-type: none"> <li>1. In relations with other states, the paramount consideration should be NaS TINI RS</li> </ol> <p>II(8) Nuclear free Philippines</p> <ol style="list-style-type: none"> <li>1. Policy of freedom from nuclear weapons in the territory.</li> <li>2. Treaties allowing entry of MBTF cannot include entry of nuclear weapons.</li> </ol> <p>II(14) Women</p> <ol style="list-style-type: none"> <li>1. Women's role in nation-building; Fundamental equality before the law between men and women.</li> <li>2. The provision imposes an active, rather than a passive duty upon the State to secure and promote equality.</li> <li>3. Implemented through the country's signing and ratification of the CEDAW.</li> <li>4. Relevant provisions: (i) II(12). Equally protection of the life of the mother and the unborn from conception; (ii) XIII(14). Protection of working women by providing safe and healthful working conditions.</li> </ol> <p>III(22) Cultural minorities</p> <ol style="list-style-type: none"> <li>1. Recognition and promotion of the rights of indigenous cultural communities within the framework of national unity and development NUD</li> <li>2. VI(25)(5), par. 2. Reserves ½ of the seats allocated to party list representatives to ICC, and other minority groups.</li> <li>3. XII(5). Protect the rights of ICCs to their ancestral lands. Congress may provide for the applicability of customary laws governing <u>property rights</u> or relations in determining the ownership and extent of ancestral domain <u>PR RDOEAD</u>. However, national criminal laws apply even to ICC. It is not one of the aspects to which customary law of IPs are given general applicability.</li> <li>4. XIII(6). Rights of ICC to their ancestral lands shall be considered in the disposition or utilization of other natural resources.</li> <li>5. XIV(17). Recognition, respect, and protection of the rights of ICCs to preserve and develop their cultures, traditions, and institutions.</li> <li>6. XVI(12). Creation of consultative body to advise the President on policies affecting ICC. Majority of its members shall come from ICCs.</li> <li>7. Implemented by IPRA creating the NCIP.</li> </ol> <p>II(28) – Policy of FPD TIPI</p> <ol style="list-style-type: none"> <li>1. In splendid symmetry with III(7) <u>RIMPuC</u>. Together, they can be the basis of rights to compel the government to make disclosure to the public.</li> <li>2. They may be used to compel the government to make the disclosure, but they cannot compel the particular manner of disclosure – e.g., disclosure by online means cannot be compelled.</li> <li>3. Information on <u>on-going evaluation or review</u> of bids or proposals is not immediately accessible under the RIMPuC. Disclosure of acts, transactions, decision is only compellable when the bidding committee already makes an <b>official recommendation</b>, from which a <b>definite proposition</b> on the part of the government arises. <u>ORDP</u> However, even executory contracts may be</li> </ol>	<p>the subject of the RIMPuC, provided it was already finalized.</p> <ol style="list-style-type: none"> <li>4. A confidentiality clause in a government contract cannot be made to prevail against people's RIMPuC.</li> <li>5. Relevant provisions: <u>CoFS</u> (i) VI(20) <b>Congressional</b> records and books of accounts of shall be open to public; (ii) XI(17) requirement for public officers to submit sworn <b>SALN</b> upon assumption of office and as often as may be required by law. Public disclosure as provided by law of the SALNs of President, the Vice-President, Cabinet Members, Congress, SC, the Constitutional Commissions, other constitutional offices, and officers of the armed forces with general or flag rank (7); (iii) information on <b>foreign</b> loans obtained or guaranteed by the Government shall be made available to the public.</li> <li>6. Relevant laws: (i) ARTA; (ii) Code of Ethics for Public Officers and Employees which requires government agencies to respond within 15d from receipt of letter or inquiry from the public.</li> </ol> <p><b>E. Dynamics Among the Branches of Government</b></p> <p><b>1. Separation of Powers</b></p> <p>The constitutional demarcation of the three fundamental powers of the government.</p> <ol style="list-style-type: none"> <li>1. To the legislative, through Congress, belongs the power to make laws; to the executive, through the President, belongs the power to enforce laws; and to the judiciary, through the Courts, belong the power to interpret laws.</li> <li>2. Each branch is supreme in its own sphere.</li> <li>3. Provided for in the Constitution not by express provision but by the actual division in the fundamental document.</li> <li>4. It also applies to the independent Constitutional Commissions which are not subservient to the three great branches of the government.</li> </ol> <p>Intrusion of separation of powers</p> <ol style="list-style-type: none"> <li>1. Impermissible interference – when one branch exercises certain aspects of a power that is constitutionally vested upon another branch.</li> <li>2. Impermissible assumption – when one branch exercises or arrogates upon itself a power that is constitutionally vested upon another branch.</li> </ol> <p><b>Examples</b></p> <ol style="list-style-type: none"> <li>1. Legislative interferes with executive functions – (i) post-enactment participation of Congress in the implementation of GAA, (ii) establishment of Joint Congressional Oversight Committees where the Congress reserves to itself the power to approve or disapprove the implementing rules to be promulgated by the implementing agency.</li> <li>2. Legislative interferes with judicial functions – (i) provision on CDDA which prohibits plea bargaining in drugs cases infringes on the SC's exclusive rule-making power. Plea-bargaining is a matter of procedure which is within the exclusive domain of the SC; (ii) but the provision in DOJ Circular No. 27 does not interfere with SC's rule-making powers as it merely serves as internal guidelines for prosecutors.</li> <li>3. Executive assumes legislative functions – an Administrative Order providing for a national ID system which creates rights, imposes obligations, and subjects persons to penalties in case of non-compliance.</li> <li>4. Judiciary interferes with executive functions – (i) the issuance of a writ of continuing mandamus for the Manila Bay clean-up and creation of Manila Bay Commission to which executive agencies shall report is not an assumption of executive powers. The execution of its decision is an integral part of the courts' adjudicative function.</li> </ol>
---	---

- Judiciary interferes with legislative functions – judicial legislation, e.g., RTC's order for COA, BIR, and BOC to examine the books of Petron, Shell and Caltex for alleged violation of the anti-cartel provision of the Oil Deregulation Act. The RTC judge engaged in judicial legislation, since such audit was not provided for under the law. Further, the enforcement of law is vested upon the DOJ-DOE task force.

## 2. System of Checks and Balances

The three great branches are not absolutely independent as they are co-equal and co-ordinate, the Const. providing for an elaborate system of checks and balances.

A system whereby each branch can participate in the exercise of functions of the other branches: (i) to secure the coordination in their workings, (ii) to prevent abuse in the exercise of power, and (iii) to ensure accountability of the latter branch.

Examples:

- Legislative checks on executive – (i) Confirmation of Presidential appointees by CAPP; (ii) Conduct of inquiries in aid of legislation, question hour; (iii) Automatic review on the declaration of ML or suspension of the PWHC; (iv) Senate concurrence in the ratification of treaties.
- Judiciary checks on executive and legislative through its power of judicial review.
- Executive checks on legislative through the exercise of its veto powers.

## 3. Delegation of Powers

Tests of valid delegation:

- Completeness Test – when the law sets forth the policy to be carried out by the delegate.
- Sufficient Standard Test – when the law prescribes sufficient and determinate or determinable guidelines to which the delegate must conform in the performance of functions.

*Sufficient standard*

- The standards are necessarily broad and highly abstract. It may also be express or implied. It need not be spelled out specifically, it may be implied from the purpose of the law considered as a whole.
- E.g., the Psychology Act of 2009 provided exceptions for the taking of licensure examination in for the practice of psychology with respect to those who have been engaged in the practice of psychology for 5y. The PRC implemented the provision and required as condition for exemption the completion of 100 training hours and workshops in the last five years. The SC held that the standard prescribed by the law is sufficient even though it did not specifically require the completion of training hours as the same can be implied from the purpose of the law, which is to protect the public from incompetent practitioners.

*Permissible delegation: TEPLA (see II.A.5 Exceptions to Non-delegability)*

## F. State Immunity

Two aspects: (a) Immunity of foreign states; (b) Immunity of GRP against domestic suits

### 1. Basis

(a) Immunity of foreign states

- Based on the sovereignty and comity of nations.
- Only the Secretary of Foreign Affairs can certify whether a foreign person or entity is immune from suit. Certifications issued by the OSG or the OGCC are not sufficient. However, the certification

by SFA is subject to judicial review to determine its intrinsic validity.

- The immunity attaches only with respect to acts *jure imperii* but not to acts *jure gestionis*. E.g., lease agreement for the establishment of an embassy is act *jure imperii* for which the foreign state is immune.

(b) Immunity of GRP against domestic suits

- XVI(3) The State may not be sued without its consent.
- A suit is against the State when: (i) the GRP is impleaded as a party as represented by the concerned government agency, or (ii) an agent of the state is made a respondent, if the satisfaction of adverse judgement would require a positive act on the part of the state (appropriation).
- Not suits against the state: (i) even if the State is impleaded but the ultimate liability will fall upon private persons; (ii) when a public officer/agent is being sued in his personal capacity, and government property will not be involved; (iii) if the action does not seek to impose financial liability upon the State, e.g., injunction, mandamus.
- Incorporated government agencies, including GOCCs are generally suable. Their charters would often provide that they have the capacity to sue or be sued, e.g., BSP.
- Unincorporated government agencies may or may not be suable depending on the functions performed. If primarily governmental, they are not suable. If primarily proprietary, they are suable. XPN: although ED is a governmental function, the government is not immune from suit.
- LGUs are suable by express provision of the LGC, but only if they are exercising corporate powers. Hence, there is need to distinguish between governmental and proprietary acts.
- Public officers and EEs are immune from suit with respect to acts in the performance of their official duties. But not if: (i) he acted in personal capacity; (ii) for acts done in BF; (iii) acts done outside the scope of his authority. In the latter, the suit is not one against the state as the public officer/EE is personally liable. The court's power over the case ends when the judgment is rendered; it has not power to execute.
- Suability is not equivalent to liability. It merely gives the private claimant the opportunity to prove his claim.
- If liability is adjudged against the State, execution will not immediately ensue. (i) The same must be submitted to COA for execution; (ii) COA's authority is limited to execution, but it cannot alter final and executory judgments of other court or tribunals, e.g., CIAC

## 2. Exceptions

The State may be sued with its consent, which consent may be expressed or implied.

*Expressed*

- Charters of GOCCs
- Special Laws
- General Laws – (i) Act No. 3083 which allows suits against the government for money claims arising from proprietary contracts; (ii) LGC §22 with respect to acts in exercise of its corporate powers; (iii) NCC Art. 2176 holding the State liable for the acts of its special agent.

*Implied*

- Government submits itself to court jurisdiction either by (i) initiating a suit or counterclaim by which it opens itself to counterclaims that may be interposed, (ii) by failing to raise the defense of immunity.

2. By entering into a proprietary contract, the State descends to the level of ordinary citizens.
3. When unincorporated government agencies perform proprietary functions; (iv) When it will impose injustice upon the citizens, e.g., taking of government property without payment of JC.

#### *BPI v. Central Bank 2020*

1. Suit against the Central Bank for recovery of money resulting from the fraudulent acts of the EEs involved in the clearing operations.
2. The Central Bank is suable by virtue of the express consent to be sued under its Charter.
3. However, it is not liable since: (i) it is performing governmental functions and the EEs who perpetrated the fraud are not its special agents; (ii) assuming it is performing proprietary functions (liable as ordinary ER), it is still not liable since the EEs acted within the scope of their assigned duties in perpetrating the fraud.

### **G. The National Territory**

#### **1. Scope (Terrestrial, Aerial, and Fluvial Domains)**

1. Ph territory: (i) Ph archipelago with all the islands and waters embraced therein, (ii) other territories over which the Ph has sovereignty or jurisdiction.
2. Composition: (i) terrestrial, fluvial, and aerial domains, (ii) territorial sea, (iii) submarine areas – seabed, subsoil, insular shelves, others.
3. Internal waters are waters around, between, and connecting the islands regardless of their breadth and dimensions. **ABC BD**. Under UNCLOS, they are waters landward side from the baselines.
4. Submarine cables within the Ph waters are within the taxing jurisdiction of the concerned LGU.

#### **Maritime areas**

Territorial sea	12NM from baselines	Full sovereignty extending to the airspace and seabed, subject to right of innocent passage
Contiguous zone	24NM from baselines	Functional jurisdiction to punish the violation or prevent the infringement of customs, fiscal, immigration and sanitary regulations <b>CIFS</b>
Exclusive economic zone	200NM from baselines	Sovereign <b>rights</b> for economic purposes only, i.e., exploration, exploitation, management, conservation, EEMC of the natural resources.
Continental shelf	200NM to 350 NM from baselines	Sovereign rights for the purpose of exploration, exploitation (management, conservation) of natural resources consisting of minerals, non-living resources, living resources of the sedentary species (immobile).

#### **2. Archipelagic Doctrine**

All the islands and waters of the Philippine archipelago are unified in sovereignty, together with “all territories over which the Philippines has sovereignty or jurisdiction”.

Under UNCLOS, Philippine is considered an archipelagic state i.e., a State constituted wholly by one or more archipelagos and may include other islands.

An archipelago is (i) a group of islands, including (a) parts of islands, (b) interconnecting waters and (c) other natural resources **IWan** (ii) which are so closely interrelated that such islands, water, and other natural features form an intrinsic geographic, economic and political entity. **IGEP**

Islands are naturally formed area of land, surrounded by water which is above water at high tide. “Rocks” are those which cannot sustain human habitation of their own. The importance of the difference between a natural island and rock is that an island is provided with territorial sea, EEZ ad

continental shelf, whereas rocks have no EEZ and continental shelf.

### **II. Legislative Department**

#### **A. Nature of Legislative Power**

The power to enact, amend and repeal **EAR** laws.

#### **1. Derivative and Delegated Power**

Sovereignty resides in the people and all government authority emanates from them.

#### **2. Plenary Character**

The power includes all (i) those expressly granted, (ii) those implied from the express grant, and (iii) those traditionally exercised by the legislative department.

#### **3. Limitations**

##### **a) Substantive - Bill of Rights**

1. Due process
2. Equal protection
3. Right against unreasonable searches and seizures
4. Right to privacy of communication and correspondence
5. **\*\*No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.**
6. **\*\*No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.**
7. Liberty of abode and of changing the same
8. Right to travel
9. RIMPuC
10. Right to freedom of association
11. Private property shall not be taken for public use without just compensation.
12. **\*\*No law impairing the obligation of contracts shall be passed.**
13. Free access to the courts and QJ bodies, and to adequate legal assistance
14. Rights of persons under custodial investigation
15. Right to bail
16. Criminal due process
17. Privilege of the WHC
18. Right to a speedy disposition of their cases
19. Right against self-incrimination
20. Right against involuntary servitude
21. **\*\*Prohibited punishments – (i) excessive fines, (ii) cruel, degrading or inhuman punishment, (iii) death penalty XPN: for compelling reasons involving heinous crimes**
22. Non-imprisonment for debt or non-payment of a poll tax
23. Right against double jeopardy
24. **\*\*No ex post facto law or bill of attainder shall be enacted.**

VIII(5)(5) SC has exclusive authority to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts”.

1. This includes plea bargaining. Hence, the Congress encroached on the SC’s power when it provided under the CDDA that “any person charged under any provision of this Act regardless of the impossible penalty shall not be allowed to avail of the provision on plea bargaining”.

The congress cannot pass an irrepealable law.

1. Congress is not a continuing body.
2. A provision in the law that it cannot be repealed except upon 2/3s vote gives it the character of being irrepealable. Hence, unconstitutional.



*b) Procedural - Manner of Passage and Form of Bills*

*\*\*See II.A.F Process of Law-making*

**4. Law-Making Distinguished from Law-Execution**

*a) Filling-Up Details*

Supplementary rule-making – the filling up the details of the law for its enforcement.

*b) Ascertainment of Facts*

Contingent rule-making – ascertaining facts to bring the law into actual operation.

**5. Exceptions to Non-Delegability**

TEPLA:

1. Fixing of **Tariff** Rates, Quotas, and Other Duties
2. **Emergency** Powers
3. To **people** by way of initiative and referendum
4. Delegation to **LGUs**
5. Delegation to **administrative** agencies

*a) Local Governments*

Local governments have the delegated powers of police power, taxation, and eminent domain. They also have delegated legislative powers.

(a) Police power

1. §16 – General welfare clause. Every local government unit shall exercise the powers which are essential to the promotion of the general welfare.

(b) Taxation

1. §18 – LGUs shall have the power and authority to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them.

(c) Eminent domain

1. §19 – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain.
2. Limitations: (i) For public use, or purpose or welfare for the benefit of the poor and the landless, (ii) upon payment of just compensation, (iii) pursuant to the provisions of the Constitution and pertinent laws; (iv) valid and definite offer previously made to the owner, which offer was not accepted. The amount of JC shall be determined by the proper court, based on the fair market value at the time of the taking of the property.
3. The LGU may immediately take possession of the property (i) upon the filing of the expropriation proceedings and (ii) upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated.

(d) Local Legislative Power

1. §48 – Local legislative power shall be exercised by the sangguniang panlalawigan for the province; the sangguniang panlungsod for the city; the sangguniang bayan for the municipality; and the sangguniang barangay for the barangay.

*b) Presidential Power in Times of War and National Emergency, Including Martial Law and in a Revolutionary Context*

1. Congress has sole authority to declare the existence of a state of war – (i) 2/3s of both Houses in joint session assembled **JSA**; (ii) declaration is political Q, what is justiciable is the compliance with voting requirement; (iii) Congress cannot declare an offensive war since it will run counter against the principle of renunciation of war as INP.

**Emergency Powers of the President PDPOWA**

1. Requires a prior declaration of a state of war by Congress. However, such declaration does not automatically constitute delegation of power to the President. The latter must be granted separately.
2. Delegation by law to President in times of war or another national emergency to exercise powers necessary and proper to carry out a declared national policy.
3. Limitations: (i) for a limited period, (ii) other restrictions prescribed by Congress.
4. May be withdrawn by Congress by mere resolution passed in a regular, not special session.
5. Automatically ceases upon next adjournment of Congress (regular not special session).

Power of the President to declare the existence of a state of emergency, rebellion or lawlessness

1. Part of the President's ordinance powers.
2. Delegated: (i) power to issued Executive Orders, Proclamations; (ii) these must comply with the requisites of valid administrative regulation.
3. Direct exercise of power of control: (i) power to issue Administrative Orders, Memorandum Orders, Circulars, Special/General Orders [as Comm-in-Chief]; (ii) requisites of valid administrative regulation is not necessarily applicable.

*c) Fixing Tariff Rates, Quotas, and Other Duties*

Authority of the President to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts **TITO**

1. Limitations – (i) within specified limits, (ii) subject to such limitations and restrictions as Congress may impose, (iii) within the framework of the national development program of the Government.

**6. Legislative Power of the People Through Initiative and Referendum**

Initiative and referendum are the modes by which the people exercise legislative powers reserved to them by the Constitution.

1. Initiative to propose or enact a legislation.
2. Initiative to propose amendments to the Constitution (see I.A.3. Process of Change)
3. Referendum to approve or reject a legislation.

**B. Bicameral Congress**

**1. Senate**

Upper chamber consisting of 24 Senators, elected at large.

**2. House of Representatives**

Lower chamber consisting of not more than 250 members, unless otherwise provided for by law.

1. District representatives, elected at the district level.
2. Party-list representatives who shall be elected through a party-list system of registered national, regional and sectoral parties and organizations.

*a) District Representatives and Mechanics of Apportionment*

Legislative apportionment

1. Flows from the constitutional mandate of equality of representation.
2. Mechanism fixing the number of representatives which may be sent to the Congress by a province, city, or MM area.
3. Legislative districts shall be apportioned among the provinces, cities, and the Metropolitan Manila area.
4. Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts (legislative reapportionment).
5. Plebiscite is not required for legislative re/apportionment. Unlike the creation of LGUs re/

apportionment is only for purposes of representation.

#### *Standards*

1. Population – apportionment in accordance with the number inhabitants on the basis of a uniform and progressive ratio. Each city with a population of at least 250k, or each province, shall have at least one representative.
2. Territory – shall comprise, as far as practicable, contiguous, compact, and adjacent CCA territory.

#### *b) Party-List System*

Electoral reform by giving the marginalized and under-represented parties the chance to participate in the electoral exercise and to elect themselves to the HR through a system other than the legislative district elections.

#### Seat allocation (20-2-3)

1. The party-list representatives shall constitute 20% of the total number of representatives including those under the party list.
2. Implemented by RA 7941 – (i) 2% threshold: the party list must obtain 2% of all the votes cast for the party list system to be entitled to a qualifying seat; (ii) Each qualifying party-list is entitled only to a maximum of 3 representatives, regardless of the number of votes obtained (2 additional seats). In *BANAT v. COMELEC*, the SC declared the application of the 2% threshold unconstitutional with respect to the allocation of additional seats.

#### Party list organizations

1. (i) National political parties, (ii) regional political parties, and sectoral parties or organizations may participate in the party list elections.
2. If already registered with COMELEC, they shall register under the party-list system to participate in the party-list elections.
3. Participation in the party-list elections is not limited to the marginalized and under-represented political parties.

#### *Political parties (national and regional)*

1. Those who advocate ideologies and platforms, principles, and policies, for the general conduct of the government.
2. Participation in both electoral arenas (legislative district and party-list) is prohibited for major political parties. If they participated in the legislative district elections, may no longer participate in the party-list elections. They cannot also form a coalition to participate in party list elections. However, they may form informal alliances with party-list parties running for the party-list elections. The party-list components are not prohibited from running in the party-list elections.
3. The marginal and under-represented and lack of constituency requirements also apply to political parties, which is deemed complied if they do not participate in the legislative district elections.
4. Political parties or organizations need not organize along sectoral lines and need not represent any marginalized or under-represented sectors.

#### *Sectoral parties, groups, organizations*

1. Those who share common interests, concerns, characteristics, although they need not identify with any social justice characteristics.
2. They include those who belong to sectors identified under Art. VI, Sec. 5(2) sharing social justice characteristics: labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

3. Two requirements: (i) marginalized and under-represented, and (ii) lacking in well-defined political constituencies. The requirement is presumed complied if they do not participate in the legislative district elections.
4. Majority of its members must belong to the sector represented.

#### Nominees

1. Of political parties – Must be a bona fide member of the group represented.
2. Of sectoral parties – Must represent the marginalized or under-represented sector, either by: (i) actual possession of such status, or (ii) genuine advocacy of the interests and concern of the same.
3. The nominee must: (i) express his consent in writing to the nomination; (ii) maintain membership in the party list which nominated him as a continuing qualification.
4. The DQ of the nominee does not automatically DQ the party. It may (i) dispute the disqualification, or (ii) fill in the qualified nominee before cancellation or refusal of registration is ordered.
5. The party list must submit a list of at least 5 nominees to COMELEC.

#### **C. Legislative Privileges, Disclosure of Financial and Business Affairs, Prohibitions, Inhibitions, and Disqualifications**

(a) Compensation – (i) determined by law, (ii) no increase shall take effect until after the expiration of the full term of all the Members who approved the same (delayed effectivity).

#### **(b) Privilege from arrest**

1. For offenses punishable by ≤6y imprisonment
2. While the Congress is in session – (i) regular session: from 4<sup>th</sup> Monday of July until 30d before opening of the following regular session; (ii) special session: may be called by the President at any time.
3. The privilege does not amount to immunity from suit. The concerned member may still be subject to any suit, civil or criminal. In case of conviction in criminal prosecution, he may not be arrested, provided the conditions are present.

#### **(c) Parliamentary immunity**

1. Covers speech, conduct or debate **SCD** in the Congress or any of its committee. The SCD must be related to the legislator's performance of his legislative functions. E.g., explanatory notes in bills, casting of votes, interpellations and debates, privileged speeches
2. They shall not be questioned nor be held liable in any other place. However, members are subject to the disciplinary authority of each House for disorderly behavior (Ethics Committee).

#### **(d) Disclosures**

1. Upon assumption of office – Full disclosure of financial and business interests
2. Upon filing of a bill – notice to concerned House of a potential conflict of interest in relation to bills authored.

#### **(e) Incompatible and forbidden office**

1. Incompatible – they cannot hold any other office or employment in the Government, including GOCCs, during their term without forfeiting their seat. (i) In case of vacancy, a special election shall be held (no succession rules). The person elected shall hold the office for the unexpired portion; (ii) PNRC is not a GOCC but a sui generis entity, not covered by the prohibition.
2. Forbidden – they cannot be appointed to any office created or its emoluments increased during

their term. The holding of forbidden office is an absolute nullity, even if the Congressman forfeits his seat in the Congress. The prohibition applies only to appointive, but not to elective offices.

(f) Prohibitions

1. They cannot personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies **CEQA**.
2. They cannot be financially interested in any contract, franchise or special privilege **CFS** granted by the Government, including GOCCs, during their term of office.
3. They cannot intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

#### D. Quorum and Voting Majorities

A majority of each House shall constitute a **quorum** to do business.

1. Coercive jurisdiction – each House may compel the attendance of absent Members under its internal rules.
2. For purposes quorum, only those members subject to the coercive jurisdiction of Congress shall be counted, i.e., those within the territorial jurisdiction of the Ph. The following shall not be counted: (i) those abroad, (ii) those detained of a non-bailable offense.
3. Existence of quorum is a justiciable question.
4. Kinds of majority – (i) simple majority: majority of all those present where there is a quorum; (ii) absolute majority: majority of all the members as fixed in the Const.

Election of Senate President and House Speaker	Absolute majority
Suspension or expulsion of Members for disorderly behavior	2/3s of all members
Entry of yeas and nays in Journal	1/5s of members present
Passage of bills, other than those granting tax exemption	Simple majority
Bills granting tax exemption	Absolute majority

Internal rules of procedure:

1. Each house may determine the rules of its proceedings. It only has to be promulgated but it need not be published. XPN: rules of procedure for the conduct of inquiries in aid of legislation must be published since they affect the rights of 3ps.
2. The promulgation of internal rules of Congress and departures therefrom are within the prerogative of the Congress, even if the rules were published. These matters are political questions.

#### E. Discipline of Members

Each House may punish its Members for disorderly behavior.

1. The ground for discipline of members is a political question, only the voting requirement is justiciable.
2. It may impose the penalty of suspension or expulsion upon the vote of 2/3s of all members. Suspension shall not exceed 60d.
3. The disciplinary authority of Congress does not bar the exercise of judicial functions. Its members may be subject to preventive suspension pursuant to an ongoing investigation by the Sandiganbayan. The Congress itself authorized such imposition by including the same in RA 3019.

#### F. Process of Law-Making

Process:

1. Origination of bill – All **ART** bills, bills authorizing **increase** of the public debt, bills of **local** application, and **private** bills **PAIL** shall originate exclusively in the HR but the Senate may propose or concur with amendments. In the latter, the Senate must wait for the transmission of the House version, even though it may already have its own version of the Bill.
2. 3 readings on 3 separate days – (i) No amendment shall be allowed after the third reading, and votes shall be immediately taken; (ii) only simple majority is required. XPN: law granting any tax exemption must be concurred by absolute majority; (iii) withdrawal of tax exemption (no decided case): may either be by simple (preferred considering strict construction against tax exemptions) or absolute majority.
3. Distribution of printed copies in final form to members 3 days before its passage (3-3-3)
4. Enrolled bill
5. Presentment to the President
6. **\*\*Presidential Veto and Congressional Override** (see below)
7. Publication – condition for effectivity. Q: may the President be compelled to cause the publication of the law?

XPNS (3-3-3 is dispensed):

1. When the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency
2. In case of simultaneous vacancy in the office of the President and VP, a bill calling for a special election shall become law upon its approval on third reading by the Congress.

*\*\*In these cases, the necessity of three readings is not dispensed. However, it need not be on separate days, and printed copies of the final version need not be disseminated.*

*Enrolled bill doctrine*

1. Once the bill was certified by Senate President, HR Speaker, and their respective secretaries, the bill is considered enrolled, i.e., its due enactment is conclusively presumed (rule of evidence).
2. In case of errors in the bill presented to the President, the signatures may be withdrawn. There was no enrolled bill to speak of since the signed bill was different from that actually approved. If so withdrawn, the President may also withdraw his signature.

*One subject-one title rule*

1. Every bill shall embrace only one subject, which shall be express in its title.
2. A title is sufficient if it offers information that will **alert** those who may be interested to examine the proposed legislation, including the lawmakers themselves.
3. It need not be an exhaustive index of the discussion of the subject matter. However, it must not be misleading, i.e., nothing is excluded which ought to be included.

A joint resolution is not a bill even if it follows the procedure for enacting a bill into law. It can however, (i) be part of the implementation of the law as indicated in the law itself, or (ii) be treated as a recommendation to the executive on how the law can be implemented. The internal rules of Congress cannot amend the constitutional requirement that only a bill can become a law.

#### 1. Function of the Bicameral Conference Committee

1. Not a constitutional body but a mere creature of the Congress.



2. The bills are transmitted to the BCC after the third reading. Hence, generally, not amendments are allowed.
3. It reconciles the conflicting versions of the bill from the two Houses and comes up with the final version. But the conferees are not limited to reconciling the differences in the bill, they may likewise introduce new provisions germane to the subject matter or report out an entirely new bill on the subject.
4. The final version by the BCC is no longer subject to the 3-3-3 requirement. It may be tackled separately by the chambers and passed by mere resolution.
5. The validity of a law cannot be questioned based on the work done by the bicameral conference committee for it will violate the enrolled bill doctrine.

## 2. Limitations on Legislative Power

### a) Limitations on Revenue, Appropriations, and Tariff

1. All PAIL shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.
2. ART bills are subject to the line-item veto power of the President.

#### Tax laws

1. Must be uniform and equitable.
2. Congress shall evolve a progressive system (guideline).
3. Exemption of charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements from RPT if ADE for REC purposes.
4. Tax exemptions must be passed by a majority of all the members of the Congress.

### b) Presidential Veto and Congressional Override

When a bill is presented to the President, he may: (a) approve, (b) veto, (c) not act.

(a) Approve – upon signing, the bill becomes a law.

(b) Veto

1. The bill shall be returned to the House of origin with his objections. The President may veto a bill even if unanimously passed by Congress.
2. GR: the veto shall be of the entire bill. XPN: line-item veto with respect to appropriation, revenue, or tariff bill. **ART**.
3. The Congress may **override** the veto by 2/3s vote of all Members of each House. Upon approval, the bill becomes a law. N.B.: the veto is an act of Congress. Hence, both Houses must override the veto.

(c) Not act – if the President fails to communicate his veto of any bill to the House of origin within 30d from receipt, it becomes a law, as if he had signed it.

## G. Rules on Appropriation and Re-Alignment

### Appropriations

1. All PAIL shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.
2. The Congress may not increase the appropriations recommended by the President as specified in the budget.
3. Each provision in an appropriations bill must relate specifically to some particular appropriation therein. Such provision shall be limited in its operation to the appropriation to which it relates. – (i) “inappropriate provisions” are provisions in an appropriations bill which do not relate to a particular appropriation; (ii) these may be subject

to the President's line-item veto power. E.g., the portion pertaining to CHED in the GAA contains a provision abolishing ROTC, and instead, requiring students to render community service without a specific item of appropriation in an inappropriate provision.

4. The procedure for approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for the other departments and agencies.
5. A special appropriations bill shall: (i) specify the purpose for which it is intended, and (ii) be supported by available funds as certified by the National Treasurer, or to be raised by a proposed revenue. XPN: Special appropriations bill for the conduct of special elections in case of simultaneous vacancy in the office of the President and VP shall be charged against any current appropriations and exempt from the certification requirement.
6. Discretionary funds appropriated for particular officials shall be (i) disbursed only for public purposes (ii) to be supported by appropriate vouchers and (iii) subject to such guidelines as may be prescribed by law.
7. The GAA for the previous year shall be deemed reenacted if the Congress fails to pass a GAA for the ensuing fiscal year by the end of any fiscal year. It shall remain in force and effect until the GAA is passed by the Congress.

### Realignment

1. No law shall be passed authorizing any transfer of appropriations. XPNs: Pres., Senate Pres., House Speaker, CJ of SC, and the heads of Constitutional Commissions may (5), **by law**, be authorized to augment any item in the general appropriations law for their offices from savings in other items of their appropriations. **AIGO SOI**
2. Limitations: (i) the authority may be granted only to the specific officers mentioned in the Const.; (ii) cross-border realignments are not allowed, i.e., the savings shall be used by the same governmental body that generated it.
3. In GAAs two officers were usually added: (i) OMB, and (ii) Chairman of the CHR – they are also fiscally autonomous.

### Disbursement

1. No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. E.g., Contributions made by PAGCOR for socio-economic purposes without appropriation is not valid. The funds of PAGCOR are public funds which cannot be disbursed without appropriation.
2. No appropriations or disbursements shall be made in favor of any religious sector or individuals, except when the latter are assigned to the armed forces, any penal institution, government orphanage or leprosarium. **APOL** – the sending out of priests or ministers abroad for the spiritual needs of OFWs is not one of the exceptions.
3. Money collected on tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose was fulfilled or abandoned, the balance, if any, shall be transferred to the general funds.

## H. Electoral Tribunals and Commission on Appointments

### 1. Composition

#### Electoral Tribunals (9)

1. 3 SC Justices designated by SC. The senior Justice shall be the Chairman.
2. 6 members of respective House chosen based on proportional representation from the political parties and party list representatives.
3. For quorum purposes, an SC member must always be present.

#### Commission on Appointments (25)

1. Senate President, ex officio Chairman, who shall not vote, except in case of a tie.
2. 12 Senators, 12 HR, elected by each house based on proportional representation from the political parties and party list representatives.

#### Notes:

1. Both are constitutionally independent entities, but CApp is adjunct of Congress.
2. They shall be constituted within 30d after Congress is organized by the election of Senate President and Speaker of the House.
3. Fractional membership cannot be rounded off to full membership. 10.99 ~ 10.
4. Temporary alliance between members of the political parties does not authorize change in the membership of the CA/ETs.

### 2. Powers and Jurisdiction

SET and HRET shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

1. Their decision may be assailed via R65.
2. They shall exercise jurisdiction over the concerned member upon concurrence of three conditions: (i) proclamation, (ii) taking of oath of office, (iii) assumption of office. Otherwise, COMELEC has jurisdiction.
3. Even though members of the electoral tribunals are selected on the basis of proportional representation, the said members are not charged to represent their political parties at the tribunals. They should discharge said functions with impartiality and independence.

The Commission on Appointments shall act on all appointments submitted to it within 30 session days from their submission by a majority vote of all the Members.

1. Shall meet only while the Congress is in session, at the call of its Chairman or a majority of all its Members.
2. Part of the checks and balance mechanism on the President's appointing power.

## I. Powers of Congress

### 1. Legislative Inquiries and the Oversight Functions

#### Legislative Inquiries

1. Each house or their committees may conduct inquiries **in aid of legislation** in accordance with its duly published rules of procedure.
2. The power of inquiry is inherent to the Congress since it is necessary for the discharge of their main function of lawmaking. The constitutional provision is not to grant the power, but to provide (i) for the standards of a valid inquiry, and (ii) for protective mechanisms in favor of persons invited in such inquiries. Inquiries in aid of legislation cannot be made subordinate to pending civil and criminal actions before courts.
3. Requisites for validity: (i) in aid of legislation, (ii) in accordance with published procedures, (iii) rights of those invited as witnesses or resource persons are respected.
4. An inquiry is in aid of legislation if it is related to (i) a pending bill, (ii) an existing law which the

Congress seeks to reexamine for amendment or repeal, or (iii) a bill considered for filing.

5. Its purpose is limited to fact-finding or information-gathering to aid legislation, not the adjudication of actual case or controversy, or the determination of liability or criminal culpability.

#### Rights of witnesses/RPs

1. The rights of persons appearing in or affected by such inquiries shall be respected.
2. The Congress is required to publish its rules of procedure for the conduct of legislative inquiries since it affects third persons. c.f.: parliamentary rules of procedure need not be published.
3. Persons invited cannot invoke their right against self-incrimination to evade attendance. They are not deemed an accused in a criminal action since the fixing of criminal culpability is not one of the objectives of the inquiry. However, they may invoke the right on a case-by-case basis when the called to answer incriminating questions.
4. Executive privilege may be invoked: (i) Presidential communications, (ii) Deliberative process, (iii) Diplomatic process. The privilege attaches to certain types of information, rather than to the person giving the same.
5. Persons who refuse to cooperate may be punished by contempt (inherent). When the Congress goes on recess, persons detained for contempt shall be released for the power of contempt exists only for as long as there is on-going inquiry.

#### Oversight Function (Question Hour)

1. Heads of departments may appear before and be heard by such House on any matter pertaining to their departments.
2. May be: (i) upon their own initiative, (ii) with the consent of the President, or (iii) upon the request of either House.
3. Written questions shall be submitted to the Senate President or the Speaker of the House at least 3d before their scheduled appearance. Interpellations shall not be limited to written questions but may cover related matters.
4. The appearance shall be conducted in executive session – (i) When the security of the State or the public interest so requires, and (ii) the President so states in writing.
5. Its purpose is to determine whether the laws promulgated were being properly executed or implemented.

## 2. Non-Legislative

### a) Informing Function

Instruction and guidance in political affairs which people might receive from the Congress regarding matters of national concern. The duty of representatives to look diligently into government affairs and to share these with people to keep them from being ignorant of the very affairs which it is most important that they should understand and direct.

2 senses: (i) Congress informs itself to receive guidance, (ii) Congress informs the public of the performance of their duties.

Informing itself	Informing public
Through voting, preparation of committee reports	Through newsletters, press releases, the members of Congress inform the public of their activities
Part of legislative function of the Congress to inform itself	Not part of legislative function or the deliberations that make up the legislative process
Information is directed towards members of the Congress	Information is directed towards the public
Reflects views of the body	Reflects views of the individual member

Covered by parliamentary immunity	Not covered by parliamentary immunity
--------------------------------------	--

## b) Power of Impeachment

### (a) Impeachable officers

1. President; VP; SC members; ConCom members; OMB
2. Other than the President, they are qualifiedly immune from suit which would affect their eligibility to hold the office extraneous of the grounds for impeachment. e.g., SC officials are immune from disbarment suits.

### (b) Grounds TCG BOB

1. Treason; Culpable violation of the Const.; Graft and Corruption; Bribery; Other high crimes; Betrayal of public trust.
2. Only acts committed by an impeachable official as such during his incumbency may be the subject of impeachment, but not acts committed by him prior election or appointment as impeachable official.

### (c) Effects of impeachment

1. Not equivalent to removal. Impeachment is merely a process. Only upon a finding of guilt by a vote of 2/3s of all the members of the Senate can impeachment lead to the penalty of removal and/or disqualification from public office. The President's power grant pardon does not extend to impeachment cases.
2. An official is considered impeached upon filing of the Articles of Impeachment by the Congress upon the vote of 1/3 of all its members (HR)

### (d) Procedure

1. Initiation – (i) filing of complaint, (ii) referral to committee, (iii) recommendation of committee, (iv) approval or override by Congress.
2. Filing of Articles of Impeachment
3. Impeachment proceedings

#### Initiation

1. Exclusive power of the House of Representatives.
2. Modes: (i) verified complaint filed by any Member, (ii) verified complaint by any citizen upon a resolution of endorsement by any Member, (iii) verified complaint/ resolution filed by at least 1/3s of all Members (Articles of Impeachment).
3. (i)(ii) The complaint shall be referred to the proper committee [on Justice] who shall come up with a resolution/recommendation (dismiss/file) by majority vote. The committee resolution may be affirmed or overridden by 1/3s vote of all members >> Filing of Articles of impeachment.
4. Impeachment was deemed initiation upon its filing and referral to the proper committee. No impeachment proceedings shall be initiated against the same official more than once within a period of one year.
5. Upon filing of Articles of Impeachment, custody over the official is conferred to the Senate for the conduct of the impeachment trial.
6. An impeachment proceeding may be comprised of more than 1 complaint, provided that both complaints are **referred** to the proper committee at the same time within the prescribed periods, even if filed on different dates.

#### Impeachment proceedings

1. Senate has the sole power to try and decide impeachment cases.
2. It shall be conducted based on its internal rules; Rules of Court (inhibition) are not necessarily binding. Rules on impeachment need not be published, they only need to be promulgated.

Impeachment is a sui generis, political rather than a judicial exercise.

3. If the President is on trial, the CJ shall preside, but shall not vote.
4. Conviction requires 2/3s of all members. The judgement shall not extend further than (i) removal from office and (ii) disqualification to hold any office. The liability of the official shall be fixed in a separate proceeding.
5. Judicial review on the basis only of GAD only.
6. The resignation of an impeachable officer renders moot the impeachment trial (decision). Alternative view: not necessarily since aside from removal, it may also lead to a pronouncement of his disqualification to hold public office.
7. AmJur. The preventive dismissal of an officer pending impeachment trial is considered an unnecessary molestation.

### (e) Impeachment v. Quo warranto

Distinctions	Quo warranto	Impeachment
Nature	Judicial	Political
Jurisdiction	Cognizable only by the Supreme Court	Congress is the prosecutor, the trier, and the judge
Who may file	Member of Congress or citizen with endorsement of a member	SolGen or any person claiming right to the position
End result	Ouster + additional penalties as reimbursement of costs to the rightful holder of office; further judgment as justice requires	Removal and perpetual political disqualification from holding public office; presupposes the validity of election or appointment
Purpose	To determine the legal right, title, eligibility, or qualifications of the incumbent to the contested public office and oust the holder of its enjoyment	To determine whether the public officer committed any of the impeachable offenses and vindicate the breach of the trust
Nature of holding	The official is a de facto officer who does not enjoy security of tenure	The official is a de jure officer who enjoys security of tenure and can be removed only upon just cause (impeachable grounds) and observance of procedural due process
Process	Judicial determination	Political process undertaken by Congress
Governing rules	Dictated by the Rules of Court	Const., Rules of impeachment promulgated by Congress
Ground	Act/omission committed prior to or at the time of appointment/ election relating to an official's qualifications as to render such appointment or election invalid is a proper subject of a quo warranto petition. Such act/omission if committed during incumbency cannot be the subject of a quo warranto petition.	Only acts committed by an impeachable official as such during his incumbency may be the subject of impeachment, but not acts committed by him prior election or appointment as impeachable official.

### III. Executive Department

#### A. Nature of Executive Power

##### 1. In Relation to the Implementation of Laws (Including Delegated Powers)

GR: Executive power is limited to the implementation of the law.

XPNS (Const.)

1. Emergency Powers (see II.A.5.c)
2. Tariff powers (see II.A.5.d)

##### 2. Express or Implied (Including the Faithful Execution of Laws and Residual Powers)

(a) Express – The President shall ensure that the laws be faithfully executed. VII(17).

(b) Implied

1. The President's power cannot be said to be limited only to the specific powers enumerated under the Const. The residual powers of the Pres. are implicit and correlative to his paramount duty to safeguard and protect the general welfare.
2. The President has power to the conduct investigations, though, among others the creation of fact-finding commissions or ad hoc, in aid of his duty to faithfully execute the laws.
3. The President also has a residual power to restructure the executive departments flowing from his power of control.

#### B. Concept of Presidential Immunity

The incumbent holder of the office of the President is not amenable to suit during his tenure.

1. The immunity pertains to the holder of office. Once the holder ceases occupying the office, the immunity ceases even with respect to acts done during his incumbency.
2. Effective only during his tenure.

##### 1. Conduct Covered

All kinds of suit, whether civil, criminal, administrative.

1. Also immune in special proceedings as writ of habeas data.
2. Action to compel him to take action to protect the rights of the Philippines with respect to the West Philippine Sea.

##### 2. Waiver and Exceptions

1. The President is not immune from an impeachment suit.
2. He can be a respondent in an election protest or quo warranto action (sole judicial authority with SC)
3. May be waived – e.g., by filing of suit or counter-suit.

#### C. Concept of Executive Privilege

The power of the Executive to withhold information to the public, the Courts, and the Congress. It is not a personal privilege but adheres to the Office of the President, and to the information itself.

##### 1. Types

(a) Presidential communications, (b) Deliberative process

(a) Presidential communications

1. Presidential communications pertain to communications, documents and other materials CDM related to Presidential decision-making and deliberations, which the President believes should remain confidential
2. Elements: (i) Must relate to a quintessential, non-delegable power of the President, (ii) Must be authored or solicited and received by a close advisor to the President or the President himself, (iii) Qualified privilege that may be overcome by showing of (a) adequate need, (b) that the

communication like contains important evidence and (c) unavailability of the information elsewhere to the proper investigating authority.

*Close advisor to the President*

1. Operational proximity test – officials who stand in close proximity with the President by reason of their function, intimate communication.
2. Organization test – officials who stand in close proximity with the President by reason of their position in the Executive's organizational structure (used when operational proximity test is not conclusive)
3. The information be considered authored or solicited and received by a close advisor of the President even if the President did not receive the information.

(b) Deliberative process

1. Pertains to advisory opinions, recommendations, deliberations.
2. Drafts of treaties and international agreements, offers and counter-offers by negotiating panels are covered by the privilege.

##### 2. Who May Invoke

Only the President or the Executive Secretary (by authority of the President) may invoke the privilege.

1. If by the Executive Secretary, he must state that the authority is "By order of the President", which means that he personally consulted with him.
2. The President may not authorize his subordinates to exercise the power, especially when such authorization was not expressed, but merely implicitly by silence.

#### D. Qualifications, Election, Term of the President and Vice-President, and Rules on Succession

(a) Qualifications of President and VP

1. Natural-born Filipino
2. Registered voter
3. Able to read and write
4. At least 40y of age on the day of the election
5. Ph resident for at least 10y immediately preceding election.
6. Before assumption of office, they shall take an oath or affirmation.

(b) Election

1. By the direct vote of the people.
2. Every second Monday of May.
3. The Congress shall act as the national board of canvassers – (i) board of canvassers shall transmit the election returns to the Congress, directed to the Senate President; (ii) the Senate President shall open all certificates in the presence of the Senate and the House of Representatives in joint public session; (iii) the Congress shall canvass the votes upon determination of their authenticity and due execution.
4. One with the highest number of votes shall be proclaimed elected. **In case of tie**, it shall be broken by a majority vote of all the Members of both Houses of the Congress, voting separately.
5. SC en banc shall be the sole judge of all contests relating to the election, returns, and qualifications of the Pres. or VP (PET).

(c) Term

1. 6y starting June 30 next following the day of election, ending at noon of the same date after 6y.
2. No re-election: (i) President, (ii) anyone who has succeeded the President and served as such for more than 4y.
3. VP has 2-term limit (consecutive). Voluntary renunciation of office shall not be considered an interruption of his term.



(d) Rules on Succession

1. VP is the constitutional successor of the President.

*Beginning of term (after proc. but before assumption of office)*

1. In case of (i) failure to qualify, or (ii) Pres. not chosen – VP shall be acting Pres.
2. In case of (i) death, or (ii) permanent incapacity – VP shall be the Pres.
3. In case of: (i) failure to qualify, or (ii) if Pres. not chosen, (iii) death, (iv) permanent incapacity of both Pres. – Senate Pres. or if unable, the House Speaker, shall act as Pres.
4. In case of: (i) death, (ii) permanent incapacity, or (iii) inability of the Senate Pres. and House Speaker. – Congress shall provide, by law, the manner of selection of who shall act as Pres.

*During term*

1. In case of (i) death, (ii) permanent incapacity, (iii) removal, or (iv) resignation of Pres. – VP shall be the Pres. for the unexpired term.
2. In case of: (i) death, (ii) permanent incapacity, (iii) removal, or (iv) resignation of both the Pres. and VP. – Senate Pres., or if unable, the House Speaker, shall act as Pres.
3. In case of: (i) death, (ii) permanent incapacity, or (iii) inability of the Acting Pres – Congress shall provide, by law, for the manner of selection of who shall act as Pres.

*Filling of vacancies*

1. In OVP – the President shall nominate among the members of Congress. The nominee shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.
2. In both OP and OVP – Congress shall convene without need of call and enact a law calling for a special election. The bill is exempt from 3-3-3 requirement and shall become a law upon its approval on the third reading. Appropriations shall be charged to current appropriation and exempt from the requirement of certificate of availability of funds from National Treasurer. No special election shall be conducted if the vacancy occurs within 18m before the next presidential election.

*Temporary incapacity of President*

1. If the Pres. transmits to the Senate Pres. and House Speaker a written declaration that he is unable to discharge the powers and duties of his office – the VP shall act as Pres. until the Pres. transmits a written declaration to the contrary.
2. If the majority of the members of Cabinet transmits to the Senate Pres. and House Speaker a written declaration that the Pres. is unable to discharge the powers and duties of his office – the VP shall act as Pres. until the Pres. transmits a written declaration to the contrary. Such declaration may be contradicted by the majority of the members of Cabinet through another written declaration. The Congress shall resolve the conflict on the continuing ability of Pres. to discharge his duties by 2/3s vote. If the Pres. is found unable, the VP shall act as Pres. Otherwise, the Pres. shall continue exercising the powers of his office.
3. In case of serious illness of the Pres., the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Notes:

1. The VP cannot act as Pres. in case of temporary absence of Pres. in the jurisdiction.
2. The acting president may exercise all of the powers of the Pres.
3. If the cause of removal is a S78 OEC petition, the COC of the candidate is void ab initio. Hence, the qualified candidate having the highest no. of votes shall be proclaimed elect.

**E. Other Privileges, Inhibitions, and Disqualifications**

Prohibited transactions – Pres., VP, Cabinet Members, their deputies, and assistants (5), during their tenure, cannot:

1. **hold** any other office or employment during their tenure (public or private). The holding of other office is void and the original office is retained.
2. **practice** any other profession;
3. **participate** in any business – (i) upon election or appointment, they shall divest themselves of the business interest
4. be **financially** interested in any contract, franchise, or special privilege granted by the Government, including GOCCs
5. receive any other emolument from the government or any other source.

**\*\* Inhibitions applicable to the executive department are the most stringent to guard against abuse of power.**

*XPNS to prohibited office:*

1. If otherwise provided by Const. – (i) VP as cabinet member, (ii) SOJ as ex-officio member of JBC, (iii) President as NEDA Head.
2. Offices held: (i) without additional compensation, and (ii) in an **ex-officio** capacity. Whether the post is ex-officio is determined by (a) law and (b) the nature of the primary functions of the office. It is not considered “other office or position” but mere imposition of additional duties.

Prohibited appointments – During their tenure, their spouses and relatives within the 4th degree (con/aff) cannot be appointed as

1. members of the **ConCom**, or
2. members of the Office of **OMB**,
3. **Secretaries**,
4. **Undersecretaries**,
5. **Chairmen**
6. **heads** of bureaus or offices, including GOCCs. **COSUCH**.
7. **\*\* (i)** The prohibition applies only to real offices, not those “having the rank of” such offices; **(ii)** appointments to Assistant Secretary positions are not covered; **(iii)** appointments to judiciary are not covered; **(iv)** There no distinction on effect as to appointment/designation

**F. Powers of the President**

**1. Executive and Administrative Powers**

**(a) Executive power**

1. The power to enforce and administer laws, including constitutional policies and judicial decisions.
2. The President given charge of the bureaucracy as chief executive as it is through the bureaucracy that the President seeks to discharge his constitutional function of seeing to the faithful execution of laws.

**(b) Administrative power**

1. Authorizes the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents.
2. Exercised through the issuance of administrative orders, rules and regulations.
3. Based on the presidential power of control over executive departments, bureaus, offices.

## 2. Power of Appointment

The power of appointment is inherent in the Pres.

### a) Process of Confirmation by the Commission

Officials requiring confirmation

1. Heads of the executive departments. XPN: appointment of VP as cabinet member is not subject to CApp confirmation.
2. Ambassadors, other public ministers and consuls
3. Officers of the armed forces from the rank of colonel or naval captain
4. Other officers whose appointments are vested in him in this Constitution – (i) Constitutional Commissioners, (ii) regular members of the JBC (4), (iii) but the OMB need not be confirmed since they are appointed upon recommendation by JBC.

*\*\*The list is exhaustive, and the Congress may not add to the list. In one case, the SC declared unconstitutional, a law requiring the confirmation of CApp for the appointment of the NLRC Chairman.*

Officials not requiring confirmation

1. Government officers whose appointments are not otherwise provided for by law.
2. Government officers whom he may be authorized by law to appoint.
3. Appointments of CHR Commissioner, Heads of Bureaus need not be confirmed.

When a law was passed synchronizing the local elections of LGUs and ARMM, a temporary vacancy is created in ARMM local offices since the terms of offices were different. The solution offered was for the President to appoint who shall act as local officials for the 1y interim. SC upheld – (i) this is not new since the president is actually authorized to appoint in case of vacancies of governor; (ii) by Const., the president has the power to make appointments to positions as may be allowed by law; (iii) even without statutory grant, the appointment may fall under the category of “officers whose appointments are not otherwise provided for by law”. The last is a mere affirmation of the President’s inherent power to make appointments.

### b) By-Passed Appointments and their Effects

A bypassed appointment ceases to be effective. An appointment is bypassed if the Congress failed approve or act on the appointment upon its next adjournment (regular or special session).

### c) Appointments by an Acting President

Shall remain effective, unless revoked by the elected President within 90d from his assumption or reassumption of office.

### d) Scope of Midnight Appointments

1. 2m immediately before the next presidential elections up to the end of his term, an Acting/President cannot make appointments. XPN: temporary appointments to executive positions when continued vacancies will prejudice public service or endanger public safety. **TECPE**
2. Applies only to appointments to the executive.
3. Does not cover appointments to the judiciary, which appointment is based on recommendations by JBC, and for which the Constitution fixes the period of the same.
4. Requirements for valid appointment: (i) the Pres must sign a written appointment; (ii) he must send the same to the appointee; (iii) the appointment must receive the appointment, as sent by the Pres; and (iv) the appointee must accept the appointment.
5. The acceptance by appointee completes the appointment. If this is done during the appointment bar, the appointment is not completed.

### e) Recess of Ad-Interim Appointments

Regular and ad interim appointments

Regular	Ad interim
Permanent	Permanent
Appointments done while Congress is in session	Appointments done while Congress is in recess
Not effective until confirmed	Immediately effective until disapproved or until the next adjournment of the Congress (bypassed)

Notes:

1. The distinction is relevant only with respect to officers requiring confirmation of CApp.
2. If the appointment was disapproved or bypassed, there is no prohibition for the Pres. to appoint the same person.
3. The President may make appointments in acting capacity in the cabinet. The CApp cannot compel their submission to them for confirmation.

### f) Power of Removal

The power to appoint carries the power to remove.

Presidential appointees serve at the pleasure of the President. They may be removed from office on ground of loss of trust. Such shall not be considered a violation of their security of tenure, their term is merely deemed to have expired.

## 3. Power of Control and Supervision

The President shall have control of all the executive departments, bureaus, and offices. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees in his department.

1. Power of Control
  1. The overarching power of the President which subsumes supervision.
2. Power to: (i) Directly act whenever a specific function is vested by law or regulation to a subordinate; (ii) Direct the performance of duties; (iii) Restrain the commission of acts; (iv) Review, reverse, approve or modify the acts or decisions of officials or unit; (v) Determine the priorities in the execution of plans and programs; (vi) Prescribed guidelines, plans and programs; (vii) Reorganization of the executive department: transfer of unit, transfer of functions, abolish, consolidate, merge units based on the stand-by authority granted to the President under the Administrative Code.
3. President’s power of control extends to agencies with respect to their administrative functions, even if they are performing quasi-judicial functions and to GOCCs.

### (b) Power of Supervision

1. The authority to ensure that subordinate is acting within the scope of his powers, in accordance with law, and not ultra vires.
2. Components: (i) supervision of the enforcement of the law and for the maintenance of general peace and public order (ii) administrative power over the bureaus and offices under his control to enable discharge of duties effectively.

### a) Doctrine of Qualified Political Agency

Concept of Singular Executive: The whole of executive power is vested in one President alone.

1. To enable the President to discharge all the functions of the executive department, the doctrine of qualified political agency is recognized, whereby the President may act through his agents.
2. The heads of the executive departments are alter egos of the President in matters of that department where the President is required by law



to exercise authority. Although they may exercise certain powers under the law, they cannot impair the constitutional power of control and direction of the President.

3. Actions of the department heads must always be with authority of the President. If they acted without prior authority, their acts are subject to ratification. Once ratified, the acts of the department heads will be deemed as action of the President himself.
4. The Heads of the Constitutional Commissions are not part of the cabinet, they are not alter egos of the President. Their acts are not by virtue of the appointment of the President but by the law governing the Commission.
5. The doctrine does not apply to acts performed by Boards or collegiate bodies of GOCCs, even if some of their members are heads of departments.

#### b) Executive Departments and Offices

Administrative disciplinary authority of President

2. None over deputy OMB – (i) provision in RA 6770 granting the same was declared unconstitutional; (ii) it will undermine the constitutional independence of the deputy OMB which has same level of constitutional independence as the OMB; (iii) leads to a potential conflict of interest in view of OMB's jurisdiction over all public officers,<sup>5</sup> including cabinet members who are alter egos of the President.
3. It has over special prosecutors – (i) they do not enjoy the same degree of independence as the deputy/OMB; (ii) its attachment to OMB is merely for coordination.

#### c) Local Government Units

The president only have power of general supervision over LGUs. Generally carried out by provision of guidelines through the DILG.

### 4. Emergency Powers

**\*\*See II.A.5.b. Presidential Power in Times of War and National Emergency**

#### 5. Commander-in-Chief Powers

The President is the civilian authority over the military. Civilian authority shall be at all times supreme over the military.

1. Three powers: (a) Calling out Powers; (b) Power to suspend the PWHC; (c) Power to declare martial law – from least to most intrusive.
2. The powers are exclusively vested to the President and cannot be exercised by the Governor of a province.
3. Quintessential and non-delegable which cannot be exercised by the President's alter egos.

##### a) Calling Out Powers

1. The power of the President to call out the armed forces to prevent or suppress lawless violence, invasion, or rebellion. **LIR**
2. Calling out the APF is not a condition for the declaration of ML or suspension of the PWHC
3. The joint visibility exercises by the PNP and AFP by virtue of an Executive Order issued by then Pres. Estrada is not an exercise of his calling out powers, but of his residual powers to ensure public safety.

##### b) Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus (Including Extension of Period)

1. Requirements: (i) Existence of actual (not just imminent) invasion or rebellion, (ii) the public safety requires, (iii) ≤60d. Quantum of proof is probable cause.

2. The President must submit a report to Congress (personal or in writing) on such proclamation/suspension within 48h from its making.

##### A state of martial law **OSAS**

1. Does not suspend the **operation** of the Constitution.
2. Nor **supplant** the functioning of the civil courts or legislative assemblies.
3. Nor **authorize** the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. Open court theory: so long as civil courts are open and operational, military courts cannot exercise jurisdiction over civilians. But if the courts become inoperational, military courts may exercise jurisdiction.
4. Nor does it automatically **suspend** the privilege of the writ.

##### Suspension of PWHC

1. Apply only to persons judicially charged for rebellion or invasion.
2. During the suspension, any person so arrested/detained shall be judicially charged within 3d, otherwise he shall be released.
3. If a person is charged, the remedy is bail, which is not suspended.
4. Only the PWHC is suspended. In any case, the writ shall issue for the production of the body of the detainee. However, further proceedings to determine the legality of the detention shall be suspended. Upon lifting of the suspension, such further proceeding shall be conducted.

##### Automatic review by Congress

1. The Congress may **revoke** the P/S by at least a majority of all its members voting in JSA. The revocation shall not be set aside by the Pres. But the revocation may be reviewed and set aside by SC if attended by GADALEJ.
2. The Congress may **extend** the P/S by at least a majority of all its members voting in JSA. (i) upon initiative of Pres. (not motu proprio), (ii) for a period to be determined by Congress, if the invasion or rebellion persist and public safety requires it. The period of extension, and the no. of times are political questions.
3. Congress may conduct independent investigation of supervening events for purposes of exercising its power to revoke or extend the P/S.
4. If not in session, the Congress shall convene without need of call within 24h from the P/S – (i) not necessarily joint; (ii) JSA requirement is only for revoking or extending the P/S.
5. The automatic review completes the P/S.

##### Special judicial power

1. To determine the sufficiency of the factual basis of the P/S, or its extension – the authority limited. Unlike Congress, the court cannot conduct an independent investigation or consider supervening events. It can only rely on the President's report.
2. The determination by the President whether the exigency has arisen is not conclusive upon the Courts.
3. Quantum of evidence: probable cause.
4. In an appropriate proceeding filed by any **citizen**.
5. It must promulgate its decision within 30d from filing.
6. This may be exercised independently and simultaneously with the automatic review powers by Congress. The inaction of the Congress after

<sup>5</sup> Except: members of Judiciary/Congress, Impeachable officers.

the President's report does not affect the Court's exercise of its special judicial power.

In case of conflict between Congress and SC

1. Re: matters within the exclusive competence of each, decision of such competent branch prevails.
2. Re: matters within their concurrent competence, the decision of SC prevails as final interpreter of the Constitution.

## 6. Pardoning Powers

### a) Scope and Limitations

PRC RFF

1. Except in impeachment cases.
2. Only after final conviction.
3. Requires favorable recommendation of COMELEC in cases of violation of election laws, rr.
4. Cannot be exercised with respect to officers of the judiciary for administrative charges. Otherwise, the executive will encroach on the exclusive disciplinary powers of the Court to members of the judiciary.
5. The Congress may not prohibit the exercise of pardoning powers in cases not excepted by the Const.

Amnesty

1. Requires concurrence of a majority of all the Members of the Congress.
2. Requires favorable recommendation of COMELEC in cases of violation of election laws, rr.

### b) Forms of Executive Clemency

Pardons, reprieves, commutations, remission of fines and forfeitures PRC RFF; Amnesty.

1. Pardon exempts the convict from the criminal punishment. However, it does not operate to automatically reinstate a public official so pardoned to his former office, although it removes the accessory penalty of DQ to hold public office.
2. Reprieve is the postponement of the execution of sentence to a day certain.
3. Commutation is partial remission of punishment, or a substitution of less penalty for one originally imposed.

Pardon	Amnesty
Private act of the Pres. which must be pleaded and proven	Joint public act of the Pres. and Congress which may be taken judicial notice;
Granted to individuals	Granted to groups (political offenders)
Offense against peace of the state	Offense against the state itself (political offenses)
Legislative concurrence is not required	Legislative concurrence is required; the Pres. may not unilaterally withdraw without consent of Congress
Looks forward and suspends the further effects of the offense	Looks backward and abolishes all the effects of the crime, as if it has not been committed
Requires prior conviction <sup>6</sup>	Prior conviction is not required, but prior admission of guilt is

Conditional pardon

1. Requires consent of pardonee.
2. Whereas clauses (recitals) are not controlling in determining whether the pardon is conditional. If the body states that the pardonee will be restored in his full civil and political rights, the pardon is absolute.
3. In case of violation of the condition: (i) the violator may be subject to execution or administrative action, (ii) separate criminal action for violation of the conditional pardon. The ground for the revocation of the conditional pardon is not

justiciable. The President has sole prerogative to determine whether the conditions of the conditional pardon has been violated, and the same is conclusive. By accepting the terms of the conditional pardon, the pardonee agreed that the determination of the President that he had violated its condition would be conclusive upon him, and that such determination cannot be reviewed by the courts.

4. If the condition consists of is no longer committing another offense, mere commission, even without conviction is sufficient to order the pardonee's recommitment.

## 7. Foreign Relations Powers

### a) In General

As head of state, the President is the chief architect of the country's foreign policy. He possesses diplomatic powers, including: (i) the conduct of foreign relations, (ii) reception of foreign diplomatic agents, appointment and sending out of state's diplomatic agents; (iii) negotiation, execution and ratification of treaties and international agreements **CRN**

### b) To Contract or Guarantee Foreign Loans

1. Requires prior concurrence of the Monetary Board, and subject to limitations as may be provided by law.
2. Concurrence of Senate is not required since the Consti. prescribed a specific procedure to be observed.

### c) Entry into Treaties or International Agreements

The treaty making authority of the President is absolute.

Whether or not to enter into treaty or international agreement is a political question. However, when the President decides to enter into a treaty, it must observe the limitations prescribed by the Const.

1. By entering into a treaty, the State surrenders a portion of its sovereignty.
2. The object cannot be contrary to state policies – (i) independent foreign policy, (ii) in relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination. **NaS TINI RS**, (iii) policy of freedom from nuclear weapons in its territory.

### Treaties

#### Treaties in general

1. Requires concurrence of 2/3s of all members of Senate for effectivity.
2. But the concurrence is not required for validity. The validity of a treaty is subject to final judicial determination.
3. Treaty containing tariff provision must conform to the President's delegated power. He cannot grant tax exemption by way of treaty.

*Treaty providing for the entry of foreign military bases, troops, or facilities* **MBTF**

1. e.g., VFA/MDT
2. Must be (i) in the form of treaty concurred by Senate (following 2/3s requirement) and ratified by a majority of the votes cast by the people in a national referendum held for that purpose, if required by Congress (ii) recognized as a treaty by the other contracting State.
3. The President may enter into executive agreements regarding MBTF if it is not the instrument that allows its entry but merely seeks to implement the same, e.g., EDCA.
4. The requirement applies even if the entry of MBFT is merely temporary for training purposes.

<sup>6</sup> If there is pending appeal, the same may be allowed withdrawn to activate the pardon.

#### Ratification

1. An executive function. The purpose of the Senate is merely to concur with the ratification. The Senate cannot compel the President to transmit the treaty for the Senate's concurrence.
2. The provision on ratification is found in Art. VII.
3. Required only for effectivity of the treaty, but not conclusive as to its validity. The SC ultimately determines the validity of treaties.

#### Unilateral withdrawal

1. The president may unilaterally withdraw for treaties, provided it is shown that the treaty violates the constitution or law. However, the withdrawal cannot be made arbitrarily or on a whim.
2. However, he cannot do so if – (i) the senate conditionally concurred that withdrawal shall likewise be subject to its concurrence; (ii) the requirement of Senate concurrence is provided for in general law.

#### Treaties v. Domestic Laws

1. Police power prevails over treaties.
2. However, the SC in these cases held that treaty provisions shall be observed: (i) special detention procedure in the prosecution of foreign nationals; (ii) tax incentives to foreign corporations which shall prevail over local prescriptive periods.

#### Executive agreements

1. W/N to enter into executive agreements is a political question, but once the President decided to enter into the agreement, the SM is limited such that it must only be by way of implementation of policies already existing – (i) cannot create new rights or obligations, (ii) cannot amend treaties or laws.
2. EDCA is merely an executive agreement which provides for the details of VFA and MDT by specifying the locations, authorizing the building of military facilities, providing for the visas requirement of contractors.
3. Treaty allowing the establishment of embassy and consular offices is valid without need for concurrence.

Executive Agreements	Treaties
IAs embodying adjustments of detail carrying out well-established national policies and traditions	Involves political issues, changes of national policy
More or less temporary nature – e.g., EDCA which merely implements VFA/MDT	Permanent character – e.g., treaty on death penalty
Senate concurrence not required	Senate concurrence required
Same force as an executive regulation. (i) Has the force and effect of law, like an IRR; (ii) Cannot amend or repeal prior law but must conform thereto	Same force as a statute. It may amend, repeal, or change a national policy set forth in a prior law
*Executive has no law-making power, merely rule-making	*Since Senate is involved action, treaties are treated as laws
More informal	Formal/solemn; concurrence or ratification/accession must comply with the treaty provision

**\*\*Under IL, the distinction between is irrelevant, as long as the negotiating functionaries remained within their powers. Both must be complied with in GF following pacta sunt servanda.**

#### Judicial review

1. Lower courts have the power to pass upon the constitutionality or validity of any treaty,

international or executive agreement. By express provision, SC has appellate jurisdiction.

2. All cases involving the constitutionality of a treaty, international or executive agreement shall be heard by the SC en banc.

#### 8. Powers Relative to Appropriation Measures

1. Subject to line-item veto power.
2. As basis for GAA, the President submits to the Congress a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures. The Congress may not increase the appropriations recommended by the President as specified in the budget.
4. The President may, **by law**, be authorized to augment any item in the general appropriations law for their offices from savings in other items of their appropriations. **AIGO SOI**

#### 9. Veto Powers

**\*\*See II.F.2.B Presidential Veto and Congressional Override**

#### IV. Judicial Department

##### A. Concept of Judicial Power

1. Traditional concept – the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.
2. Expanded concept – to determine whether or not there has been a GADALEJ on the part of any branch or instrumentality of the Government. It narrows the political question doctrine.

It shall be vested in one SC and lower courts as may be established by law.

1. While the congress has the authority to establish lower courts and apportion their jurisdiction, a law abolishing the SB will be of doubtful constitutionality considering that its creation is provided for by the constitution itself.
- 2.
3. Judicial power is different from jurisdiction. Jurisdiction determines what cases a particular court in our judicial hierarchy has authority to resolve. While all courts are vested with judicial power and may exercise judicial review, they may only do so with respect to cases that come within their respective jurisdictions

##### B. Judicial Review

###### 1. Requisites

The power of the court to test the validity of a government act, executive or legislative, with respect to their conformity with the Constitution, i.e., to determine whether there has been GADALEJ.

1. The power is inherent in all courts, from the Supreme Court up to the lowest courts, subject to rules on jurisdiction.
2. Judicial power is different from judicial review. Judicial review is an offshoot or aspect of the judicial power. The courts cannot exercise judicial review independently of the exercise of judicial power.
3. It follows that it can be exercised only in the context of an actual case or controversy.

###### Requisites:

1. Actual case or controversy
2. Locus standi
3. The constitutional question was raised at the earliest opportunity
4. The constitutional question is the very lis mota of the case

###### (1) Actual case or controversy

1. Involves a conflict of legal rights and assertion of opposite legal claims that is capable of judicial determination.

2. Subsumes the element of ripeness: there must be a completed government action giving rise to a direct, concrete, and adverse DCA effect on the petitioner (immediate or threatened injury ITI)
3. Cases which are not moot and academic; not based on extra-legal considerations not cognizable by courts; not questions of policy or wisdom/political questions; not speculations; must not require the court to render a mere advisory opinion. An action to challenge a pending bill is premature.

#### (2) Locus standi

1. The right of appearance in a court of justice in a constitutional question.
2. Established if the petitioner is able to show that he has personal and substantial interest in the case such that he will sustain a direct injury as a result of the enforcement of the questioned act (direct injury test).
3. The rules on standing are mere procedural rule which may be liberalized and set aside by the court in the exercise of its discretion.

#### XPNS to direct injury test

1. Taxpayers – (i) if there is claim of illegal disbursement of public funds; or (ii) tax measure is unconstitutional.
2. Voters – upon showing of obvious interest in the validity to the election law in question.
3. Concerned citizens – (i) constitutional issues raised are of transcendental importance supported by proper allegations; (ii) deprivation of some right or privilege, or imposition of certain burdens or penalties.
4. Legislators – must show infringement on their prerogative as legislators.
5. Standing Jus Tertii – a litigant may file a case on behalf of third parties if: (i) the litigant suffered injury in fact giving her sufficient concrete interest in the outcome of the issue; (ii) close relation between the litigant and the third party; (iii) hindrance on the part of the third party, which prevents him from protecting his own interests. E.g., in one case the owners and operators of hotels were able to successfully invoke the right to privacy of their clientele to challenge an ordinance which banned certain activities in such hotels.
6. Factors in determining whether the issue is of transcendental importance – (i) character of the funds or assets involved; (ii) clear disregard of constitutional or statutory prohibitions; and (iii) the lack of other party with a more direct or specific interest.
7. Even under special rules on standing, injury in fact (actual injury) must be alleged and shown, even though it may not be direct or substantial.

#### (3) Constitutional question was raised at the earliest opportunity

1. Timeliness means that the constitutional issue was raised in the pleadings before a competent court or trial court.
2. The constitutional issue may not be raised for the first time on MR or on appeal.

#### Tests: Vertical and horizontal

1. Vertical: constitutional issue must be raised in the pleadings in the lowest court.
2. Horizontal: (i) constitutional issue must be raised after the grounds for its objection become apparent; if the grounds were already apparent when a prior case was heard involving the same issue and the same petitioner, raising the constitutional issue at the subsequent case cannot be said to have been made at the earliest opportunity. In essence, the petitioner is already

estopped in the subsequent case to raise the constitutional issue; (ii) even if the issue was raised in the pleadings before the TC, if the same was not raised in a prior case involving the same petitioner where the issue could have been raised, timeliness is not complied. XPN: SC will resolve the issue of constitutionality of a provision not raised in an earlier case if its resolution is indispensable in determining the constitutionality of other related provisions which were timely questioned.

#### (4) Constitutional question is the very lis mota of the case

1. (i) the constitutional question must be properly raised and presented, and (ii) its resolution must be necessary for the determination of the case.
2. A court must try to avoid disposing of an issue based a constitutional question if it can do so without touching on the constitutionality of the matter.

### 2. Political Questions Doctrine

Questions which, under the constitution, are to be determined by the people in their sovereign capacity, or in regard to which, full discretionary authority has been vested to the executive or legislative branch of the government.

#### CoDePS FDAVEL

1. A political question cannot be the subject of judicial review.
2. It limits exercise of judicial power as to whether there has been GADALEJ on the part of the official whose action is being questioned (narrowing of the political question doctrine due to the expansion of the power of judicial review).

#### "Classic formulation" of a political question

1. textually demonstrable constitutional commitment of the issue to a coordinate political department
2. lack of judicially discoverable and manageable standard for resolving it
3. the impossibility of resolving the issue without an initial policy determination of a kind clearly for non-judicial discretion
4. the impossibility of the court's undertaking an independent resolution without expressing a lack of respect due coordinate branches of the government
5. an unusual need for unquestioning adherence to a political decision already made
6. the potentiality for embarrassment from multifarious pronouncements by various departments on the one question

### 3. Moot Questions

When the case no longer presents an actual case or controversy due to supervening events, it is moot.

1. Affects the issue of actual case or controversy.
2. If the case is moot, the judgment of the court on it will serve no practical purpose.
3. The case is dismissible.

#### XPNS:

1. There is grave violation of the Constitution.
2. The case is of exceptional character involving paramount public interest.
3. The constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public.
4. The case is capable of repetition yet evading review – (i) it is too short in duration to be fully litigated; (ii) there was a reasonable expectation that the same complaining party will be subjected to the same action again.



#### 4. Operative Fact Doctrine

Deals with the effect when the SC declares a law or a government act to be unconstitutional in the exercise of its power of judicial review.

1. GR: a law that has been declared unconstitutional is void from the beginning. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.
2. XPN: **Operative fact doctrine**. – recognizes that from the time the law was passed and the time it was declared unconstitutional, rights/privileges or obligation were created. Completed acts prior to the declaration of the law's unconstitutionality are recognized and given effect to mitigate the potentially far-reaching effect of such declaration.

Requisites:

1. A law or administrative issuance (not mere administrative practice) which was declared unconstitutional by the court.
2. Acts were performed and completed from the time of its passage up to the time of its declaration as unconstitutional.
3. The public acted in good faith in relying upon the validity of the law or issuance.
4. The effects of such acts performed may be recognized and given effect.

#### C. Judicial Independence and Fiscal Autonomy

Judiciary enjoys fiscal autonomy.

1. Congress may not reduce appropriations for the Judiciary below that appropriated for PY.
2. After approval, appropriations shall be automatically and regularly released.
3. DBM issuances which impose a condition prior to the release of approved appropriations is invalid as regards bodies enjoying fiscal autonomy, including the judiciary.

#### D. Appointments to the Judiciary

1. Appointed by the President from a list of at least 3 nominees prepared by JBC for every vacancy.
2. Appointments need no confirmation.
3. In SC, vacancies shall be filled within 90d from the occurrence of vacancy. For the lower collegiate and lower courts, the President shall issue the appointments within 90d from the submission of the list. Appointments to the judiciary are not covered by the ban on midnight appointments.
4. Members judiciary shall hold office during good behavior until they reached the age of 70y or become incapacitated to discharge the duties of their office (not subject to hold over). No law shall be passed reorganizing the judiciary when it undermines the security of tenure of its members.

*Clustering of names*

1. The clustering of names is not unconstitutional. However, in case of multiple vacancies, the clustering of names to be appointed for a particular vacancy is not valid as it impairs the appointment power of the President.
2. If there are simultaneous vacancies, there should be just 1 list.

#### 1. Qualifications of Members

Supreme Court

1. Objective qualifications – (i) Natural-born Ph citizen; (ii) At least 40y; (iii) Must have been for 15y or more: (i) a judge of a lower court, or (ii) engaged in the practice of law in the Ph.
2. Subjective qualifications – proven competence, integrity, probity, and independence. **Compl Probl**

Lower collegiate courts

1. Objective qualifications – (i) Natural-born Ph citizen; (ii) Member of Ph bar; (iii) qualifications as may be prescribed by Congress.
2. Subjective qualifications – proven competence, integrity, probity, and independence. **Compl Probl**

Lower courts

1. Objective qualifications – (i) Natural-born Ph citizen (JBC rule. N.B.: the Const., only requires Ph citizen); (ii) Member of Ph bar; (iii) qualifications as may be prescribed by Congress.
2. Subjective qualifications – proven competence, integrity, probity, and independence.
3. The 5y minimum experience requirement prescribed by JBC cannot be considered as an additional qualification, but rather a mere criterion for the JBC to determine whether an applicant satisfies the requirement of "competence".

**\*\*Lower courts judges and justices need not be natural-born Filipinos, except the justices of collegiate courts.**

#### 2. Judicial and Bar Council

##### a) Composition

(a) Composition

1. CJ, as ex officio Chairman;
2. SOJ, as ex officio Member;
3. Representative of the Congress, as ex officio Member – (i) Congress is entitled only to one seat although it is composed of two houses; (ii) 2 representatives with 0.50 votes each is not proper.
4. Representative of IBP;
5. Professor of law;
6. Retired SC Member;
7. Representative of the private sector.

**\*\*Clerk of the SC shall be the ex-officio secretary, who shall maintain records of the proceedings.**

(b) Appointment – by the President with the consent of the CApp.

(c) Term

1. 4y
2. Term of first appointees – 4y (representative of IBP); 3y (law professor); 2y (retired Justice); 1y (representative of private sector)

##### b) Powers

Primarily to recommend appointees to the Judiciary. It may exercise such other functions and duties as the SC may assign.

1. JBC shall be under the supervision of SC.

Rules of procedure

1. JBC may promulgate its rules of procedure, including qualifications of nominees, which must be published since these substantive rights of persons.
2. However, the requirement of filing with ONAR does not apply. It applies only to executive/administrative bodies.
3. SC may review as the JBC rules as to its validity and whether the JBC had been adhering to its own rules.

**\*\*In the course of JBC deliberations, potential appointees shall be given the opportunity to be heard on allegations against them. E.g., in the case of Jardeleza, for allegations of commission of treasonous acts or involvement in extra-marital affairs.**

#### E. The Supreme Court

##### 1. Composition, Powers, and Functions

(a) Composition

1. 1 CJ + 14 AJ (15)
2. It may sit: (i) en banc, (ii) divisions of 3/5/7

(b) Powers and functions

1. Adjudication of cases and controversies
2. Rule-making
3. Administrative Supervision Over Lower Courts
4. Act as PET

Rule-making: promulgation of procedural rules for:

1. Protection and enforcement of constitutional rights, e.g. Rules on Writ of Amparo, Rules on Habeas Data, Rules in relation to Environmental Cases
2. Pleading, practice, and procedure in all courts, excluding quasi-judicial agencies
3. Admission to the practice of law and the integrated bar
4. Legal assistance to the underprivileged

**\*\*The rules must:** (i) provide for simplified, inexpensive procedure for speedy disposition of cases, (ii) must be uniform form for all courts of the same grade, (iii) must not diminish, increase or modify substantive rights.

**PET**

1. The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the Pres. or VP
2. Election contests must be filed within 30d from proclamation.
3. Quo warrant petitions must be filed within 10d from proclamation.
4. Decisions of PET are not appealable to SC since they are the same entity, but MR is available.
5. This is an exercise of judicial power.

(c) The Members of the judiciary shall not be designated to any agency performing quasi-judicial or administrative functions.

## 2. En Banc and Division Cases

**En banc**

1. Cases to be heard en banc: (i) involving **constitutionality** of a treaty, international or executive agreement, or law; (ii) involving **modification** or reversal of doctrine or principle of law laid down by the court in a decision rendered en banc or in division; (iii) **other** cases which under the ROC must be heard en banc, e.g., those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations; (iv) cases heard by the **division** but the required number of votes was not obtained
2. Other cases – (i) acting as **PET**; (ii) in ordering the **dismissal** or lower court judges in the exercise of disciplinary authority. **COMDED**
3. Decided by majority vote of the Members: (i) who actually took part in the deliberations on the issues, and (ii) voted thereon.

**Division**

1. Decides by majority vote of the Members: (i) who actually took part in the deliberations on the issues, and (ii) voted thereon, and (iii) in no case, without the concurrence of **at least three** of such Members. **APV**
2. 3 votes are minimum for a valid decision.
3. The case shall be referred to en banc if: (i) the required number is not obtained, or (ii) it will require a modification or reversal of doctrine or principle of law.

**Notes:**

1. Abstention is not a vote, hence not considered in determining majority. A justice who reached 70y cannot hold over the office to participate in vote.
2. If a justice who actually participated in the deliberations died before the case was promulgated – (i) the decision may no longer be promulgated, and the remaining judges shall deliberate and vote anew; (ii) before filing of the decision with Clerk of Court, the decision is not yet promulgated even if the result of the voting was already released to the Pres.; (iii) citizens cannot compel the disclosure of votes and decisions that were not yet promulgated.
3. Both SC division and en banc are the SC. En banc is not an appellate body within SC. Hence, as a GR, MR on decision made by a division to the SC is not allowed.

## 3. Administrative Supervision Over Lower Courts

The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

1. It may temporarily assign judges of lower courts to other stations as public interest may require, for period not exceeding 6m.
2. It may order a change of venue or place of trial to avoid a miscarriage of justice.
3. It may appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

**Disciplinary authority**

1. SC en banc shall have the power to discipline judges of lower courts or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
2. The President's pardoning power excludes court personnel and officers who are administratively charged.
3. If a case was filed against a judge before the OMB for knowingly rendering an erroneous judgment, the OMB cannot refuse to refer the case to SC since the case arose out of the judge's performance of his administrative duties over which the SC exercise jurisdiction.

## 4. Original and Appellate Jurisdiction

Congress has the power to define, prescribe, and apportion **DPA** the jurisdiction of various courts.

1. Limitations: it may not deprive SC of its jurisdiction over cases under VIII(5).
2. It cannot reorganize the judiciary if it will violate the security of tenure of its members.
3. It cannot pass a law increasing the appellate jurisdiction of SC without its advice and concurrence.
4. A law prohibiting courts and administrative agencies from issuing restraining orders and injunctions is valid as the jurisdiction of courts may be defined by law. It is not one of the matters which the Congress cannot deprive the SC.

**Original jurisdiction**

1. Cases affecting ambassadors, other public ministers and consuls.
2. Petitions for CPM, quo warranto, and habeas corpus.

**Appellate jurisdiction** (final judgments and orders of lower courts)

1. Cases involving the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation. – (i) Lower courts may pass upon constitutionality of laws subject to the final determination of SC, (ii) Military courts are not considered lower court for



- purposes of the exercise of appellate jurisdiction by SC. Their decisions may be elevated to SC only by way of R65, (iii) but for purposes of applying DJ, conviction by a court martial may be invoked.
2. Cases involving the legality of any tax, impost, assessment, or toll, or related penalty.
  3. Cases in which the jurisdiction of any lower court is in issue.
  4. Criminal cases in which the penalty imposed is reclusion perpetua or higher.
  5. Cases in which only an error or question of law is involved.

## V. Constitutional Commissions (COMELEC, COA, CSC)

### A. Constitutional Safeguards to Ensure Independence of Commissions

1. Appointment of officials and employees in accordance with law
2. Promulgation of own rules of pleadings and practice
3. Fiscal autonomy – (i) approved annual appropriations shall be released automatically and regularly; (ii) conditions imposed by DBM for their release are invalid.
4. Separation of powers which applies as between the three great branches on the one hand, and the ConComs on the other.
5. Rotational plan or staggering term – (i) the first Commissioners shall start on a common date; (ii) any vacancy prior to the expiration of term shall be filled only be for the balance of the term. It prevents the President of the Philippines from dominating the Commission.
6. Fixed-term limit – (i) 7y; (ii) appointment due to expiration of term of the predecessor shall be for the full 7y. A term of lesser period is void; (ii) appointment is due to other causes of vacancy shall be for the unexpired portion of the predecessor only. Appointment in excess of the unexpired term shall not be nullified but it shall be valid only as to the unexpired term.
7. Limitation of the appointment to the vacancies to the unexpired term of the predecessor – (i) appointments to vacancies arising other than from expiration of term shall only be for the unexpired term of the predecessor; (ii) to prevent disruption the staggering of term.
8. Prohibition against reappointment.
9. Proscription against temporary appointment or designation – (i) appointments must be permanent, (ii) subject to confirmation of CApp; (iii) ad interim appointments are allowed since this is a permanent appointment.

#### *Prohibition against reappointment*

1. Applies to members who have served their full terms.
2. Reappointment means the appointment of the same person for the same position. It does not cover promotional appointments.
3. The prohibition also does not apply to a by-passed ad interim appointment since the appointment has not been finally disapproved by the CApp. The officer so by-passed may be appointed again.
4. A member who resigned from his position may be appointed as Chairman, provided that: (i) the appointment is only for the unexpired portion of the term of the departing Chairman, (ii) his aggregate length of service as Commissioner and the unexpired term of the predecessor will not exceed 7y, and (iii) the vacancy in the position of Chairman resulted from death, resignation, disability, or removal by impeachment, i.e. not from expiration of term.

### B. Common Provisions

1. Independence

2. Inhibitions (see below)
3. Fiscal autonomy (see below)
4. Promulgation of rules concerning pleadings and practice, which should not diminish, increase, or modify substantive rights.
5. Decision by majority vote.

## C. Powers, Functions, and Jurisdiction

CSC is the central personnel agency of the Government. It shall administer the civil service.

#### Relevant principles on civil service

1. CS embraces all ranches, subdivision, instrumentalities, and agencies of the government, including GOCCs with original charters only. GOCCs created under RCC are not covered.
2. Characteristics of CS: **(i) appointment** based on merit and fitness determined based on competitive examinations as far as practicable. XPNs: positions which are (a) policy-determining; (b) primarily confidential; or (c) highly technical; **(ii) security** of tenure – (a) An office with a fixed term or “unless sooner terminated” shall be construed to be termination for just cause and upon observance of due process; (b) appointments at the pleasure of appointing authority expires upon loss of confidence; **(iii) opportunity** for advancement to higher career positions.
3. All civil service workers shall take an oath to defend the constitution before entering the discharge of functions.

#### Inhibitions against civil servants

1. They cannot participate in electioneering or partisan political activity.
2. They cannot participate in strike but have the right to self-organization.
3. Elective officials: ineligible for appointment or designation in any capacity to any public office or position during his tenure. Any such appointment is void, and not validated by the forfeiture of original office.
4. Appointive official: DQ from holding any other office or employment in the Government, including GOCCs. XPN: if allowed by law or by the primary functions of his position, in ex-officio capacity without additional compensation.
5. No candidate who has lost in any election shall, within 1y after such election, be appointed to any office in the Government or any GOCC.
6. Elective and appointive officers: shall not (i) receive additional, double, or indirect compensation. XPN: if specifically authorized by law; (ii) accept any present, emolument, office, or title of any kind from any foreign government. XPN: if Congress consents.

#### COMELEC Powers and functions:

1. Enforcement and administration of election laws, laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall – (i) it may deputize AFP and LEA to ensure free, orderly, honest, peaceful and credible elections, but only with the concurrence of the President; (ii) it may regulate franchises during election period to ensure free, orderly, honest, peaceful and credible elections.
2. Registration of political parties, organizations, coalitions.
3. Filing a petition in court for voter inclusion or exclusion, either: upon verified complaint or on its own initiative.
4. Investigation or prosecution of cases for violation of election laws, including acts or omissions constituting election frauds, offenses, malpractices.
5. Recommend to Congress effective measures to minimize election spending, including limitation of

<p>places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, nuisance candidates.</p> <p>6. Recommend the removal of any officer or employee it has deputized, or the imposition of any disciplinary action, for violation or disregard of, or disobedience to, its directive, order or decision.</p> <p>7. Favorable recommendation of COMELEC is required for the pardon, amnesty, parole, or suspension of sentence for violation election laws.</p> <p><b>QJ Functions</b></p> <ol style="list-style-type: none"> <li>EOJ – Over all contests relating to the elections, returns, and qualifications of all elective regional, provincial and city officials. XPN: those falling within the jurisdiction of the HRET, SET, PET.</li> <li>Appellate – Over all contests relating to the elections, returns, and qualifications of all elective municipal and barangay officials.</li> <li>All questions affecting elections, including the determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters. XPN: those involving the right to vote.</li> </ol> <p><b>Relevant principles on election</b></p> <ol style="list-style-type: none"> <li>Free and open party system shall be allowed to evolve according to the free choice of the people (effective recognition of multi-party system).</li> <li>Only registered political or sectoral parties may participate in the party list elections. The following cannot be registered: (i) Religious denominations and sects; (ii) Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to the Constitution; (iii) Those supported by any foreign government.</li> <li>Political or sectoral parties shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.</li> <li>Political or sectoral parties must present their platform or program of government.</li> <li>Election period shall be for 90d before the day of election up to 30d thereafter, except in special cases as fixed by the COMELEC.</li> </ol> <p>COA shall have the power to examine, audit, settle all accounts <b>EAS</b> pertaining to the revenue and receipts of, and expenditures or uses of funds and property, <b>RREU</b> owned or held in trust by, or pertaining to, <b>OHP</b> the Government, or any of its subdivisions, agencies, or instrumentalities, including <b>GOCCs with original charters</b>.</p> <ol style="list-style-type: none"> <li>Post audit – (i) Constitutional bodies and offices that enjoying <b>fiscal</b> autonomy; (ii) <b>Autonomous</b> SUCs; (iii) <b>Other</b> GOCCs and their subsidiaries [without original charter]; (iv) <b>non-governmental</b> entities <i>receiving</i> subsidy or equity from or through the government, <i>required</i> by law or the granting institution to submit to such audit as a condition of subsidy or equity <b>FANO</b></li> <li>Pre-audit – Audit conducted before the disbursement of public funds was completed to determine: (i) compliance with law; (ii) sufficiency of funds; (iii) reasonableness of expenditure; (iv) approval by proper authority, duly supported by authentic documents.</li> <li>No law shall be passed exempting any entity of the Government or its subsidiary, or any investment of public funds, from the jurisdiction of the COA.</li> <li>A claim against a government agency with respect to a contract entered into by it in its sovereign capacity shall be filed with the COA in relation to</li> </ol>	
---	--

<p>its power to settle all accounts pertaining to the disbursement of public funds belonging to the government.</p> <p>5. LGUs are also subject to COA jurisdiction.</p> <p>6. The privatization of an entity removes it from COA jurisdiction, unless it still receives subsidy or equity from or through the government, which is required by law to be subject to COA audit as condition for such subsidy or equity.</p> <p>It can promulgate its own rules of proceedings</p> <ol style="list-style-type: none"> <li>Define the scope of its audit and examination.</li> <li>Establish the techniques and methods therefor.</li> <li>Promulgate accounting and auditing rules and regulations, including those for the prevention (pre-audit) and disallowance (post-audit) of illegal, irregular, excessive, extravagant, unnecessary and unconscionable expenditure or uses of government funds.</li> </ol>
---

#### D. Composition and Qualifications of Members

CSC	COMELEC	
Chairman; 2 Commissioners	Chairman; 6 Commissioners	Chairman; 2 Commissioners
Natural-born citizen	Same	Same
At least 35y	Same	Same
Proven capacity for public administration	College degree holder, majority must be member of Ph Bar with ≥10y of practice	CPAs with ≥10y of audit experience, or members of Ph bar with ≥10y of practice <sup>7</sup>
Not a candidate in elections immediately preceding their appointment	Same	Same
Permanent appointment only by Pres., with consent of CApp	Same	Same
7y term without reappointment	Same	Same

#### E. Prohibited Offices and Interests

<p>Members of ConCom (during tenure)</p> <ol style="list-style-type: none"> <li>Hold any other office or employment. XPNs: if (i) allowed by law, and (ii) related to the primary functions of the current position in ex-officio capacity without additional compensation.</li> <li>Engage in the practice of any profession or in the active management or control of any business which in any way be affected by the functions of his office.</li> <li>Be financially interested in any contract, franchise or privilege granted by the Government, including GOCCs.</li> </ol> <p><i>**The CSC Chairman may be designated as BOD member of other government agencies which functions involve the rights and status, privileges, and other employment-related concerns of government employees. But not to GSIS and PHIC, which carries out other functions such as managing the contributions of members.</i></p>
--

#### F. Judicial Review of Final Orders, Resolutions, and Decisions

##### 1. Rendered in the Exercise of Quasi-Judicial Functions

<p>Decisions</p> <ol style="list-style-type: none"> <li>Each Commission shall decide by a majority vote of all its members (NOT only those who participated in the deliberations) any case or matter brought before it within 60d from the date of its submission for decision/resolution.</li> </ol> <p>Mode of judicial review <i>Final orders</i></p> <ol style="list-style-type: none"> <li>CSC – R43 to CA</li> </ol>
--

<sup>7</sup> At no time shall all members belong to the same profession.

2. COA/COMELEC – R64 to SC within 30d from notice. EO remedy proper only in case of GADALEJ of the Commission.

*Interlocutory orders – Petition for certiorari to SC via R65*

## 2. Rendered in the Exercise of Administrative Functions

Acts rendered in the exercise of the administrative functions of a Constitutional Commission (e.g., awarding a contract to a bidder) are not judicially reviewable.

1. These are in the exercise of the Commission's discretion/prerogatives, which are in the nature of policy and generally not reviewable by the courts.

XPNs:

1. Acts violative of laws may be challenged through ordinary civil action before regular courts, subject to rule on immunity from suit. – e.g., violation of procurement act, obligations and contracts.
2. Acts attended by GAD may be challenged via Petition for certiorari to SC under R65.

## THE CITIZEN IN RELATION TO THE STATE

### I. Citizenship

#### A. Who are Filipinos

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.
2. Those whose fathers or mothers are citizens of the Philippines.
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority.
4. Those who are naturalized in accordance with law.

*\*\* A passport proves that the country which issued it recognizes the person named therein as its national.*

#### B. Modes of Acquiring Citizenship

1. by birth (natural-born citizen)
2. by naturalization (naturalized citizen)

Natural-born citizens:

1. Those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.
2. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority are considered natural-born Filipinos, even if they have to elect Ph citizenship upon reach the age of majority. This requirement does not apply to illegitimate children born of Filipino mother and alien father. In the latter, the child is natural-born Filipino without having to elect Ph citizenship upon attaining age of majority.

*Public officers who must be natural born Filipinos under Const.*

1. President
2. Vice-President
3. Congress
4. Members of the Supreme Court or any lower collegiate court<sup>8</sup>
5. Members of the Constitutional Commissions
6. Ombudsman and his Deputies
7. Chairman and Members of the Commission on Human Rights

Naturalized citizens:

1. Those who have become Filipino citizens through naturalization, generally under Commonwealth Act No. 473 (Revised Naturalization Law).

2. To be naturalized, an applicant has to prove that he possesses all the qualifications and none of the disqualifications-provided by law to become a Filipino citizen.

#### Naturalization

1. Naturalization proceedings are matters of the highest public interest. Applicant has the burden to prove strict and complete compliance with the statutory requirements.
2. Naturalization laws are strictly construed in favor of the government.
3. Witnesses in naturalization proceedings must have personal knowledge of the facts that establish the applicant's qualifications for naturalization. General averments are insufficient. E.g., in one case, the SC denied naturalization of a person based on the testimony of his tutors.

## C. Loss and Re-Acquisition of Philippine Citizenship

Modes of reacquisition of Ph citizenship

1. by naturalization – governed by: (i) CA 473, as mode of initial acquisition of Ph citizenship, or (ii) CA 63, as mode of reacquisition of Ph citizenship.
2. by repatriation
3. by direct act of Congress

#### Repatriation

1. May be had under various statutes by those who lost their citizenship due to: (i) desertion of the armed forces; (ii) service in the armed forces of the allied forces in World War II; (iii) service in the Armed Forces of the United States at any other time; (iv) marriage of a Filipino woman to an alien; and (v) political and economic necessity.
2. Consists of: (i) taking of an oath of allegiance to the RP and (ii) registering said oath in the LCR of residence.
3. Repatriation results in the recovery of the original nationality, either natural-born or naturalized.
4. Under RA 8171, only the ff. are entitled to repatriation: (i) Filipino women who lost their Ph citizenship by marriage to aliens; (ii) Natural-born Filipinos, including their minor children who lost their Ph citizenship due to political or economic necessity.
5. Under RA 9225, citizens who lost their citizenship by naturalization as foreign citizen are deemed to have reacquired their Ph citizenship upon taking the oath of allegiance.

Ph citizens who marry aliens retain their citizenship. XPN: if by their act or omission, they are deemed, under the law, to have renounced it.

Effect of reacquisition of Ph citizenship

1. Does not automatically result in the wife gaining Ph nationality.
2. But unmarried minor children are deemed Ph citizens.

The act of a foreign parent petitioning a child to acquire foreign citizenship does not cause the child to become a naturalized foreign national. Such is not considered a naturalization process but mere presentation of evidence to establish the child's citizenship.

## D. Dual Citizenship and Dual Allegiance

Dual citizenship	Dual allegiance
Result of the concurrent application of the laws of two or more states where a person is simultaneously considered a citizen of those states.	A person simultaneously owes, by some positive act, loyalty to two or more states.

<sup>8</sup> By law, members of the lower courts or trial courts are likewise required to be natural-born Filipinos.

A child is born of Filipino mother or father (jus sanguinis) in US (jus soli), the child is considered a citizen of both Ph and US.	A Filipino who pledges allegiance to a foreign country.
Involuntary and legal	Voluntary and inimical to public and national interest, and shall be dealt with by law
Not DQ to run for public office. Filing of COC is deemed sufficient to renounce foreign citizenship.	DQ to run for public office.

## E. Foundlings

### 1. Foundling Recognition and Protection Act (RA 11767)

1. Foundling – (i) a deserted or abandoned child or infant with unknown facts of birth and parentage; (ii) those who have been duly registered as a foundling but have reached the age of majority without benefitting from adoption procedures upon the passage of the law.
2. A foundling found in the Ph and/or in Ph embassies, consulates and territories abroad is presumed a natural-born Ph citizen regardless of the status or circumstances of birth.
3. Ph citizenship of foundlings does not need perfection or any further act.
4. The presumption of natural-born status of a foundling may not be impugned in any proceeding unless substantial proof of foreign parentage is shown.
5. The natural-born status of a foundling shall not be affected by the fact: (i) that the birth certificate was simulated, (ii) that there was absence of a legal adoption process, (iii) that there was inaction or delay in reporting, documenting, or registering a foundling.

## II. Bill of Rights

### A. Private Acts and the Bill of Rights

The Bill of Rights is intended to protect the people from arbitrary government action. Its provisions cannot generally be invoked against the acts of private persons, unless such private persons acted under government authority.

### B. Due Process

No person shall be deprived of life, liberty, or property without due process of law.

1. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty, and property of individuals.
2. Right to life, includes the right security of person, as a guarantee of the quality of life.
3. Right to liberty, includes the the right (i) to **exist**, (ii) to be **free** from arbitrary personal restraint or servitude, and (iii) to enjoy a use his faculties to live and work, and enter into contracts and other acts necessary for such purpose. Limitations: (i) it cannot be exercise in a way injuries to the rights of others, (ii) may be subjected to restraints for the common welfare.

#### Right to property

1. The entire bundle of rights inhering in person's ownership of property.
2. It includes the right to **employment**, exercise of profession, trade or calling; and to a certain extent, legislative **franchise**.
3. However, legislative franchise remains to be a special privilege subject to alteration, amendment, repeal by Congress but it cannot be subject to collateral attack and arbitrary deprivation. In one case, the court held that there is deprivation of due process rights of the franchise holder who was served a notice to explain why its franchise should not be revoked by following day. Despite compliance, the franchise was still revoked the following day and the government agency immediately took over its operations and facilities.

4. Only rights which have completely and definitely accrued and settled are entitled protection under the due process clause. The livelihood of those in the informal sector whose income is not guaranteed is not covered.
5. Property interest must be based on clear legitimate claim of entitlement which is more than an abstract need, desire or unilateral expectation.
6. The right to bear firearms is not a property right in Ph jurisdiction. It is a mere statutory privilege.

Property rights	Human rights
Can be lost through prescription A mere reasonable or rational relation between the means employed by the law and its object or purpose, i.e., that the law is neither arbitrary nor discriminatory nor oppressive — would suffice to validate a law which restricts or impairs property rights	Imprescriptible A constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent.

### 1. Procedural and Substantive

#### (a) Procedural due process

1. Test: compliance with the requirements of notice and hearing, publication and filing.
2. Established procedures that the government must follow before it deprives a person of life, liberty, or property or otherwise intrudes into the private sphere.
3. If there is violation, the law remains valid but the governmental act that did not follow the procedure shall be invalid/ unconstitutional.
4. Both constitutional and statutory procedures mandatory.

#### (b) Substantive due process

1. Test: reasonableness of the government act, i.e., whether the government has sufficient justification for depriving a person of life, liberty, or property.
2. Pertains to the intrinsic validity of the law.
3. If there is violation, the law itself shall be invalid/ unconstitutional.
4. Basic elements – **LREA** (i) a **law** enacted within the general powers of the legislative; (ii) **reasonable** in its operation; (iii) **enforced** according to the regular methods of procedure prescribed; (iv) **applicable** alike to all the citizens of the state or to all of a class.

### 2. Void-for-Vagueness

#### Void-for-Vagueness

1. A law is vague if it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. **LCS MCI GMDA**
2. A law that is vague is unconstitutional because – (i) it violates due process for failing to afford people fair notice of what conduct to avoid, especially those targeted by it; (ii) gives the law enforcement officers arbitrary discretion as to its enforcement unlimited discretion.
3. A law is not impermissibly vague if – (i) it is mere couched in an imprecise language, but nonetheless specify a standard though defectively phrased. It may be saved by proper construction. (ii) it is apparently ambiguous yet fairly applicable to certain types of activities. No challenge may be mounted as against such laws whenever directed against such activities.

#### Facial challenge

1. Laws that are void-for-vagueness and overbroad (see II.F.3) may be the subject of facial challenge.



2. The constitutionality of a law may already be challenged even before violation and even by one not directly affected.
3. Traditionally applied only in free speech cases.
4. GR: criminal laws cannot be subject to facial challenge (in terrorem effect, mass acquittal). XPN: if it relates to exercise of free speech, religious and other fundamental freedom – e.g., Cyberlibel, ATA
5. c.f.: as applied challenge (prohibition against 3p standing). The issue of constitutionality may be raised only once there is already a violation of the right and only by the person whose right was violated (see: Requisites of judicial review).

### 3. Judicial and Administrative Due Process

#### (a) Judicial due process

##### *In general*

1. Requirements: (i) SM jurisdiction; (ii) personal jurisdiction; (iii) opportunity to be heard; (iv) judgement rendered only after trial. Applies also to criminal proceedings.

##### *In criminal proceedings*

1. Right to be heard may be waived, but waiver of such on one issue is not a blanket waiver of the same as to the other issues, particularly on the issue of his guilt or innocence.
2. In addition to general requirements: (i) the accused must have been proceeded against under the orderly processes of law; (ii) a judgment was awarded within the authority of the constitutional law.

#### (b) Administrative due process

1. Minimum requirements: Notice and hearing.
2. The essence of hearing is the opportunity to explain his side. It does not require trial type or adversarial proceedings. The submission of position papers, memoranda, reply is sufficient compliance.
3. Applies only in exercise of QJ functions, but not in quasi-legislative functions – (i) and act is quasi-legislative if it is general and prospective; (ii) and act is quasi-judicial if it is specific and immediate, pertains to past events.

#### *Cardinal Primary Requirements of Procedural Due Process in Administrative Proceedings (Ang Tibay) HeCSS BIM*

1. The right to a **hearing**, which includes the right to present one's case and submit evidence in support thereof.
2. The tribunal must **consider** the evidence presented.
3. The decision must have something to **support** itself.
4. The evidence must be **substantial**, i.e., such reasonable evidence as a reasonable mind accepts as adequate to support a conclusion.
5. The decision must be **based** on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
6. The tribunal or body or any of its judges must act on its own **independent** consideration of the law and facts of the controversy, and not simply accept the views of a subordinate.
7. The board or body should, in all controversial questions, render its decision in such **manner** that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

#### *Student disciplinary action*

1. Student must be informed in writing of nature and cause of accusation against him.
2. He shall have the right to answer the charges against him, with assistance of counsel if desired.

3. He must be informed of evidence against him.
4. He shall have the right to present evidence.
5. The Committee or investigating officer shall consider the evidence presented.

#### *Notes:*

1. *The right to discipline the student is covered by academic freedom. The right of students to choose their field of study is subject to the established academic and disciplinary standards laid down by the academic institution.*
2. *Right to confrontation of witness against him is not indispensable in student disciplinary actions.*
3. *The conduct of preliminary inquiry by a member of the SDT simply requires such members to participate in the conduct of the inquiry, even though they merely observed and did not directly propound questions. "Inquiry", in the ordinary sense, means to request information.*

### C. Equal Protection

No person shall be denied the equal protection of the laws.

1. All persons and things belonging to the same class shall be treated alike both as to privileged conferred and the liabilities imposed.
2. Universal application of law is not required. What is demanded is only an equality among equals.
3. It guarantees equality, not identity of rights.

#### 1. Requisites for Valid Classification

1. Substantial distinction which makes for real differences.
2. Germane to purpose.
3. Not limited to existing conditions.
4. Applies equally to all members of the same class. – e.g., the EO creating the PTC which singles out the Arroyo administration as subject of investigation is void for violating this requirement.

Whether the classification is reasonable is a factual question

1. Stare decisis is not applicable. The reasonableness of the classification is limited to the factual circumstances of each law.
2. Classification based on infancy, women, cultural minorities, citizenship is generally valid, if they are accorded a more favorable treatment.
3. Address two evils (i) against undue favor or individual legislation (ii) against unjust or illegal oppression.
4. A law may also be challenged on ground of its universal application to persons and things situated differently.
5. An erroneous performance of statutory duty as an apparent selective enforcement of the statute, could not be considered a violation of the equal protection clause, unless the element of intentional or purposeful discrimination is shown (not presumed). E.g., COA disallowed the CNA payments from EAO savings rather than from MOOE of DPWH but not of other agencies.

#### Facial challenge

1. Not allowed if based on [1], [2]
2. Allowed, if based on [2]. The law may be challenged if the change in existing conditions will result in discrimination. E.g., law imposing sugar tax on Ormoc Sugar is constitutional since it is the only sugar mill at the time. But should there be additional mills established in the future, discrimination will arise.

### 2. Standards of Judicial Review

#### a) Rational Basis Test

Applies to all other subjects not covered by the two tests.

1. Legitimate government interest
2. Reasonable connection between it and the methods used to achieve it.

### b) Strict Scrutiny test

Applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes.

1. Compelling governmental interest.
2. Least intrusive means.

**\*\*Burden is on the state to prove concurrence.**

#### Suspect classes

1. A class saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.  
**DHP**
2. Race, religion, alienage, national origin, and ancestry.
3. In the Ph jurisdiction, the strict scrutiny test is applied not only when the classification involves suspect class but also when it involves classes which is given special protection under the Constitution, e.g., labor sector.

### c) Intermediate Scrutiny Test

Applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy.

1. Important governmental interest.
2. Substantially related to that interest
3. The justification for the classification must be genuine and must not depend on broad generalizations.

### D. Arrests, Searches, and Seizures

The right of the people to be secure in their persons, houses, papers, and effects against **unreasonable** searches and seizures of whatever nature and for any purpose shall be inviolable.

1. Unreasonable searches and seizures are those which are illegal.
2. A personal right which can be invoked only by the person whose rights were violated.
3. It is available to juridical persons which can invoke the right through its duly authorized representative. Corporate officers without authority from the corporation has not standing to question the legality of search and seizure done against the corporation.
4. It cannot be invoked against private persons. Mere presence of the NBI does not make the search one conducted by government officers, unless (i) the officer performs the search himself, or (ii) the private individual is under his control and supervision.
5. The right extends, not only to Ph citizens but to all inhabitants of the country.

### 1. Requisites of a Valid Warrant

Requisites	Arrest Warrant	Search Warrant
Issued upon probable cause	Facts and circumstances which would lead a reasonably discreet and prudent man to believe (i) that an offense has been committed and (ii) the person sought to be arrested is probably guilty thereof.	Facts and circumstances which would lead a reasonably discreet and prudent man to believe that (i) an offense has been committed and (ii) that the objects sought is related to a crime, and (iii) it may be found in a place sought to be searched.
	Question of fact. The quantum of evidence is probability (not absolute certainty or clear and convincing evidence), i.e., more than bare suspicion but less than evidence that would justify	

	conviction based on best evidence that obtainable under the circumstances.	
Determined personally by the judge	Personal evaluation of the report with supporting documents prepared by the prosecutor who performed a prior investigation and to which the judge can rely.	The conduct of <b>searching questions and answers</b> in writing and under oath. Reliance on the affidavits of complainant and witnesses is not sufficient since no prior investigation was conducted by the prosecutor.
Examination under oath or affirmation of the complainant and the witnesses he may produce	Must be based on personal knowledge, such that the affiant can be held liable for perjury for false statement. The examination of complainant alone, or <b>witness alone</b> , is sufficient, provided that probable cause is established.	
Particular description	Sufficient if it allows the executing officers to locate the place and readily identify the person to be arrested, or the things to be seized with reasonable certainty, and leaves them no discretion. The standard of particular description is what appears in the face of the warrant, excluding the knowledge of police officers.	

### a) Arrest Warrant

Arrest is taking of the person into the custody of law enforcement officers so that he may be bound to answer for the commission of an offense.

1. May be in the form of: (i) Actual restraint of the person to be arrested, or (ii) Voluntary submission of the person to the one making the arrest.
2. But it is not required that there be: (i) Application of actual force, (ii) manual touching of the body, (iii) physical restraint, (iv) formal declaration of arrest.
3. What is controlling is the: (i) Intent on the part of the person making the arrest to make such arrest, or (ii) intent of the part of the person voluntarily submitting to submit himself, under the impression that such submission is necessary.

### b) Search Warrant

SW proceedings are *sui generis*

1. Not criminal, hence, private parties may participate and it need not be under the direction and control of the prosecutor.
2. Not civil since it does not involve adjudication of rights.
3. Not administrative since the quantum of evidence is only PC, not substantial evidence.

#### Searching questions and answers

1. Must be probing and exhaustive, not merely routinary, general, peripheral, perfunctory or pro forma.
2. Examination of applicant alone may be sufficient (previous ruling).
3. Examination of witness alone may be sufficient, if only the witnesses are available, provided PC is established.

#### Place to be searched

1. Minor inaccuracy in the address indicated in the search warrant may be supplied by the description or location map attached to the same, take together.

#### Things to be seized **SOM**

1. The subject of the crime
2. The object or fruit of the crime
3. Used or intended to be used as means of committing the crime.

**\*\*Minute or technical description is not required.**



## 2. Warrantless Arrests and Detention

(a) In flagrante delicto warrantless arrest; (b) Hot pursuit warrantless arrest; (c) Pursuit of a person who has escaped

(a) In flagrante delicto warrantless arrest

1. Requisites: (i) the person to be arrested executed an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; (ii) such overt act is done in the presence or within the view of the arresting officer.
2. In continuing crimes, a person may be arrested even if he is longer in the process of performing acts constitutive of the crime, e.g., rebellion.
3. Physical presence at the scene of the crime is not required for as long as it is done within the sensory perceptions of the arresting office – view, hearing, sight.
4. But mere physical presence at the scene of the crime without awareness that it is taking place is not sufficient.
5. In case of conduct of rally without required permit, only the **leader or organizer** can be arrested without a warrant, but those who merely participated in or attended the rally, if peaceful, cannot be arrested.

(b) Hot pursuit warrantless arrest

1. Requisites: (i) An offense has just been committed. (ii) The arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
2. Durational immediacy is material, i.e., the lapse of time between when the offense appears to have been committed and when the hot pursuit was completed. The factual circumstances from the commission of the crime to the actual arrest must be connected with unbroken chain. E.g., When the poseur-buyer left the scene of the crime, the chain of events was already broken, and the arrest done a few hours later may no longer be considered hot pursuit arrest.
3. PC is essential since the offense is not necessarily in the presence of or within the view of the arresting officer (he has no personal knowledge)

(c) Pursuit of a person who has escaped

1. An escapee or a Person Deprived of Liberty (PDL) who has escaped detention

**\*\*The arrest may be done by a public officer or a private person.**

Other instances:

1. Arrest after escape or rescue R113 S13 (non-prisoner)
2. A person out on bail who attempts to leave the country without permission.
3. Bondsman's arrest.

Questioning illegality of arrest

1. Must be raised before entering plea in a MTQ. Otherwise, deemed waived. However, the waiver does not extent to the waiver of the inadmissibility of the evidence seized during the illegal arrest.
2. Defect in validity of arrest will not negate or nullify a valid judgment of conviction rendered on the basis of sufficient complaint after a trial free from error.

## 3. Warrantless Searches

PIMIVES CoCu

1. Warrantless search **incidental** to a lawful arrest
2. Seizure of evidence in **plain view**

3. Search of a **moving** vehicle
4. **Consented** warrantless search
5. **Customs** search
6. **Stop** and frisk (Terry searches)
7. **Exigent** and emergency circumstances
8. Search of **vessels** and aircraft while on port
9. **Inspection** of buildings and other premises for the enforcement of fire, sanitary and building **FSB** regulations

*Warrantless search incidental to a lawful arrest*

1. Scope: (i) persona of arrestee; (ii) those within his vicinity and reach.
2. The search of an accused arrested within a few meters from house cannot extend to such house since it is no longer within his reach. Also, if he was arrested in his living room, the search cannot extend to his kitchen 5m away.
3. What may be seized: (i) Dangerous weapons, (ii) Anything which may have been used or constitute proof in the commission of the offense.
4. The apprehension of accused of the violation of a traffic ordinance where only fine is the imposable penalty does not amount to an arrest, so is roadside questioning for traffic violation.<sup>9</sup> Search made incident thereto are invalid since no valid warrantless arrest preceded the same.
5. Failure to question that legality of arrest did not render it valid such as to likewise validate the ensuing search. The effect is that the accused may no longer question the invalidity of the arrest.

*Seizure of evidence in plain view*

1. Requisites: **PAWI** – (i) prior justification for an initial intrusion or is in a position from which he can view a particular area, (ii) it is readily apparent that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure, (iii) it was discovered inadvertently by police officers who have the right to be where they are, (iv) seizure of evidence in plain view is justified without further search.
2. An object is in plain view if it is plainly exposed to sight.
3. Objects inside a closed package are not in plain view. XPNs: (i) If the package proclaims its contents, by its distinctive configuration, transparency, giving off a particular or distinctive scent, or its contents are otherwise obvious to an observer; (ii) if the package is such that an experienced observer could infer from its appearance it contains the prohibited article.
4. If the search is based on the execution of the search warrant which authorizes the officer to peer into cabinets, checking closed packages is allowed. Otherwise (non-intrusive search), it is not.
5. The seizure of firearms on ground that the same was unlicensed cannot be justified by the plain view doctrine. It is not readily apparent to be a contraband since the absence of license must be proven first.

*Search of a moving vehicle*

1. If in checkpoints, there is only brief detention of the vehicle, and subject only to visual non-intrusive search.
2. If there is PC to believe that an offense was committed, and an instrument related to such offense can be found in the vehicle, the latter may be subject to a more intrusive search.
3. Unverified anonymous tip received through a hotline text message without anything more is not sufficient to constitute PC.

<sup>9</sup> There is mere momentary detention, and the expectation is that after the issuance of ticket, the person is free to go.

#### Consented warrantless search

1. The consent must be unequivocal, specific, and intelligently given, uncontaminated by force, duress or coercion **USIU**
2. Unequivocal means that the consent cannot be interpreted any other way, e.g., by raising one's hands when asked by police officers concerning a person educated on the language used.
3. Consent may not be presumed by the silence or lack of response of the person to be searched. – (i) it is a question of fact, to be proven by clear and convincing evidence; (ii) State has the burden.
4. Airport searches are valid – (i) consent is based on the contract of carriage; (ii) however, to be valid, it must be routine, applicable to all and not random or targeted.

#### Customs search

1. Provided in TCC.
2. Covers only warehouse or enclosures commercial in character, but not residential places.
3. Goods that may be seized are only dutiable goods – imported, or local goods to be exported.

#### Stop and frisk (Terry searches)

1. The act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband.
2. Conducted to prevent the occurrence of a crime, and a measure to ensure safety and self-preservation of the police officer.
3. There must exist a genuine reason to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him, in light of the police officer's experience and surrounding conditions.
4. Under Ph concept, PC is required. Further, the search is not limited to dangerous weapons but also to contrabands, e.g., illegal drugs.
5. Stop (to distinguish from arrest) and frisk (search limited to body and outer clothing).
6. c.f.: stop and search. The search may extend to premises within the control of the person search, e.g., bags carried by him.

Stop and frisk	Incidental search
Conducted to prevent the occurrence of a crime, i.e., no crime was committed yet at the time of search	Require that a crime be already committed in flagrante delicto in the presence or within the view of the arresting officer. The commission of the crime and the valid warrantless arrest, precedes the search
Should be used dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure a search warrant	The search must be conducted within the vicinity and within reach by the person arrested is done to ensure that there are no weapons, as well as to preserve the evidence

#### Inspection of buildings and other premises for the enforcement of fire, sanitary and building **FSB** regulations

1. Administrative or visual inspections which does not really involve a search or a seizure.
2. SC Rules on Administrative Searches in relation to Intellectual Property Code violations – seizure is allowed.
3. 2019 Rules on Inspection Orders under the Philippine Competition Act – allows only copying of documents, but without the actual seizure of the original documents.

#### Workplace search

1. The search will be "justified at its inception" when there are reasonable grounds for suspecting (i) that the search will turn up evidence that the employee is guilty of work-related misconduct, or (ii) that the search is necessary for a non-

investigatory work-related purpose such as to retrieve a needed file.

2. E.g., search of a CSC director's computer upon the allegation that the latter was moonlighting or accepting cases before the CSC.

#### PC requirement [generally, 1-7]

1. PC must be satisfied before a warrantless search and seizure can be lawfully conducted.
2. PC in warrantless searches pertain to reasonable ground of suspicion or belief that a crime has been committed or is about to be committed, and supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.
3. EJ determination carried out by the law enforcement officer, which is subject to validation in a judicial proceeding.

#### 4. Administrative Arrests

GR: only a judge can issue a SW or WA for the purpose of prosecution of an offense.

XPN: an administrative officer can issue a warrant if intended to execute a final order. E.g., order of arrest issued by the immigration commissioner for the deportation of undesirable aliens pursuant to a F&E order.

#### 5. Exclusionary Rule

Evidence obtained in violation of the person's right against unreasonable searches and seizures shall not be admissible in any proceeding for any purpose.

1. Fruit of the poisonous tree – extends the inadmissibility of evidence to derivative or secondary evidence.

#### Invalid warrants

1. General warrants – those which does not describe with particularity the place to be search or the persons and things to be seized.
2. Scattershot warrants – those issued for more than 1 offense or an offense that is not clear. **Each warrant must be issued in connection with one particular offense, even if the single act constitutes violation of two provisions of the same law.**

#### E. Privacy of Communications and Correspondence

The privacy of communication and correspondence shall be inviolable.

1. Right to privacy is a constitutional right. Although there is no specific provision pertaining to it, specific provisions of the constitution create zones of privacy.
2. 3 categories of right to privacy: (i) locational: in physical spaces, (ii) informational: to withhold personal information, (iii) decisional: independence in making certain important decisions.

#### 1. Private and Public Communications

##### Reasonable expectation of privacy

1. Subjective test – (i) the person claiming the right to privacy must show by his conduct that he is expecting privacy; (ii) in online context, the adoption of proper security settings.
2. Objective test – the expectation must be recognized by society as reasonable.

#### 2. When Intrusion is Allowed

(a) Upon lawful order of the court

(b) When public safety or order requires, as prescribed by law

1. Even when the object is apparently to maintain public safety or order, it cannot be undertaken without an implementing law.
2. Order by the Chief of Police to intercept and open mails addressed and coming from a suspected member of a subversive group, without any law.
3. Act of the warden of opening and reading letters of the convicted felon pursuant to the rules of discipline of the Bureau of Prisons (not law). Prisoners' right to privacy is limited. Their letters may be subject to inspection, unless there is reasonable expectation of privacy indicated by markings of confidential, or when the letter was intended for his lawyer.

#### *Bank Secrecy Law*

1. Secrecy of bank deposit is statutory right.
2. Bank inquiry order is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property.

#### *Anti-wiretapping Act*

1. Protects only private communications.
2. Even a party to the communication may violate the law if the recording was made without the authorization of all the other parties.
3. Extension telephone line are not covered, as this is not one of the instruments that may be used to overhear the communication under the law.
4. The unauthorized recording communication/shouting between a police and a person in the police station while there are people around does not violate the wiretapping act. Based on their conduct, the parties did not intend their communication to be private.

(c) With respect to public figures, and the information sought to be elicited from him or to be published about him constitute matters of a public character.

### 3. Exclusionary Rule

Evidence obtained in violation of the people's right to privacy is not admissible in evidence.

1. EJ admission contained in a recorded conversation is inadmissible (even if recorded by private person since this is expressly prohibited by the Anti-wiretapping Act)
2. The right can be invoked only against the government and not against private individuals (express abandonment of *Zulueta v. Pp*) – *Cadajas v. Pp*.
3. In one case, hotel owners and operators are able to invoke the violation of the right to privacy of their customers to strike down an ordinance which prohibits the conduct of certain activities in such hotels (standing *jus tertii*).

### F. Freedom of Speech and Expression

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. **SEP AP**

1. These rights enjoy primacy in a democratic order. They are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. Without these rights, all other rights will be meaningless and unprotected.
2. While rights are not identical, they are inseparable.
3. All manners of expression are covered – utterance, conduct, in/action, even the right to be silent. Symbolic speeches, e.g., salute, flag-burning.

*May be invoked only against the government "no law"*

1. But it covers other governmental acts.
2. Acts of a mayor refusing to issue permit for the conduct of public meeting.
3. Resolution of COMELEC prohibiting exit surveys.
4. SOJ pronouncements and NTC regulations prohibiting media outlets from playing Garci tapes under the pain of license cancellation.

#### *Theory of deliberative democracy*

1. Political speech shall be protected. Those that encourages dialogue and airs out grievances. Truth is not a requirement, so long as the person believes in GF to the truth of the statement.
2. Criticisms are protected speech if directed to (i) public officers in the performance of public functions; (ii) public figures with respect to matters of public concern; (iii) private citizens involved in public issues, e.g., government consultant.
3. With respect to judicial conduct, the criticism must not obstruct, interfere, or influence the court in deciding the case. Hence, distinction must be made between terminated and pending cases. A case is considered terminated for this purpose if the judge may no longer be influenced in his decision, even if the same is still pending with a higher court.

#### *Doctrine of privileged communications*

1. Privileged communications may be absolute or qualified.
2. Absolute privilege holds even if the act or utterance is done with malice – e.g., parliamentary immunity for speech/debate by members of the Congress before it or any of its committee in the performance of legislative functions. They cannot be held liable elsewhere.
3. Qualified privilege holds only if the act or utterance is done in GF – (i) Private communication made by one to another in the performance of some legal, moral, social duty;<sup>10</sup> (ii) Fair and true report made without comments or remarks on any official action which is not confidential. These are provided for under RPC. However, the list is not exhaustive as SC also recognized other qualified privileged communications, e.g., editorials as fair commentaries on public affairs.

### 1. Prior Restraint and Subsequent Punishment

Forms of restraint to cognate freedoms

#### (a) Prior restraint

1. Official government restrictions on the press or other forms of expression **in advance** of actual publication or dissemination.
2. All prior restraint is presumed invalid. The burden to show validity of the regulation is on the government actor.
3. E.g., (i) censorship: banning a material from publication or dissemination; (ii) requiring license or permits for publication; (iii) business closure.
4. Prohibition of showing of certain shows upon review by MTRCB may constitute prior restraint. However, the regulation may be justified considering that TV are radio station may be subject to stricter regulations as compared to print media.

#### (b) Subsequent punishment

<sup>10</sup> The communication need not be done in secrecy so long as the same was communicated to the officer who has the duty to

receive the communication. It may even be done a public instrument.

1. Restrictions on the press or other forms of expression after the utterance or performance of the expressive conduct by imposition of punishment.
2. E.g., Libel suit, Prosecution for sedition, Contempt proceedings,

## 2. Content-Based and Content-Neutral Regulations

### (a) Content-based regulation

1. One which regulates the subject matter of speech itself.
2. Subject to Clear and Present Danger Test (see below)
3. CPDT will apply if the content-based regulation is penal in character. E.g., in a COMELEC resolution prohibiting the SWS to publish statistical data involving elective candidates, the O'brien test was applied since the regulation is not penal in character. In this case, the SC found the regulation invalid since: (i) it is directly related to the oppression of free speech, (ii) more than necessary to further an important government objective.

### (b) Content-neutral regulation

1. One which regulates only the incidents of speech: time, manner, place, without regard to the subject of speech or speaker, and under well-defined standards.
2. Subject to the Intermediate Test or O'brien approach (see below).
3. Only minimum test of rationality is required, e.g., regulation on ground that the rally will block the traffic is valid.

#### BP 880 (Public Assembly Act of 1985)

1. Content-neutral regulation. It merely regulates the TPM of the conduct of public assemblies.
2. Requirement: prior written permit from City Mayor if the rally is to be conducted in a public place. Permit is not required if to be conducted in: (i) Freedom Parks; (ii) private property, subject to owner's consent; (iii) SUCs, subject to regulations of the school. Political meetings or rallies held during any election campaign are not covered.
3. The permit shall be granted unless there is **clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.** OCSMH
4. Maximum tolerance must be observed (same with calibrated preemptive response), i.e., the highest degree of restraint that the military, police, and other peace keeping authorities shall observe during a public assembly or its dispersal – (i) first instance of disorder: organizers must be notified and ordered to stop the same; (ii) second: warning; (iii) third: dispersal. Applies only if the rally was done with permit. Otherwise, the assembly may be dispersed even at the first instance of disorder.
5. Under the law, police officers cannot carry firearms.
6. In case of conduct of rally without permit. Only the leaders or organizers may be arrested without warrant, but not those who merely participated or attended the rally.

## 3. Facial Challenges and Overbreadth Doctrine

### Overbreadth doctrine

1. Governmental purpose to regulate an act validly subject to regulation cannot be made through means which sweep unnecessarily and invade areas of freedom.
2. The law is clear but it is so broad that it already encroaches on protected freedoms.

### Facial challenge

1. Laws that are void-for-vagueness and overbroad may be the subject of facial challenge.
2. The constitutionality of a law may already be challenged even before violation and even by one not directly affected.
3. Traditionally applied only in free speech cases.
4. GR: criminal laws cannot be subject to facial challenge (in terrorem effect, mass acquittal). XPN: if it relates to exercise of free speech, religious and other fundamental freedom – e.g., Cyberlibel, ATA
5. c.f.: as applied challenge (prohibition against 3p standing). The issue of constitutionality may be raised only once there is already a violation of the right and only by the person whose right was violated (see: Requisites of judicial review).

## 4. Tests to Determine the Validity of Governmental Regulation

### (a) Clear and Present Danger Test

1. The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.
2. To justify the oppression of free speech, the evil sought to be prevented must be extremely serious (degree) and its degree of imminence extremely high (proximity).

### (b) Intermediate Test or O'brien approach

1. the regulation must be within the constitutional power of the government.
2. It must further an important governmental objective.
3. It must be unrelated to suppression of free speech.
4. The incidental suppression must not be greater than what is needed to achieve the governmental objective.

(c) Dangerous tendency Test: permits limitations on speech once a **rational connection** has been established between the speech restrained and the danger contemplated.

### (d) Balancing of Interests Test

1. Requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.
2. The crucial question is: how much deference should be given to the legislative judgment?
3. Has been applied by the Court in contempt cases.

## 5. State Regulation of Different Types of Mass Media

All forms of communication are entitled to broad protection of the freedom of expression clause.

1. However, the freedom of TV and radio broadcasting is lesser in scope than that accorded to newspaper and print media – (i) Need for licensing and allocation of airwaves; (ii) pervasive presence in lives of all citizens, not only in public but in their private homes; (iii) non-discriminatory as selectivity cannot be implemented with regard to material available to children.
2. Motion pictures are important both as a medium for the communication of Ideas and the expression of the artistic impulse. The "importance of motion pictures as an organ of public opinion lessened by the fact that they are designed to entertain as well as to inform.

## 6. Commercial Speech

Speech that does "no more than propose a commercial transaction.



1. Commercial speeches are also protected speech.
2. However, they may be subject to greater regulation as compared to political speeches.

## 7. Unprotected Speech

### (a) Obscenity

1. The State, as *parens patriae*, is mandated to protect the public from obscene, immoral, and indecent materials must justify the regulation or limitation.
2. Question of fact
3. Standards: (i) if it appeals to the prurient interests of the average person; (ii) the work depicts or describes, in a **patently offensive** way, sexual conduct specifically defined by the applicable law; (iii) the work lacks serious literary, artistic, political, or scientific value.

### (b) Defamatory speech

1. One which ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance which tends to dishonor or to discredit or put him in contempt, or which tends to blacken the memory of one who is dead.
2. Elements – (i) Publication, i.e., communication to 3p; (ii) Identifiability, from POV of 3p; (iii) Malice or ill will.

### Malice

1. Every defamatory imputation is presumed malicious, even if true if no good intention and justifiable motive for making it is shown.
2. 2 kinds of malice: (i) in law, and (ii) in fact.
3. If the SM of the utterance is a private person, malice (in law) is presumed.
4. Malice in fact must be proved in case of (QPC): (i) private communication made by any person to another in the performance of any legal, moral or security duty; (ii) A fair and true report, made in GF, without any comments or remarks, of any official proceedings which are not confidential, or of any statement, report or speech delivered therein, or of any other act performed by public officers in the exercise of their functions;<sup>11</sup> (iii) if the SM of the utterance a public figure, or private individual involved in private interest.
5. Truth is generally not a defense in libel cases. XPN: in cases involving public figure, or private individual involved in private interest.

\*\*\*"fighting words" are also unprotected.

## G. Freedom of Religion

### 1. Non-Establishment and Free Exercise Clauses

#### Constitutional policies on religion

1. Separation of church and state.
2. Exemption from taxation of real properties actually, directly and exclusively used for religious purposes.
3. Public money shall not be applied for the use, benefit or support of any religious organization or person, except those assigned to a penal institution, government orphanage or leprosarium.
4. Teaching of religion to children in schools may be allowed upon consent of parents or guardians, provided there is no additional cost to the government.

#### (a) Non-Establishment Clause

1. No law shall be made respecting an establishment of religion.
2. What non-establishment calls for is government neutrality in religious matters – (i) Government must not prefer one religion over another, or religion over irreligion; (ii) Government funds must not be applied to religious purposes; (iii) Government action must not aid religion; (iv) Government action must not result in excessive entanglement with religion.
3. In determining the morality of a conduct, secular standards apply. The use of religious standards will violate the non-establishment clause.
4. The use of government funds for an activity with incidental religious color does not violate the non-establishment clause if there is a valid secular purpose. E.g., (i) the printing of post stamps commemorating the INC anniversary has a valid secular purpose of promoting tourism; (ii) use of LGU funds for acquisition of wooden image of its patron saint for use in fiesta celebration.
5. Lemon test: the use of public funds or property with religious color does not violate the Non-Establishment Clause if – (i) the activity have some secular legislative purpose; (ii) it neither advances nor inhibits religion; (iii) it must not cause excessive entanglement with religion.

#### (b) Free Exercise Clause

1. No law shall be made prohibiting the free exercise of religion.
2. The taxation of the sale of religious articles is considered abridgment of the freedom. Also, requiring a permit before the persons can engage in religious activities.
3. The mere fact that a TV show involves religious freedom does not automatically put it beyond review by the MTRB. However, its prohibition on the ground that it criticizes the beliefs of the Catholic was not proper. It violates both the non-establishment and free exercise clauses.
4. Religious freedom does not extend only the traditional forms of exercise but also to the bizarre – e.g., non-salute of the flag, non-singing of the national anthem, non-recitation of patriotic pledge.

**\*\* The two religion clauses are intended to deprive the government the power to reward or punish religious belief to influence religion.**

State cannot meddle in ecclesiastical or purely religious affairs. Hence, courts are barred from taking cognizance such matters.

1. Ecclesiastical affair Involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship, and governance of the congregation. – e.g., excommunication, ordinations, administration of sacraments.
2. The existence of ER-EE relationship between a religious organization and its ministers is not an ecclesiastical affair but a matter that is secular in nature. The court may pass upon the issue for purposes of determining mandatory coverage with the SSS Law.

## 2. Benevolent Neutrality and Conscientious Objector

### (a) Benevolent Neutrality

1. While a conduct may be immoral based on secular standards, there is further needed to determine whether the same can be accommodated based on benevolent neutrality.

<sup>11</sup> A citizen who accepts public employment "must accept certain limitations on his or her freedom."

2. Exemption of an EE from the union security clause on ground that his religion prohibits joining such organizations is merely permissive based on public policy to maintain peace among members of the religion.
3. Courts have the power to grant accommodations.
4. A law offensive to religious freedom should not be invalidated, but an exemption from its application may be carved out to accommodate religious exercise where it is justified.

Establishment	Accommodation
Entails a positive action on the part of the State	Passive
The State becomes involved through the use of government resources with the primary intention of setting up a state religion	The State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion

(b) Conscientious Objector

1. The law cannot also compel a person to perform an act that is against his conscience.
2. E.g., under RH law, the conscientious objector cannot be compelled to make referrals to other practitioners or recommend contraception when to do so will contradict their religious beliefs.

### 3. Tests to Determine the Validity of Governmental Regulation

#### a) Clear and Present Danger

Applied if the religious freedom is exercised with other cognate rights.

While people have absolute freedom to adopt their own religion in accordance with their belief, external manifestations of the freedom of religion though certain overt acts may be subject to state regulation for the general welfare of the public, if there is a showing of a clear and present danger which the state has the right to prevent.

#### b) Compelling State Interest

Applied if the religious freedom is exercised solely, viewed from the context of benevolent neutrality.

1. Tests: (i) Has the statute created a burden on the free exercise clause? (ii) Is there is sufficient compelling state interest that would justify the burden on religious freedom?

Elements:

1. Law or government practice inhibits or burdens the free exercise of religion.
2. Sincerity of religious belief and centrality of faith.
3. Burden shifts to government for demonstration that the law or practice justifies a secular objective. The compelling state interest must be specific, and not merely a general invocation of a constitutional principle as the protection of the sanctity of marriage, or the administration of justice.
4. Law or practice is the least restrictive means of achieving that objective.

#### 3 Situations of Accommodation Applying CSI Test

1. Mandatory accommodation: an exemption from a law of general application is possible even if anchored directly on an invocation of the Free Exercise clause alone, rather than a legislative exemption.
2. Permissive accommodation or legislative accommodations: the state may accommodate religious interests only by way of statute.
3. Accommodation is prohibited.

## H. Liberty of Abode and Right to Travel

### 1. Scope and Limitations

1. Liberty of abode and of changing the same – the establishment of residence.

2. Right to travel – (i) the right to move freely within Ph; (ii) right to leave Ph; (iii) but not the right to return to one's own country [covered by IL]

#### Limitations to liberty of abode and of changing the same

1. Limits prescribed by law – e.g., (i) zoning ordinance; (ii) provision in UDHA authorizing the summary eviction and demolition of houses (without court order) if occupying danger areas, or areas where government infrastructure projects with available funding are about to be implemented; (iii) law requiring the segregation of lepers.
2. Lawful order of the court – e.g., (i) court judgment imposing destierro, ordering ejectment; (ii) but a military commander cannot force residents to transfer abode to prevent being attacked by rebel groups without court order; (iii) deportation of women to provinces ordered by the City Mayor to curb prostitution in Manila is not valid without court order.

#### Limitations to right to travel

1. Interest of national security, public safety, or public health, as may be provided by law – (i) administrative agencies may impair the right to travel only if they are so authorized by law; (ii) but a mere DOJ Circular allowing issuance of HDO WLO without a law authorizing the same is not sufficient; (iii) the grant must be specific.
2. Inherent – (i) power of the trial courts to prohibit persons charged with a crime to leave the country [right to bail]; (ii) power of the legislative department to conduct a congressional inquiry in aid of legislation; (iii) rule prescribing the requirement of Travel Authority before government personnel can travel.

#### Specific laws impairing right to travel

1. Human Security Act/ATA – accused may be prevented from leaving his house.
2. Ph Passport Act – in case of disapproval or cancellation of passport.
3. Migrant Worker's Act – on ban of OFWs.
4. Anti-VAWC – on the issuance of protection orders.
5. Inter-counter Adoption Act – the adopter may be prevented from leaving Ph.
6. Anti-Trafficking in Persons Act – authorizes the offloading of persons with suspicious documents.

## 2. Watch-List and Hold Departure Orders

#### HDOs

1. Inherent in SB's power to preserve and maintain the effectiveness of its jurisdiction over the case and the person of the accused.
2. Holding an accused within the reach of the courts by preventing his departure from Ph must be considered a valid restriction on his right to travel so that he may be dealt with in accordance with law.

#### Precautionary HDO

1. Order of Court, ordering BI to prevent any attempt by a person suspected of a crime to depart from Ph.
2. Issued ex parte in cases involving: (i) crimes with punishable with imprisonment ≥6y1d, or (ii) foreigner offenders, regardless of the imposable penalty.
3. May be filed by the prosecutor with the RTC where the offense was allegedly committed. If unknown and for compelling reasons, may be filed with any RTC within the judicial region where the crime was committed.
4. Conditions for issuance – (i) PC as determined by judge; (ii) high probability that the respondent will depart from Ph to evade arrest and prosecution.

- PHDO is valid until lifted by issuing court as may be warranted by PI.

#### DOJ Circular No. 41

- DOJ Circular No. 41 authorizing the SOJ to issue Hold Departure Orders (HDO), Watch List Orders (WLO), or Allow Departure Orders (ALO) is without legal basis, as the SOJ was not authorized by any law to make such issuances.
- Under DOJ Circular No. 41, WLO may be issued against (i) accused in criminal cases, (ii) respondent in cases pending before DOJ or prosecution offices, or (iii) any person, upon request of a government agency.
- Under the same HDO may be issued against (i) accused in criminal cases, (ii) an alien who is a defendant, respondent, or witness in pending case before courts or administrative agencies, or (iii) any person upon request of Heads of Departments, ConCom, Congress or SC.

### I. Right to Information

The right of the people to information on matters of public concern shall be recognized. Access to official records shall be afforded the citizen, subject to such limitations as may be provided by law.

#### 1. Scope and Limitations

Scope: (a) Information on matters of public concern shall be recognized; (b) Access to official records.

*\*\*With II(28) FPD TIPI, this can be the basis to compel the government to disclose information.*

##### (a) Information on matters of public concern

- Information which citizens has the right to know either because: (i) it affects their rights, or (ii) it naturally arouses the interest of ordinary individual.
- There must be legitimate governmental or secular objective in the information.
- E.g., health of Pres., CS eligibility of government officers, BJE composition even to those not residing there, MTRCB voting slips, GSIS transactions even to non-members since they manage public funds, regularity of real estate transactions entered in RD, recovery of the Marcoses alleged ill-gotten wealth, identity of party-list nominees.
- Government contracts entered in proprietary capacity are covered by the right, not privileged.

##### (b) Access to official records

- The citizens may demand access to official records, but they cannot demand lists, summaries, abstracts.
- Custodians cannot outright deny access (only Congress) to official records, but they may regulate the time, manner of place of inspection (i) to prevent damage to the records, (ii) prevent interference with official duties, (iii) to preserve the rights of others who may equally exercise the right.

Requisites to compel disclosure of information by writ of mandamus

- The information sought must be in relation to matters of public concern or public interest.
- It must not be exempt by law from the operation of the constitutional guarantee.

*\*\* If the right is denied, the government has the burden of proving that the requisites are not present.*

### Limitations

- Manner of access to official records may be regulated by law. – Congress may deny access, but only by law.
- Right is available only to citizens – (i) by express provision, (ii) even without the provision, since the intent is to allow the people to participate in decision-making process, which only Filipinos can participate in.
- State secrets/national security intelligence information.
- Trade secrets
- Bank transactions
- Law enforcement activities prior to actual detention arrest and prosecution, to prevent undue interference.
- Other confidential information – (i) closed-door cabinet meetings, (ii) internal SC deliberations, (iii) executive sessions of congress, (iv) **diplomatic negotiations**, (v) court records.
- Interdepartmental courtesy – the highest members of each department are not subject to the compulsory process of others.

#### Confidential court records

- Court actions on each case may be disclosed only to party and counsel. XPNs: (i) cases involving bar matters (disbarment); (ii) administrative cases involving judges; (iii) criminal cases where the penalty imposed is RP to death.
- Internal deliberation in matters pending before it, including staff. XPN: oral arguments before SC which are public in character.
- Court records that are predecisional and deliberative. Test: whether the disclosure would discourage candid discussion.
- Confidential information obtained by court EEs, Justices in the course of performance of official functions.
- Records of pending cases to prevent any influence on its outcome, unless made available to public (e.g., press release).

*\*\* The confidential privilege belongs to the SC as an institution. It may waive the same only as an institution (en banc).*

#### Privileged matters

- In case of privileged matters as diplomatic negotiations, there is presumptive privilege against disclosure.
- To overcome the privilege, the person demanding disclosure must show sufficient public interest.

### J. Eminent Domain

#### 1. Concept

Inherent power of the state to take private property (real or personal) for public use upon payment of just compensation.

- Exercised by legislature but may be delegated to local governments, administrative agencies, even public utilities.
- IT is exercised generally by the filing of expropriation proceedings. However, its non-filing with not necessarily entitle the owner to the return of his property. His right is limited to demanding payment of just compensation. XPN: A property owner is entitled to recover his property if: (i) no payment of JC was made 5y after the finality of order fixing JC, and (ii) there is express or implied abandonment of the public use.
- State may compel the public utilities to allow access to its facilities in exercise of ED. There is taking, even if possession to the facilities remain with the public utility.

#### Taking

- the expropriator must **enter** a private property.

- the entrance into private property must be for more than a momentary **period**.
- the entry into the property should be under warrant or **color** of legal authority.
- the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected.
- the utilization of the property for public use must be in such a way as to **oust** the owner and deprive him of all beneficial enjoyment of the property.

2 Stages:

- Determination of authority and public use
- Determination of the amount of just compensation.

## 2. Public Use

- No longer limited to the traditional notion of use by public; (i) Whatever is beneficially employed for the general welfare; (iii) Public advantage whether direct or indirect; (iv) Synonymous with public interest, public benefit, public welfare, and public convenience.
- Public purpose must be maintained throughout the expropriation proceedings – (i) if changed, a new complaint must be filed, (ii) if abandoned, the state must return the property to the owner if the latter wishes to reacquire the same.
- Incidental benefit to private persons or group will not necessarily remove the character of public use.
- E.g., the expropriation of the birthplace of the founder of a religious sect who played an important role in Ph history and culture is public use, despite incidental benefit inuring to members of the religion; use for socialized housing.

## 3. Just Compensation

- Full and fair equivalent of the property taken from its owner by the expropriator, which must be real, substantial, full, and ample.
- The measure is the owner's loss, not the taker's gain.
- It is the value of the property at the time of taking that is controlling for purposes of compensation. Interest at legal rate may be imposed until payment is made.
- Determination of JC is essentially a judicial function. Considering that all facts as to the condition of the property and its surroundings and its improvements and capabilities must be considered (question of fact).
- While the appointment of commissioners is mandatory, the Court is not bound by its report and may accept or reject the same at its discretion, provided that its decision is based on established rules, correct legal principles and competent evidence.
- A law/ordinance fixing the basis for JC or the JC itself is invalid as it would impair judicial prerogative. The court may, however, consider such bases as factors or guidelines in fixing JC. However, it cannot be bound by it. It will also deny the owner the right to due process to prove the value of his property.

## 4. Expropriation by Local Government Units

- Delegated by power by Congress through the LGC.
- May be exercised by the local chief executive only if authorized by an ordinance duly enacted by the Sanggunian.
- Requires as condition precedent, a valid and definite offer made to the property owner, and the refusal of the latter to surrender his property.
- The LGU may enter the property upon deposit of 15% of assessed or zonal value.

- LGUs are not required to secure authority from the DAR before converting agricultural to residential land since it is not required under the CARL.

## K. Right to Association

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

### 1. Scope and Limitations

Scope

- Right to join and form organizations.
- Right to participate in its activities.
- Right not to join. – the compulsion for all members of the bar to become member of IBP is within supervisory power of the SC over the entire legal profession.
- Available to all, including EEs in the public sector.

Limitations

- For purposes not contrary to law – (i) the law may declare certain purposes unlawful, e.g., under ATA, an organization may be declared terrorist by CA through a preliminary order of proscription.
- May be the subject of stipulation e.g., union security clause.
- EEs in public sector may exercise the right, except that they do not have the right to strike, both: (i) EEs of government agencies and GOCCs performing governmental functions, and (ii) GOCCs performing proprietary functions (EO 180).

## L. Non-Impairment of Contracts

No law impairing the obligation of contracts shall be passed.

### 1. Scope and Limitations

- There is impairment of contract when there is change in its express provision, interpretation, validity or discharge or remedy for its enforcement. The degree of change is irrelevant.
- Only unreasonable changes are proscribed.
- Extends not only to laws but also court judgments. – E.g., a court order requiring the change of security from REM to bond may be challenged on ground of impairment of obligation of contracts.

Limitations

- (i) all existing laws are deemed read into the contract; and (ii) there is implied reservation that the government may exercise its governmental powers even to the extent of modifying the contractual stipulations.
- Freedom to contract is subordinate to the State's exercise of police power.
- It does not cover commercial documents such as checks. Hence, passage of BP 22 does not fall within the prohibition. Assuming checks are contracts, insufficiently funded checks are not protected under the law.

Examples

- A zoning ordinance changing the use of property from residential to industrial is a reasonable impairment of a Deed of Sale providing that the property shall be used for residential purposes only.
- Moratorium laws provided: (i) the period determined or determinable, (ii) the period must be reasonable.

## M. Free Access to Courts and Adequate Legal Assistance

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.



1. Available only to natural but not juridical persons.

## N. Custodial Investigation

### 1. Meaning of Custodial Investigation

Any investigation conducted by (i) law enforcement officers after the person was (ii) taken into custody or otherwise deprived of his freedom of movement in any significant manner. (iii) It commences when the investigation ceases to be a general inquiry but starts to focus on a person as a suspect.

1. A person is under CI if (i) he was placed under arrest, (ii) asked/invited to offer investigation (IC Law).
2. An accused asked to confess his guilt while still on patrol car is already under CI.
3. Police line-ups – (i) not party of CI if mere general inquiry on an unsolved crime and police officers are unaware that the suspect is one of those included; (ii) part of CI if the accused who is already a suspect was asked to participate.
4. Not CI: (i) Interviews by TV/Radio (private persons), (ii) flag downs, (iii) burst in presence of police or precinct.

#### Arrest

1. Taking person into custody so that he may be bound to answer for an offense.
2. (i) actual restraint, or (ii) voluntary surrender. Actual force or touching is not required. What is controlling is the intent to make the arrest, or the intent to surrender.

#### Flag downs for traffic violation

1. Pertains to roadside questioning of a motorist detained pursuant to a routine traffic stop.
2. Not considered CI nor arrest – (i) motorist's expectation is only temporary detention but he will most likely be allowed to continue on his way; (ii) typically public such that the motorist does not feel completely at the mercy of the police.

#### Law enforcement officers

1. Those whose duty is to arrest/detain and investigate crimes.
2. (i) PNP members; (ii) NBI agents; (iii) Immigration officers; (iv) Mayors, by virtue of their operational supervision over local police; (v) private persons acting under the control and supervision of LEO.
3. Not LEO: (i) COA auditors conducting audit; (ii) members of the media.

#### Does not cover

1. Administrative proceedings, e.g., investigations done by ER [what applies are civil law provision on vitiated consent]
2. Enforcement of search warrant
3. Seizure or forfeiture proceedings since they are not criminal in nature conducted by customs team (also administrative)

## 2. Rights of a Person Under Custodial Investigation

1. (i) Continuing right to be **silent**, (ii) to have competent and independent **counsel** preferably of his own choice, or to be provided with counsel if he cannot afford the services of one
2. To be **informed** of such rights [1], and to waive such rights, but only in writing and in the presence of counsel.
3. To not be subject to **torture** and **illegal** detention.
4. To have confession or admission obtained in violation of these rights **excluded**. **SCITIE**

#### Right to be informed

1. Must be given prior to investigation, before any question was propounded on the accused, not necessarily when the person was taken into custody.

2. Requires meaningful transmission of information.
3. The language used was known and understood by the person to whom it is given. Failure to assign to interpreter to a foreign national who was arrested violates his right.

#### Right to independent and competent counsel

1. Any lawyer. XPN: those directly interested in the outcome of investigation, including those whose jobs are to conduct PI, prosecute crimes (fiscal, precinct legal officer, LGU legal)
2. He must be present during questioning, in every stage.
3. Choice of lawyer – (i) may be denied if impracticable, e.g., an alien asks for a foreign-based lawyer; (ii) but the LEO cannot substitute their own judgment for that of the accused in the choice of counsel, even if in their assessment, the lawyer chosen by the accused is incompetent. They shall inform the accused of their assessment and ask if he wants to continue with the questioning.

## 3. Requisites of a Valid Waiver

1. Accused was informed of his rights.
2. The confession was made in writing, with assistance of counsel. In the absence of lawyer, the waiver must be signed by in the presence of his parents, sibling, spouse, municipal mayor/judge, priest minister chosen by him.
3. Custodial investigation report – (i) in writing, signed by the person interrogated, (ii) read and explained to him in a dialect known to him.
4. EJ Confession cannot be proven verbally.

## 4. Exclusionary Doctrine

Any confession or admission obtained in violation of these rights shall be inadmissible in evidence against him.

1. The prosecution has the burden to prove that all rights of a person under CI are observed to render EJ admission admissible. Otherwise, the court may refuse admission of the confession or admission, even if the accused fails to object. It is not the duty of the accused to prove violation of his rights.
2. The exclusion extends not only the EJ confession, but also to all evidence extracted as a result of the invalid confession (fruit of the poisonous tree).

#### Confession

1. Verbal or written admission of guilt.
2. Includes: (i) Reenactment, (ii) requiring the accused to sign the seized items (including during immigration). However, the admissibility objects themselves is different question. If seized by a private person, it can be admitted. Also, if the seizure was made pursuant to a valid warrantless arrest.
3. But spontaneous statements not elicited through questioning but done in a regular and legal manner are not part of custodial investigation and may be admitted as evidence against the accused – e.g., admission to the city mayor in the presence of media representatives initiated by the accused.

#### Effect of violation of rights

1. Renders EJ confession inadmissible – (i) as to the person who confessed, and (ii) as to those implicated by him.
2. But does not result in automatic acquittal. If the prosecution is able to adduce sufficient evidence, independent of the EJ confession, the accused may still be convicted.

## O. Rights of the Accused

DBP HeC MISCA

## 1. Criminal Due Process

No person shall be held to answer for a criminal offense without due process of law. Requisites:

1. SM jurisdiction.
2. Personal jurisdiction.
3. Opportunity to be heard.
4. Judgement rendered only after trial.

### *Right to PI*

1. Not a constitutional right but essential component of criminal proceedings. It is substantive and not merely procedural.
2. Inordinate delay on conduct of PI is ground for dismissal of criminal complaint with prejudice.

### *Review of judgment of acquittal*

1. GR: not allowed as it will place the accused in DJ.
2. XPNs: (i) judgment based on sham/non-trial; (ii) violation of due process right of the prosecution; (iii) dismissal of case on ground of erroneous application of the law on speedy trial.

## 2. Bail

Whether bail is matter of right or discretion depends on the (i) stage of proceedings – before/after conviction, after finality of judgment, and (ii) imposable penalty.

### Before conviction

#### Matter of right

1. Before or after conviction by MTC
2. Before conviction by RTC of offense not punishable by DRL

#### *Before conviction by RTC of offense punishable by DRL*

1. The discretion pertains to the determination whether evidence of guilt is strong.
2. If not, bail shall be granted.
3. If strong, bail shall be denied, unless there are humanitarian considerations.

### After conviction

#### Matter of discretion

1. After conviction by RTC of offense not punishable by DRL
2. After conviction by RTC of offense punishable imprisonment >6y. Bail shall be denied if PREFR are present (bail negating circumstances).

#### *After conviction by final judgment*

1. GR: bail is generally no longer available.
2. XPNs: if the penalty imposed is probationable, and the convict applied for probation. He may be allowed provisional liberty during probation hearing upon posting of bail.

#### Duty of court upon application

1. To inform prosecution of the hearing on application and require him to submit comment.
2. To conduct summary hearing – (i) mandatory requirement even if the prosecution did not object or file a comment; (ii) if bail is matter of right, hearing is to determine bail amount; (iii) if bail is matter of discretion, hearing is to obtain basis for exercise of discretion; (iv) if offense punishable by DRL before conviction, hearing is to determine whether evidence of guilt is strong

### Waiver

1. Right to bail is waivable, express or implied, which waiver need not be in writing in the presence of counsel.
2. Stipulation in compromise agreement that the accused will remain in custody of the law if charges will not be filed against certain persons is waiver of his right to provisional liberty. This is valid provided not contrary to Imgcopp (civil law standards of waiver of rights).

Not available in:

1. Deportation, extradition, quarantine proceedings – these are not criminal proceedings and there is no imposable penalty, nor does these require assessment of evidence of guilt.
2. Court martial proceedings. But if a member of military is tried before civil courts, he is entitled the right to bail.
3. They may have the right to bail under due process clause. “deprivation of liberty”

### Notes

1. Right to bails is not impaired by the suspension of the PWHC.
2. Excessive bail shall not be required. It should not be more that required to ensure the attendance of accused at trial when required.
3. The penalty considered pertains to that prescribed by law without considering modifying circumstances. If consisting of minimum and maximum, the maximum shall be considered.

## 3. Presumption of Innocence

1. The purpose is to balance the scales of what otherwise would be an unequal contest.
2. May be rebutted only by PBRD – (i) requires only moral (not absolute) certainty, i.e., that degree of evidence which produces conviction in an unprejudiced mind; (ii) the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence; (iii) the prosecution must rely on the strength of its own evidence and must not simply depend on the weakness of the defense.
3. The following must be PBRD – (i) elements of offense; (ii) aggravating circumstances, qualifying or ordinary; (iii) conspiracy, if proper.
4. Available only to natural persons, including officers of a corporation, but not to the corporation itself.
5. Guilt is not synonymous with accusation. A law which provides that a person charged with an act of disloyalty shall be presumed guilty of such act is not valid. A person merely charged of an offense cannot be placed in the same footing as one already convicted of such offense.
6. In one case, the SC clarified that being a fugitive from justice as DQ from running for local elective office means not just flight after conviction, but also flight after being charged of an offense to prevent prosecution. This is valid since it is not mere charge that will put the DQ in operation, but the flight of the accused.
7. Equipose rule: (i) when evidence for both sides is equally balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused; (ii) analytical tool to determine the probative value of evidence in criminal cases, i.e., whether the inculpatory or exculpatory, but not whether to convict or acquit the accused (solely based on PBRD).
8. Presumption of regularity of duty cannot prevail over presumption of innocence.

## 4. Right to be Heard

1. Right to present evidence on his defense.
2. Right to be present and defend oneself in person at every stage of the proceedings. Waivable – (i) after arraignment, (ii) due notice; (iii) absence is unjustified – Trial in absentia may proceed.
3. Invalid waiver will not automatically result in acquittal if – (i) the procedure adopted was fair and regular; (ii) the interest of accused and prosecution were not prejudiced; (iii) conviction by PBRD is supported by evidence on record.

## 5. Right to Counsel

1. The right is mandatory during trial, and not waivable. c.f.: right to counsel during CI is waivable.
2. During arraignment, the judgment is dutybound to: (i) inform accused that he has the right to be represented before being arraigned; (ii) inquire whether he wishes to be represented by counsel; (iii) if he wants to be represented, the court must give him reasonable time; (iv) if he wishes to be represented but cannot afford, the court must assign a counsel de officio (presumed regularly performed).
3. Choice of accused shall prevail over the choice of the court, and he shall be given reasonable time to secure the service of a counsel of choice. XPN: if the accused is already delaying the criminal proceeding by making unreasonable choices, the court may appoint a counsel de officio.
4. If the judgment already became final but the accused learned that his counsel is not actually a lawyer, the judgment of conviction shall be set aside and a new trial shall be allowed.

## 6. Right to be Informed of the Nature and Cause of Accusation

1. Operationalized through the conduct of arraignment where the criminal information is formally read to the accused for the first time – (i) it furnishes accused with a description of the offense to enable him to prepare his defense; (ii) informs the court of the allegations to determine if they are sufficient in law to sustain a conviction; (iii) gives the accused the right to invoke his right against double jeopardy.
2. (i) made in open court by the judge or clerk; (ii) accused is furnished with a copy of the complaint/INF with the list of witness; (iii) which is read to the accused in the language or dialect that is known to him; (iv) the accused is asked what his plea is to the charge.
3. In case of conflict between designation of crime and the allegations of act/omission – (i) the allegations prevail since the designation is mere conclusion of law; (ii) not fatal.
4. The accused can be convicted only of an offense (i) charged (ii) proven during trial. XPN: variance doctrine – the accused may be convicted of the offense charged which is necessarily included in the offense proven, or of the offense proven which is necessarily included in the offense charged.

## 7. Right to Speedy, Impartial and Public Trial

### Right to speedy trial

1. There is violation only if: (i) attended by vexatious, capricious, oppressive **VCO** delays [due to fault of prosecution]; (ii) unjustified postponements are requested [by the prosecution] and granted by TC; (iii) long period of time elapsed without allowing the party to have his case tried [for causes attributable to prosecution]. If the accused himself caused the delay, his right is not violated.
2. It covers the entire judicial criminal proceeding **from the filing of information**, to trial proper, until its termination prior to promulgation of judgment and appeal. – (i) PI is not covered since the right pertains to judicial criminal proceedings, (ii) also not available during promulgation of judgment or appeal. In the latter, the right to speedy disposition of cases is available.
3. Fact-finding proceedings or case build-up before OMB are not counted since these are not adversarial but merely preparatory to the filing of a formal complaint. However, the OMB may lose its right to prosecute on ground of prescription of criminal action or liability.

4. Factors to consider: (i) conduct of both the prosecution and the defense, (ii) length of delay, (iii) the non-/assertion of the right, and (iv) the prejudice caused to defendant.
5. Dismissal for violating the right to speedy trial amounts to an acquittal and may be invoked to claim DJ.

### Right to impartial trial

1. Judgment must be (i) based on facts and law; and (ii) rendered in manner free from suspicion [appearance of impartiality].
2. Prejudicial publicity – (i) Mere probability of prejudice due to the case's publicity is not enough to claim violation of the right; (ii) the accused must show that the judge was actually influenced by the publicity in rendering the decision.
3. Cold neutrality of an impartial judge.

### Right to public trial

1. All those who wish to observe the trial are not excluded or prohibited, subject to availability of space and rules on decorum.
2. Public trial does not mean publicized trial, or that the court should allow media coverage for everyone to watch.
3. Publicizing of trial is generally not allowed to preserve the integrity of the court. (i) it impairs the right to the parties to due process as it results in unnecessary distraction of the participants in the proceedings; (ii) it destroys judicial atmosphere and decorum; (iii) impairs impartiality of the proceedings.
4. XPNs: (i) to take advantage of technology for documentary purposes, (ii) under extraordinary circumstances where the case is of great magnitude affecting a large number of people since not all of them can be accommodated in courtroom (in the Maguindanao massacre case, the court allowed the streaming of trial in two designated public venues).

## 8. Right of Confrontation

### To meet the witnesses face to face.

1. Essential for: (i) cross-examination; (ii) observance of witness deportment by court; (iii) forcing witness to give his testimony under oath as deterred to lying under threat of perjury.
2. The affidavit of a witness who cannot be presented (e.g., died) is inadmissible.
3. The testimony of witness in a prior case is not admissible in a subsequent case involving the same parties. XPN: Under ROC – (i) if the witness can no longer be presented, and (ii) the adverse party is given the opportunity to cross-examine him during the prior case.

## 9. Right to Compulsory Processes

### To secure the attendance of witnesses and the production of evidence in his behalf.

1. Operationalized through the issuance of subpoena duces tecum and ad testificandum.
2. Tests: (i) of definiteness: particularly identification of witness or evidence, (ii) of relevance: to establish the guilt or innocence of the accused.

## 10. Trial in Absentia

Waiver of the accused's right: (i) to be present at trial; (ii) to be heard by himself or counsel; (iii) to cross-examine, but not his right to be presumed innocent.

### Requirements:

1. After arraignment.
2. Duly notified.
3. His absence is unjustifiable.

**\*\*The accused loses standing in court and cannot avail of remedies, unless he is arrested, or he voluntarily surrendered.**

#### P. Right to Speedy Trial and Speedy Disposition of Cases

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

1. Violated if proceeding is attended by VCO delays.
2. Factors to consider: **LRAP** (i) length of delay; (ii) reasons for the delay; (iii) non-/assertion of right; (iv) prejudice caused by the delay.
3. Covers conduct of PI, determination of PC by OMB.
4. Right to speedy trial is distinct and independent from the right to speedy disposition of cases.

Speedy trial	Speedy disposition of cases
Available only in criminal proceedings	Available in all proceedings judicial, quasi-judicial, or administrative bodies
Available only to accused	Available only to all parties
Results in dismissal with prejudice having the effect of acquittal	Will not always results in dismissal with prejudice. If the accused caused the delay, he is deemed to have waived his right to do the act which he unreasonably delays

#### Q. Right Against Self-Incrimination

Any confession or admission obtained in violation of his right against self-incrimination shall be inadmissible in evidence against him.

##### 1. Scope and Limitations

Applies only to testimonial compulsion.

1. Covers the production of documents, chattels other inculpatory evidence that may establish guilt of accused. XPN: if the documents are required to be submitted to government, e.g., SALN, ITR
2. Participation in reenactment
3. Giving a sample of his handwriting or signature – it is not a purely mechanical act but requires the application of intelligence and attention.

*Does not include:*

1. Performance of mechanical acts – (i) standing up; (ii) taking of fingerprints; (iii) taking of mugshots, photos.
2. Use of substance taken from the accused's body against him (blood, urine, or other sample).
3. Expulsion of items from his mouth or other orifice.
4. Medical examination for pregnancy in adultery case is not violative of right against self-incrimination if: (i) limited to ocular examination of accused and not invasive; (ii) done by accused's doctor of choice or of the same sex; (iii) examination is done in the clinic and not in the court.
5. Tracing of foot, taking measurements, removal of garments.
6. Administration of paraffin, breathalyzer test.

**\*\*XPN: the result of drug test administered for prosecution of offense not related with violation of CDDA is inadmissible.**

When may be invoked

1. (i) If by accused in criminal case, he may refuse to take the witness stand altogether (right to remain silent). (ii) If by ordinary witness in civil or criminal case, only when incriminating questions are propounded but he may refuse to take the witness stand altogether. (iii) if by respondent in administrative case that is penal in character, same with accused. E.g., administrative proceeding for medical malpractice or disbarment which may result in the loss of license to practice profession.

2. The right to remain silent and against self-incrimination are distinct rights. If the accused take the witness stand, he is deemed to waive only his right to remain silent, but not his right against self-incrimination, which he may invoke once incriminating questions were propounded.
3. May be invoked during PI or investigation, lest the right becomes useless.
4. The right is available in legislative inquiries or inquiries in aid of legislation and may be invoked on a case-by-case basis, but not by itself a ground to excuse attendance.

#### 2. Immunity Statutes

Bridges the gap between the interest of government and the accused where the court can compel the accused to testify even as to incriminating matters, but his testimony cannot be used against him preventing a violation of his right against self-incrimination.

#### R. Right Against Double Jeopardy

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

##### 1. Requisites and Limitations

Requisites:

1. First jeopardy attached – (i) court has jurisdiction; (ii) he was charged under an information sufficient to sustain a conviction; (iii) accused was already arraigned; (iv) he already validly pleaded.
2. First jeopardy terminated – the acquired by (i) convicted, (ii) acquitted, (iii) the case against him dismissed or otherwise terminated without his express consent.
3. Accused is subject to a second jeopardy involving – (i) same offense; (ii) frustration or attempt of the same; (iii) offense necessarily included or which necessarily includes the offense charged.

#### S. Right Against Involuntary Servitude

No involuntary servitude in any form shall exist except as a **punishment** for a **crime** whereof the party shall have been duly **convicted**.

#### T. Right Against Excessive Fines, and Cruel and Inhuman Punishments

Prohibited penalties

1. Excessive fines.
2. Cruel, degrading, or inhuman punishment.
3. Death penalty. XPN: for compelling reasons involving heinous crimes as provided by Congress. Death penalty already imposed shall be reduced to reclusion perpetua.

The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

#### U. Non-Imprisonment for Debts

No person shall be imprisoned for debt or non-payment of a poll tax.

#### V. Ex Post Facto Laws and Bills of Attainder

No ex post facto law or bill of attainder shall be enacted.

Ex-post fact law

1. One which criminalizes an act which was innocent when done.
2. One which aggravates an offense or makes it greater than when it was committed.
3. One which imposes a penalty greater than when it was committed.



- One which alters the rules on evidence to require a lesser quantum of proof to justify a conviction than when the offense was committed.

Bill of attainder: a law which imposes punishment without judicial process.

### W. Writ of Habeas Corpus, Kalikasan, Habeas Data, and Amparo

#### Writ of habeas corpus

The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

- The WHC cannot be suspended, only its privilege. WHC is an order in writing requiring the production of the body of the detainee before a court. PWHC is the right of the detainee to have an immediate determination of the il/legality of his detention.
- Only the President can suspend the PWHC if there is actual invasion or rebellion, and public safety requires it (probable cause).
- For a period not exceeding 60d, subject to power of Congress to revoke, or extend upon President's initiation. The revocation by Congress may not be set aside by the Pres., but the court may upon finding of GADALEJ.
- The SC may determine the sufficiency of the factual basis for the suspension upon petition filed by a citizen.
- The power of the Congress and of the Court to review the suspension of PWHC are distinct.

**\*\*See III.F.5.b Proclamation of ML and Suspension of PWHC**

If there is no suspension

- The il/legality of the detention is determined only at the time of its application.
- If the detention was inceptively legal, it may be validated by supervening events such as the filing of criminal INF or application for bail (recognition of validity of detention).
- Convicts of heinous crimes are DQ from benefiting from the provisions of GCTA Law. They cannot file petitions for WHC on ground of the passage of the law.

#### Writ of habeas data

The writ of habeas data is a remedy available to any person whose right to **privacy** in life, liberty or security is **violated** or threatened by an **unlawful** act or omission of a **public** official or employee, or of a private individual or entity **engaged** in the gathering, collecting or storing **GCS** of data or information regarding the person, family, home and correspondence **PFHC** of the aggrieved party. **PVUPE**

#### Writ of amparo

The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. **LVUPE**

- The application must be based on the personal knowledge of the applicant, not non rumors.

#### Elements of enforced disappearance

- there is an arrest, detention, abduction or any form of deprivation of liberty.
- that it is carried out by, or with the authorization, support or acquiescence of the State or a political organization.
- that it be followed by the State or a political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition.

- that the intention for such refusal is to remove the subject person from the protection of the law for a prolonged period of time.

### III. Social Justice and Human Rights

#### A. Concept of Social Justice

Social justice is neither communism nor despotism, nor atomism, nor anarchy, **NDAA** but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.

- The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty, but it certainly will not condone the offense.

#### B. Economic, Social, and Cultural Rights

Under the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, the scope of human rights includes "those that relate to an individual's social, economic, cultural, political and civil relations... along with what is generally considered to be his inherent and inalienable rights, encompassing almost all aspects of life.

### C. Commission on Human Rights

#### 1. Powers and Functions

##### VIRIL M

- Investigate** all forms of human rights violations involving civil or political rights. – (i) it may adopt its own rules, (ii) it may hold in **contempt** those who violate the rules.
- Provide appropriate **legal** measures for the **protection** of the human rights of all persons, within the Philippines (including foreigners), as well as Filipinos residing abroad, and **provide** for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. – (i) provision of protective measures does not include the issuance of **injunctive** writs.
- Exercise **visitorial** powers over jails, prisons, and other detention facilities.
- Recommend** to congress effective measures to promote human rights and to provide compensation to victims of human rights violations or their families.
- Monitor** compliance by the government with international treaty obligations on human rights.

CHR does not have:

- Prosecutorial power.
- QJ power, and those incident to it like the issuance of writs, TRO, injunctions, subpoena or contempt. XPN: CHR may hold in contempt those who violate its rules in the exercise of investigative powers.
- E.g., the CHR may not issue TRO to prevent the demolition of squatter's houses conducted by DPWH and LGU in implementation of a flood control project.

### IV. Education, Science, Technology, Arts, Culture, and Sports

#### Equity restriction on EIs

- Must be owned solely by: (i) Ph citizens, or (ii) corporations or associations ≥60% Filipino-owned.
- XPN: those established by religious groups. EIs established by religious groups may be fully-owned by foreigners.
- Control and administration shall be vested in Ph citizens. The participation of foreigners in the governing board of EI shall be limited to their proportionate capital.
- No EI shall be established exclusively for aliens and alien enrollment in any school shall be ≤1/3s.

XPN: schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

#### Tax exemption of EIs

1. All revenues and assets of NS NP EI used ADE for educational purposes are exempt from taxes and duties. – If beneficial use of property is transferred to a taxable person, the exemption is lost since it is no longer ADE used for educational purposes. But the income derived from such property may still be exempt if ADE used for educational purposes.
2. Proprietary EI may also be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.

“The State shall assign the highest budgetary priority to education” does not mean highest budget allocation to DepEd or CHED. It only means that, taking into consideration, educational and the related institutions, there should be adequate allocation for purposes of promoting education.

#### Mandatory education

1. In Const., free education is limited only to the elementary and high school levels.
2. In the HEI level, free education is provided for by law.
3. There is no prohibition for Congress to make kindergarten and senior high school compulsory.

#### Not self-executory provisions

1. The right of all citizens to quality education. – merely intended as a moral incentive to legislation, not as judicially enforceable right.
2. Use of Filipino language as medium of instruction is also not self-executory. Regional dialect may be used as medium of instruction.
3. Mandate that the study of the Constitution should be part of the curriculum of educational institutions. – the mandate was general and did not specify the educational level in which it must be taught. The inclusion of the study of the Constitution in the basic education curriculum satisfies the constitutional requirement.

#### The right to education is not absolute.

1. The right of every citizen to select a profession or course of study is subject to fair, reasonable, and equitable admission and academic requirements.
2. 3-flunk rule on NMAT was declared by SC as a valid exercise of police power to insulate the medical schools and ultimately the medical profession from the intrusion of those not qualified to be doctors.

### A. Academic Freedom

Academic freedom shall be enjoyed in all institutions of higher learning.

1. Academic freedom under the constitution covers (i) that of the individual instructors, and (ii) the HEI itself.
2. Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements. **FREAAR**
3. Academic freedom includes: (i) Who may teach; (ii) What may be taught; (iii) How it shall teach; (iv) Who may be admitted to study.

#### Institutional academic freedom

1. The right of the school to decide for themselves their aims and objectives and how best to attain them.

2. Discretion as to: (i) who can and cannot study in them, and (ii) to whom they can confer the honor and distinction of being their graduates, including the establishment of requirements for graduation.
3. The internal conditions for academic freedom in a university are that the academic staff should have de facto control of the following functions: (i) the admission and examination of students; (ii) the curricula for courses of study; (iii) the appointment and tenure of office of academic staff; and (iv) the allocation of income among the different categories of expenditure.
4. The courts may not interfere with their exercise of discretion unless there is a clear showing that they have arbitrarily and capriciously exercised their judgment. State cannot interfere save possibly when the overriding public interest calls for some restraint.

#### Disciplinary authority of EIs:

1. Subsumed in the institutional academic freedom.
2. While vital to the survival of the EI, the concept of proportionality between the offense committed and the sanction imposed must be observed. Otherwise, it is arbitrary and gives rise to a due process question.
3. A disciplinary action should be treated as an educational tool rather than a punitive measure.
4. The power of the school to impose disciplinary measures extends even after graduation for any act done by the student prior thereto. It may withdraw a doctorate degree already conferred to student found to have committed intellectual dishonesty in his dissertation (Cudia).

#### Academic freedom of instructors

1. Freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence.
2. It is subject to no control or authority except rational methods by which truths or conclusions are sought and established in these disciplines.
3. The convergence of security of tenure and academic freedom does not preclude the termination of a faculty member for a valid cause.

## NATIONAL ECONOMY AND PATRIMONY

### I. Regalian Doctrine

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.

#### LPD

1. LPD are classified to (i) agricultural, (ii) forest/timber, (iii) mineral, (iv) national parks. With the exception of agricultural lands, all other natural resources shall not be alienated.
2. Every land which does not clearly appear to be of private ownership is presumed owned by the State. XPN: native titles (see below)

#### Natural resources

1. All natural resources are also owned by the State.
2. XPNs: (i) mining rights acquired under the Philippine Bill of 1902 before the effectivity of the 1935 Constitution are vested rights that cannot be impaired by the government. The claimant or patent holder was the owner of both the surface of the land and of the minerals found underneath. Such land was considered private property and no longer part of the public domain. (ii) ancestral domains constitute an exception to the concept of inalienability of natural resources, provided that the conditions for securing a claim over such land under the IPRA have been complied with.

3. EDU of natural resources shall be under the full control and supervision of the State. It may undertake the EDU by itself or through agreement with other persons, subject to Constitutional limitations (see below).

## II. Public Trust Doctrine [See *Maynilad Water Services, Inc. v. Secretary of the DENR, G.R. No. 202897 and companion cases, August 6, 2019*]

The public trust doctrine fills the gap among three prevailing principles:

1. Regalian doctrine which is state ownership over natural resources.
2. Police power which is state regulation through legislation.
3. Parens patriae which is the default state responsibility to look after the defenseless.

The PTD recognizes a trust relationship between the State and its representatives, on the one hand, and the public, including the present and future generations on the other, whereby the State and its representatives hold the appropriated water (and other natural resources) not as an owner who could assert vested rights thereon but a mere trustee. As such, they are vested with the positive duty to – (i) manage and supervise these natural resources for the benefit of the present and future generations, and (ii) not use these rights in a manner harmful to the trust.

1. The public trust doctrine is based on the notion that private individuals cannot fully own trust resources but can only hold them subject to a servitude on behalf of the public.
2. In this case, the goal is accomplished through the legislation of the Clean Water Act.

Here, the DENR imposed penalties to the water concessionaires of Maynilad for their failure to interconnect the water sewerage systems within the 5y period prescribed by the Clean Water Act.

1. Applying the PTD, the water concessionaires, as representatives of the State was imposed the positive duty to manage the appropriated water for the protection and benefit of the public, and in a manner that will not harm then in any way.
2. The SC held that even the government itself may be compelled to perform acts in order to fulfill its obligations as trustee under the trust relationship.

## III. Nationalist and Citizenship Requirement Provisions

Activity	Foreign-equity limitation
Operation of public utility*	40%
Mass media	0%
Advertising industry*	30%
Educational institutions*	40%
EDU of natural resources through CJP	40%

### “Capital”

1. Applies to (i) the total number of outstanding shares of stock, entitled to vote in the election of directors; and (ii) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.
2. What is required is full beneficial ownership of the stocks, coupled with appropriate voting rights. This translates to effective control.

### Operation of public utility

1. Three safeguards: (i) 60% of its capital must be owned by Ph citizens; (ii) participation of foreign investors in its BOD is limited to their proportionate share in its capital; and (iii) all its executive and managing officers must be Ph citizens.

2. Must be authorized either by: (i) franchise, (ii) certificate of authority, or (iii) any other form of authorization. – either legislative or administrative.
3. For a period ≤50y.
4. Not exclusive in character.
5. Subject to amendment, alteration, repeal by Congress.
6. The equity restrictions under the Constitution pertain to entities which **operate** public utilities, and not those who merely own the assets or facilities in them. The facilities are not by themselves the public utility. What constitutes a public utility is not their ownership but their use to serve the public.

**\*\*See new PSA.**

### National patrimony

1. Refers not only to our natural resources but also to our cultural heritage.

*\* (i) Foreign participation in governing body is limited to their proportionate share in capital. (ii) Executive and management officers must be Ph citizens.*

## IV. Exploration, Development, and Utilization of Natural Resources

The EDU of natural resources shall be under the full control and supervision of the State.

1. The State may directly undertake such activities.
2. It may also enter into agreements with domestic or foreign persons subject to limits under the Const.
3. “Control” means less than dictatorial, all-encompassing control, but only that sufficient to give the State the power to direct, restrain, regulate and govern the affairs of the extractive enterprises. It may be on a macro level, through the establishment of policies, guidelines, regulations, industry standards and similar measures

### EDU of natural resources, in general

1. Shall be through co-production, joint venture, or production-sharing agreements. **CJP**
2. With Ph citizens, or corporations or associations ≥60% of capital is owned by Ph citizens. – (i) 60% means of the OCS and of voting capital, i.e., legal title + full beneficial ownership.
3. For a period ≤25y, renewable for ≤25y, under T&C as may be provided by law.
4. In case of water rights for irrigation, water supply for fisheries, or industrial uses *other than the development of waterpower*, the beneficial use may be the measure and limit of the grant.
5. However, power derived from water may be the subject of transactions with fully-foreign owned corporations. Hence, foreign ownership of hydroelectric power plant is not prohibited by the Constitution. Once the water is removed from its natural source, it ceases to be part of the natural resources of the Philippines and may be acquired and used by foreigners (*IDEALS v. PSALM*).

### Marine wealth in archipelagic waters, territorial sea, and EEZ

1. Shall be protected by the State.
2. Shall be exclusively reserved for use and enjoyment of Ph citizens.

### Small-scale utilization of natural resources

1. May be allowed to Ph citizens.
2. As may be provided by law.
3. In cooperative fish farming, priority shall be the subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons.

Large-scale EDU of minerals, petroleum, and other mineral oils **MPO AGRPN**

1. The President may enter into **agreements** with foreign-owned corporations involving either technical or financial assistance **FTAA**. – (i) the Pres. himself must be the signatory in these agreements, based on authority granted by Congress.
2. According to the **general** T&C provided by law.
3. Based on **real** contributions to the economic growth and general welfare of the country.
4. In such agreements, the State shall **promote** the development and use of local scientific and technical resources.
5. The President shall **notify** the Congress of every contract entered into in accordance with this provision, within 30d from its execution.

**FTAA**s (*La Bugal-B'laan Tribal Association, Inc. v. Ramos* 2004)

1. The State may resort to both technical and financial assistance in the large-scale EDU of minerals, petroleum and mineral oils, notwithstanding the language of S2 of Art. 12 authorizing the President to enter agreements ... involving either technical or financial assistance.
2. Service contracts which amalgamate technical or financial assistance agreements have not been deconstitutionalized, provided the constitutional safeguards are present, namely – (i) they are crafted in accordance with a general law providing for their T&C; (ii) the President shall be the signatory for the government; (iii) within 30d from execution, the President shall report it to Congress.
3. Here: (i) the general law is the Mining Act, (ii) the Pres. is the signatory. This is considered as one of the Pres.' quintessential and non-delegable powers which must be performed personally by the President, not his alter egos, and (iii) the purpose of reporting to Congress is to give it the opportunity to review the same.

## V. Acquisition, Ownership, and Transfer of Public and Private Lands

Who may acquire/lease	Alienable LPD*	Private lands
Filipinos	(i) May lease ≤ 5ha, or acquire ≤ 12ha by purchase, homestead, or grant	May be a transferee or grantee
Foreigners	May not lease or acquire	GR: May not be a transferee or grantee. XPN: ONLY in case of hereditary succession (legal or intestate)  They may lease for 50/25y, renewable for 25y.***
Foreigner who is a former natural-born	May not lease or acquire	May be a transferee or grantee – (i) ≤ 5,000sqm in urban; (ii) ≤ 3ha. in rural areas.
Private Ph corporations and associations**	May not hold, except by <b>lease</b> , for ≤ 25y, renewable for ≤ 25y, and ≤ 1,000ha	May be a transferee or grantee <sup>12</sup>
Foreign corporations	May not lease or acquire	May lease for ≤ 25y, renewable for ≤ 25y***

\*Limited to agricultural lands.

\*\* Formed and organized in the Ph, at least 60% Filipino-owned (in relation to S2).

\*\*\* Under P.D. No. 471.

\*\*\*\*If investing in Ph, maximum term of 50y; if not, 25y.

## VI. Concept of Ancestral Domain (Including Ancestral Lands)

The IPRA recognizes the existence of the ICCs/IPs as a distinct sector in Philippine society.

1. It **grants** them ownership and possession of their ancestral domains and ancestral lands and **defines** the extent of these lands and domains.
2. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.
3. Property rights within the ancestral domains already existing and/or vested upon effectivity of IPRA, shall be recognized and respected.

### Ancestral domains

1. All areas generally belonging to ICCs/IPs comprising lands, waters, and natural resources therein, held under a claim of ownership, occupied, or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present which are necessary to ensure their economic, social, and cultural welfare.
2. Includes lands whether alienable and disposable or otherwise, and those which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities.
3. The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

### Ancestral lands

1. Lands occupied, possessed and utilized by ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present.
2. Covered by the concept of native title and incapable of private ownership.
3. Native title pertains to pre-conquest rights to lands and domains which, **since** time immemorial, have been held under a claim of private ownership by ICCs/IPs **independent** of any grant of title from Spanish Crown, have never been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest.

Their rights to ancestral lands include:

1. The right to transfer land/property to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.
2. The right to redemption for a period not exceeding 15y from date of transfer, (i) if the transfer is to a non-member of the ICC/IP and is tainted by vitiated consent of the ICC/IP, or (ii) if the transfer is for an unconscionable consideration.

Within their ancestral domains and ancestral lands, the ICCs/IPs are given the right to self-governance and empowerment, social justice and human rights, the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies.

<sup>12</sup> Those who can acquire or hold lands of the public domain may acquire private lands. Since private corporations and

associations can hold lands by way of lease they can also acquire private lands



## VII. Practice of Professions

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

1. Self-executing provision.
2. The provision applies only to natural persons but not to foreign contractors. This cannot be the basis for preventing foreign contractors from participating in bidding for government contract.
3. The practice of law is subject to exclusive supervision of the SC.

## LAW ON PUBLIC OFFICERS, ADMINISTRATIVE LAW, ELECTION LAW, AND LOCAL GOVERNMENT

### I. Law on Public Officers

#### A. General Principles

Public office is a public trust. Public officers and employees must, at all times, be **accountable** to the people, **serve** them with utmost responsibility, integrity, loyalty, and efficiency **RILE**, **act** with patriotism and justice, and **lead** modest lives. **ASAL**

##### (a) Public office

1. The right, authority, or duty **RAD**, created, conferred, and defined by law by which an individual is vested with some sovereign power of government to be exercised for the benefit of the public.
2. For a given period, either fixed by law or enduring at the pleasure of the creating power.
3. Essential characteristics of public office – (i) created by Constitution, law, or authority conferred by law; (ii) delegation to the office of portion of sovereign power of government; (iii) duties and powers of the office are defined by law, or authority conferred by law; (iv) duties must be performed independently without control of superior power other than law; (v) position must have some permanency.
4. Public office is a strictly personal right and intransmissible.

##### (b) Public officer

1. One who holds a public office. A public officer is one who by virtue of his office, is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public.
2. Compensation is generally irrelevant in determining whether a person is a public officer, except under RA 3019 which, in defining a public officer, included as element “receiving compensation, even nominal, from the government”.
3. Private sector representative of the NBDB is considered public officer since the law invested him with some portion of the sovereign functions of the government to achieve governmental objectives. UP Student Regent is also a public officer.
4. As distinguished from clerk or employee, a public officer refers to a person whose duties, not being of a clerical or manual nature, involve the exercise of discretion in the performance of the functions of government.
5. A public employee is a person in the service of government or any of its agencies, divisions, subdivisions, or instrumentalities.
6. All public officers and EEs shall take an oath to uphold and defend the constitution (Admin Code).

**\*\*The creation of public office is a legislative function but the appointment of the person to discharge the functions of the office is an executive function. The Congress may not enact a law depriving executive of its power to make an appointment.**

## B. Modes of Acquiring Title to Public Office

Title to public office is acquired through (a) appointment, or (b) election.

##### (a) Appointment

1. The act of designation by the executive officer, board, or body to whom that power has been delegated, of the individual who is to exercise the powers and functions of a given office.
2. c.f.: designation generally means the imposition of additional duties has been imposed to one already previously appointed.

##### (b) Election

1. The act of selecting or choosing a person by popular vote to occupy the office.

## C. Modes and Kinds of Appointment

##### (a) Permanent and temporary

1. **Permanent** appointment is extended to a person possessing the qualifications and eligibilities required for the position and guaranteed the security of tenure.
2. **Temporary** appointment is extended to a person not possessing civil service eligibility required by law for the position when there are no eligible persons that may be appointed. – (i) generally for a period of 1y only, and revocable at will without necessity for just cause (security of tenure is not guaranteed); (ii) the acquisition of the CS eligibility does not ipso facto convert the appointment into a permanent one; (iii) acting and contractual appointment are temporary; (iv) appointment held at the pleasure of the appointing power is essentially temporary in nature.

##### (b) Regular and ad interim (see III.F.2 Power of Appointment)

##### Notes

1. Appointments to CS shall primarily be based on merit and fitness, determined where proper, through competitive examination.
2. Appointments to Constitutional Commissions must be permanent. The appointment or designation cannot be in a temporary or acting capacity.
3. CS Law prohibits the appointing officer from appointing his relative within the 4<sup>th</sup> degree (con/aff), even if the appointee is otherwise qualified for the position. N.B.: the local treasurer is appointed by the SOF, not the City Mayor.
4. 3 SG rule is also discretionary upon showing of proper qualifications.
5. Midnight appointments by the President (see III.F.2.d Scope of midnight appointments)
6. Under CS Rules, local elective officials are also prohibited from making appointments immediately before and after elections. XPNs: (i) Appointment has gone through the regular screening of the PSB before the prohibited period as shown by PSB report or minutes of meeting; (ii) appointee is qualified; (iii) need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety; (iv) appointment is not one of those mass appointments issued after elections.
7. CSC's function in confirming appointments is limited to the determination whether the appointee meets the minimum qualifications and possesses the required eligibility. If so, CSC's duty becomes ministerial. Otherwise, it should inform the appointing authority of the disqualification or ineligibility, but it cannot direct the appointment of another person deemed more suitable for the position. Cannot substitute its judgment with that of the appointing officer.

## D. Eligibility and Qualification Requirements

### (a) Qualifications

1. Pertains either to: (i) the endowments, qualities or attributes which make an individual eligible for public office, or (ii) the act of entering into the performance of functions of public office (oath).
2. Qualifications [i] must be possessed: (i) at the time of appointment or election, and (ii) continuously as long as the official relationship continues. Loss of during incumbency is a ground for removal (quo warranto).
3. Qualifications [i] are exclusive when provided for under the Constitution, but plenary when provided for by law.
4. Requirements – (i) germane to the purpose of the office; (ii) not too specific as to fit a particular, identifiable person (encroaches on executive power of appointment).

## E. Disabilities and Inhibitions of Public Officers

### Disabilities

#### General disabilities of appointive and elective officials

1. No appointive official shall hold any other office or employment in the Government or GOCC. XPN: (i) if allowed by law or (ii) by the primary functions of his position in ex-officio capacity, without additional compensation.
2. An elective official is ineligible for appointment or designation in any capacity to any public office or position during his tenure.

#### Disqualification

1. A candidate who has lost in any election cannot be appointed to any office in the Government or GOCC within 1y after such election (DQ).

#### Specific disabilities under Const. (holding other office)

1. Members of the Congress may hold any other office or employment in the Government or GOCC during his term without **forfeiting** his seat (incompatible office).
2. Members of the Congress cannot be appointed in offices created or emoluments increased during their term.
3. The Pres., VP, Cabinet Members, and their deputies or assistants shall not hold any other office or employment during their tenure. XPN: as provided in Const.
4. Members of the judiciary shall not be designated to any agency performing quasi-judicial or administrative functions.
5. Member of a Constitutional Commission shall not hold any other office or employment during his tenure.
6. OMB and his deputies shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

#### Disqualification

1. Member of a Constitutional Commission must not have been candidates for any elective position in the elections immediately preceding their appointment.
2. OMB and his deputies must not have been candidates (win or lose) for any elective office in the immediately preceding election.

### Inhibitions

1. CS officer or EEs including AFP, shall not engage in any partisan political activity or take part in any election except to vote. They shall not use their official authority or influence to coerce the political activity of any other person or body. XPN: public officers and EEs holding political offices. However, they cannot solicit contributions from their subordinates or subject them to any of the acts prohibited under the Election Code.

2. Elective or appointive public officer or EE shall not receive additional or double compensation. XPN: if specifically authorized by law. Pensions and gratuities shall not be considered as additional, double or indirect compensation.
3. Elective or appointive public officer cannot accept any present, emolument, office, or title from any foreign state. XPN: if President consents.
4. Pres., VP, Cabinet Members, Congress, SC, ConCom, OMB, or any firm or entity in which they have controlling interest, shall not be granted loan, guaranty, or other form of financial accommodation by any GOCC bank or financial institution during their tenure.
5. No detail or reassignment shall be made within 3m before any election without the approval of COMELEC.
6. All appointments made in favor of relative of (i) the appointing or recommending authority, or (ii) the chief of the bureau or office or (iii) of the persons exercising immediate supervision over him, are prohibited. The prohibition covers all appointments, including designations in the LGUs and GOCC with original charters.
7. An **elected** or appointed official of the SK must not be related within the second degree (con/aff) to any incumbent elected regional, provincial, city, municipal, or barangay official, in the locality where the appointive or elective official seeks to be elected.

#### Under LGC

1. No elective or appointive official shall be eligible for appointment or designation to any public office during his tenure.
2. Unless otherwise allowed by law or by the primary functions of his office, no elective or appointive local official shall hold any other office.
3. Except for losing candidates in barangay elections, no candidate who lost in any election should be appointed to any office within one year after election.
4. Gov./Mayor are prohibited from practicing profession or engaging in any occupation.
5. Sanggunian members may practice profession, engage in occupation, or teach, except during session hours. If lawyers, they should not: (i) Appear as counsel in any civil case where the LGU is adverse party; (ii) Appear as counsel in a criminal case where the accused is an officer of the national or local government accused of an offense committed in relation to his office; (iii) Collect a fee for appearance in administrative proceedings involving local government unit of which he is an official; (iv) Use property and personnel of the government except when the sanggunian member is defending the interest of the government.
6. Physicians may practice their profession even during office hours only on emergencies and without monetary compensation.

#### Specific inhibitions under Const.

Area	Congress	Executive	ConCom/OMB
Practice of profession	May not personally appear as counsel	May not practice any other profession	May not practice any other profession
Financial interest	Cannot be financially in any CFP granted by Government or GOCC		
Participation in business	Not prohibited but subject to disclosure requirements*	May not participate in any business	May not actively manage or control of any business which may be affected by the functions of his office

\* Must make a full disclosure of financial and business interests upon assumption of office, or potential conflict of interest upon filing of Bill.

## F. Powers and Duties of Public Officers

### (a) Powers of public officers

1. Those expressly conferred by law.
2. Those expressly annexed to the office by law.
3. Those attached to the office by common law as incidents to it – by doctrine of necessary implication, all powers necessary for the effective exercise of the express powers are deemed impliedly granted.

*\*\*The powers may be (i) ministerial, or (ii) discretionary.*

### (b) Duties of Public Officers

1. Generally, under Const. – (i) They must, at all times, be **accountable** to the people, **serve** them with utmost responsibility, integrity, loyalty, and efficiency **RILE**, **act** with patriotism and justice, and **lead** modest lives. **ASAL**; (ii) filing of SALN; (iii) to maintain allegiance to the State and Const. at all times.
2. *See inhibitions above.*

### SALN

1. Must be filed upon assumption to office, during incumbency, as frequently as the law provides, and upon termination of relation.
2. Submission of SALN is a constitutional requirement. Failure to submit may amount to culpable violation of the Constitution.
3. Violation of SALN laws defeats any claim of **integrity** as it is inherently immoral to violate the will of the legislature and to violate the Constitution.

## G. Rights of Public Officers

1. Right to office – (i) Protected by the right to security of tenure; (ii) a government employee cannot be removed from office except upon just or authorized cause, and after observance of due process.
2. Leave credits
3. Retirement pay
4. Right to self-organization, however, they do not have the right to strike.
5. Right to salary – (i) personal compensation fixed by law periodically paid to the public officer for services rendered; (ii) a de facto officer is entitled to salaries on the basis of actual service rendered.
6. Right to preference in promotion (next-in-rank rule) – (i) qualified person next in rank shall be given preference in promotion when the position immediately above his is vacated; (ii) it is a mere rule of preference but should not impair the discretion of the appointing authority. Nonetheless, he must specify special reason/s for not appointing the officer next-in-rank; (iii) the next-in-rank has the right to contest the decision of the appointing authority; (iv) No one has vested right over a government office.

## H. Liabilities of Public Officers

GR: Public officer is not liable for injuries sustained by another as a consequence of (i) official acts done (ii) within the scope of his official authority.

XPNS:

*Under RAC*

1. If there is a clear showing of bad faith, malice, or negligence.
2. If he neglects, without just cause, the performance a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed.
3. For wrongful acts, omissions of duty, negligence, or misfeasance. The head of a department or a superior shall be liable only if he actually

authorized by written order the specific act or misconduct complained. Otherwise, he shall not be liable.

### *Under NCC*

1. A public servant or employee refuses or neglects, without just cause, to perform his official duty causing material or moral loss to another shall be liable to the latter for damages, without prejudice to any disciplinary administrative action that may be taken.
2. Any public officer or employee who obstructs, defeats, violates or impedes or impairs [basic] rights and liberties of another person shall be liable to the latter for damages. The indemnity shall include moral damages. Exemplary damages may also be adjudicated.
3. A member of a city or municipal police force who refuses or fails to render aid or protection to any person in case of danger to life or property shall be liable for damages. The city or municipality shall be subsidiarily responsible.

### *Liability of local governments:*

1. Local governments and their officials are not exempt from liability for death or injury to persons or damage to property (LGC).
2. Local governments are also liable for injury or damage arising from defects in public works within their control or supervision (NCC).

### *Personal liability of public officers*

1. For contracts, if he enters without or in excess of authority.
2. For torts, if he acts beyond the scope of his authority.

### *Recovery of ill-gotten wealth (Disini v. Republic 2021)*

1. On recovery of commissions earned from Bataan Nuclear Power Plant amounting to \$50M+.
2. SC held that unauthenticated documents made part of witness' testimony cannot be used to fix Disini's liability (inadmissible).
3. However, failure to prove the exact amount of commissions will not negate the government's right to recover ill-gotten wealth since such fact was satisfactorily established. Temperate damages were awarded.
4. P1B nominal damages and 1M exemplary damages were awarded in this case.

### *Threefold Liability Rule*

1. Wrongful acts or omissions of public officers may give rise to civil, criminal, and/or administrative liability.
2. These liabilities are distinct and may proceed independently of each other.
3. They are personal to the officers concerned, and the LGU where they work do not have personality to question the imposition of penalty upon them by OMB.

### *Threefold Liability*

1. **Administrative:** based on supervisory powers of the government or subdivision where the EE works. May include reprimand, fine, suspension, removal from office.
2. **Civil:** (i) based on the claim of an individual, including the government, who may have suffered injury as a result of the act/omission. May include reimbursement, damages; (ii) private individuals may be held liable under RA 3019 if they acted in conspiracy with a public officer/EE.
3. **Criminal:** based on the right of the state to prosecute wrongs committed against it. May include imprisonment, fine, or both.

#### *Liability of ministerial officers:*

1. Nonfeasance – neglect or refusal to perform an act which is the officer's legal obligation to perform.
2. Misfeasance – failure to use that degree of care, skill, diligence required in the performance of official duties.
3. Malfeasance – doing, through ignorance, inattention, malice, of an act which he had no legal right to perform.

#### *Defenses:*

1. GF claim is available in an action for prosecution of falsification of public documents. E.g., in one case, the claim of the officers of GF belief of the necessity of signing DTRs for the processing of payrolls was upheld by the SC.
2. The fact of forgery cannot be presumed and must be shown by clear and convincing evidence.

### **1. Preventive Suspension and Back Salaries**

(a) Suspension may be (i) preventive, or (ii) imposed as penalty

#### *Preventive suspension*

1. Not a penalty but a mere precaution or preliminary step in an administrative investigation
2. It is intended to prevent the respondent from using his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.

#### *By OMB or his deputy (RA 6770)*

1. Any officer or employee under his authority may be preventively suspended pending an investigation, if in his judgment the evidence of guilt is strong, and (i) the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (ii) the charges would warrant removal from the service; or (iii) the respondent's continued stay in office may prejudice the case filed against him.
2. The suspension shall continue until termination of the case but not to exceed 6m without pay unless the delay is due to the fault of respondent.

#### *By disciplining authority (RRACCS)*

1. Any subordinate officer/EE under his authority pending investigation may be preventively suspended (i) if the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, administrative offenses punishable by dismissal from service on its second or third offense, or (ii) if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from office.
2. For a maximum period of 90d in NGAs and 60d in LGUs. Upon lapse of period without resolution of the case, the officer shall be automatically reinstated, unless the delay is due to his fault.

### **2. Illegal Dismissal, Reinstatement, and Back Salaries**

CSC has authority to order the reinstatement of illegally dismissed EE.

1. The revocation of illegal appointment, and the reinstatement of former incumbent do not constitute encroachment on the discretion of the appointing authority as it is not directing the appointment of another but simply ordering the reinstatement of the rightful holder of office.
2. As central personnel agency, it has the duty to implement and safeguard the constitutional provisions on security of tenure and due process.

### **I. Immunity of Public Officers**

The concept of State immunity extends to public officers acting in the performance of their official duties, and within the scope of their authorities.

1. If the suit against the public officer would require an affirmative act on the part of the State, the suit is one against the State and the concept of immunity from suit is applicable.
2. Conversely, the public officer can be held personally liable if: (i) he is being sued, not on official but on personal capacity; or (ii) he acted without or in excess of authority.

The President enjoys immunity from suit of whatever kind – whether civil, criminal, administrative, or special proceedings, during his tenure.

Impeachable officers enjoy qualified immunity from suit. They cannot be subject to suits that will result in their loss of qualification to hold office. E.g., OMB cannot be subject to disbarment proceedings, unless he is first removed from office via impeachment to remove his immunity.

### **J. Distinguish: De Facto and De Jure Officers**

(a) De jure officer is one who has lawful right to the office.

(b) De facto officer

1. One who assumes public office under a color of authority but without legal authority to do so.
2. Elements – (i) Vaidly existing public office (de jure office), (ii) Actual physical possession of said office; (iii) Color of title; (iv) Reliance of third persons dealing with the officer of his apparent authority.
3. Color of title – (i) valid appointment/election, but the officer failed to qualify; (ii) invalid appointment/election; (iii) appointment/election made pursuant to an unconstitutional law before it is declared as such.
4. Effects: (i) acts affecting the public remain valid, binding and with full legal effect; (ii) the rightful incumbent officer may recover from the de facto officer salary received by him during his wrongful tenure. XPN: A de facto officer is entitled to salaries and emoluments pertaining to the office on the basis of actual services rendered – (a) if no de jure officer; (b) acted in GF.

### **K. Termination of Official Relation**

Public officers and employees are subject to disciplinary action which may lead to the termination of the official relationship. However, no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

#### *Modes of termination:*

1. Expiration of term or tenure
2. Retirement, i.e., reaching the age limit
3. Resignation
4. Recall
5. Removal
6. Abandonment
7. Acceptance of incompatible office
8. Abolition of office
9. Prescription of right to office
10. Impeachment (see II.1.2.b Power of Impeachment)
11. Quo warrant (see II.1.2.b Power of Impeachment)
12. Death
13. Failure to assume elective office within 6m from proclamation
14. Conviction of crime involving moral turpitude
15. Filing of COC by appointive official
16. Involuntary retirement

*Resignation/voluntary retirement*



1. If done to pre-empt the filing of an administrative charge will not exonerate the public official/EE from liability.
2. Resignation (and voluntary retirement) is not a way out to evade administrative liability.

#### *Compromise agreement*

1. Judicially-approved compromise agreement regarding the separation of EE upon payment of his RATA is valid and binding. The EE cannot later claim reinstatement when he knowingly signed the compromise agreement.

#### *Reorganization*

1. Officers/EE may be validly removed from service pursuant to a bona fide reorganization.
2. Permanent EEs in the old staffing pattern shall preferred for appointment to the new positions in the approved staffing pattern. Positions shall be comparable to their former position or to positions next lower in rank (if former insufficient).
3. No new EEs shall be taken until all permanent EEs were appointed unless such positions are policy-determining, primarily confidential or highly technical.

#### *Not ground for termination*

1. Voluntary or optional retirement or resignation when made to simply pre-empt an administrative investigation is not a ground for termination of the official relation.

### **1. Involuntary Retirement [See Re: Letter of Mrs. Ma. Cristina Roco Corona, AM. No. 20-07-10-SC, January 12, 2021]**

The conviction in impeachment cases cannot go beyond the removal of the impeachable officer.

1. Impeachment is not the means intended to redress and punish offenses against the state but rather a mere political safeguard designed to preserve the state and its system of laws from internal harm.
2. Its objective is not the impose penalties but the remove/DQ the official from holding the public office.
3. The forfeiture of retirement benefits, criminal and civil liabilities shall be established in the proper proceedings that may be filed against him.
4. The death of the CJ during the pendency of these administrative criminal and civil cases led to their dismissal. Hence, there is no more basis for such liabilities to arise.
5. The CJ's removal through impeachment amounts to involuntary removal from office, i.e., removal for causes beyond his control.

Retirement is the termination of one's own employment or career, especially upon reaching a certain age or for health reasons.

1. Retirement then may be voluntary or involuntary. Retirement is voluntary when one decides upon one's own unilateral and independent volition to permanently cease the exercise of one's occupation. Retirement is deemed involuntary when one's profession is terminated for reasons outside the control and discretion of the worker. Impeachment resulting in removal from holding office falls under the column on involuntary retirement.
2. The Court deems CJ Corona to have been involuntarily retired from public service due to the peculiar circumstances surrounding his removal by impeachment without forfeiture of his retirement benefits and other allowances.
3. Other than the involuntary retirement, his conviction on impeachment did not affect his employment status, retirement benefits,

survivorship pension, and other emoluments for failure to judicially convict him for any liability post-impeachment.

4. Retirement laws are liberally construed and administered in favor of the persons intended to be benefited and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose (social justice legislation).

## **L. The Civil Service**

### **1. Scope**

The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies **BSIA** of the Government, including government-owned or controlled corporations with original charters.

Positions in CS are either (a) Career, or (b) Non-career

#### **(a) Career Service**

##### *Characteristics*

1. **Entrance** based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications.
2. **Opportunity** for advancement to higher career positions.
3. **Security** of tenure.

##### *Includes:*

1. Open Career positions, which requires prior qualification through examination.
2. Closed Career position which are scientific or highly technical in nature and which shall establish and maintain their own merit systems – including: (i) faculty and academic staff of SUCs, and (ii) scientific and technical positions in scientific or research institutions.
3. Positions in the Career Executive Service appointed by the President.
4. Career officers other than those in the CES, appointed by the President, such as the FSOs in the DFA.
5. Commission officers and enlisted men of the AFP which shall maintain a separate merit system;
6. Personnel of GOCC who do not fall under the non-career service.
7. Permanent laborer, whether skilled, semi-skilled, or unskilled.

#### **(b) Non-career Service**

##### *Characteristics*

1. Entrance on based other than those of the usual tests of merit and fitness.
2. Tenure (i) which is limited to a period specified by law, or (ii) which is coterminous with that of the appointing authority or subject to his pleasure, or (iii) which is limited to the duration of a particular project for which purpose employment was made.

##### *Includes*

1. Elective officials and their personal or confidential staff **PCS**.
2. Secretaries, officials of Cabinet rank who hold their positions at the pleasure of the President and their PCS.
3. Chairman and members of commissions and boards with fixed terms of office and their PCS.
4. Contractual personnel or those whose employment in the government is: (i) pursuant to a special contract for a specific work or job, requiring special or technical skills not available in the employing agency, (ii) to be accomplished within a specific period, ≤1y, and (iii) performs the specific work under his own responsibility with a minimum of direction and supervision from the hiring agency.
5. Emergency and seasonal personnel

#### Functions of CSC:

1. CSC is sole arbiter of controversies relating to the civil service.
2. Includes: (i) Disciplinary cases, (ii) cases involving "personnel action"; (iii) employment status and qualification standards.
3. E.g., petition for quo warranto and mandamus filed by one who claiming to be next-in-rank is within exclusive jurisdiction of CSC, not RTC.
4. The CSC also has the authority and jurisdiction to investigate anomalies and irregularities in the CS examinations and to impose the necessary and appropriate sanctions.

## 2. Appointments to the Civil Service

Appointments to CSC is generally discretionary to the appointing authority. CSC's authority is limited to approving or reviewing appointments to determine their compliance with the CS Law. But it has no authority, on its own, to: (i) terminate employment or to drop members from the rolls, or (ii) substitute its judgment to that of the appointing authority and direct the appointment another person in lieu of the person found ineligible.

As long as the appointee is qualified, the CSC has no choice but to attest to and respect the appointment even if it be proved that there are others with superior credentials.

## 3. Personnel Actions

1. Promotion – movement in position with increase in duties and responsibilities and usually accompanied by an increase in pay.
2. Appointment through Certification – issued to a person selected from a list of qualified persons.
3. Transfer – movement to position of equivalent rank, level, or salary without break in the service. May be imposed as a form of administrative penalty.
4. Reinstatement – appointment of an officer to a position in the same level who was separated from office without fault.
5. Reassignment – movement within same department or agency, which does not involve a reduction in rank, status, or salary. (i) Does not constitute removal for cause but comes within management prerogative; (ii) public employees with appointments that are not station-specific may be reassigned to another station in the exigency of public service.
6. Designation – movement to another agency without the issuance of an appointment. Allowed only for a limited period in case of professional, technical and scientific positions.
7. Reemployment – listing for purposes of reemployment of EEs separated due to reduction or reorganization.

## M. Accountability of Public Officers

### 1. Types of Accountability

1. Impeachment is an instrument of accountability.
2. Institutional of accountability includes: (i) ConComs; (ii) OMB, (iii) Sandiganbayan [Anti-graft Court], (iv) Tanodbayan Special Prosecutor)

#### a) Administrative

**\*\*See Threefold Liability**

#### b) Criminal

**\*\*See Threefold Liability**

## 2. Discipline

### a) Grounds

Grounds for disciplinary action

1. Dishonesty
2. Oppression
3. Neglect of duty
4. Misconduct

5. Disgraceful and immoral conduct
6. Being notoriously undesirable
7. Discourtesy in the course of official duties
8. Inefficiency and incompetence
9. Receiving for personal use of a fee, gift, or other valuable thing in the course of official duties
10. Conviction of crime involving moral turpitude
11. Improper or unauthorized solicitation of contributions from subordinate employees
12. Violation of existing Civil Service Law and rules or reasonable office regulations
13. Falsification of official document
14. Frequent unauthorized absences or tardiness, loafing
15. Habitual drunkenness
16. Gambling prohibited by law
17. Refusal to perform official duty or render overtime service
18. Disgraceful, immoral or dishonest conduct prior to entering the service
19. Physical or mental incapacity or disability due to immoral or vicious habits
20. Borrowing money by superior officers from subordinates or lending by subordinates to superior officers
21. Lending money at usurious rates of interest
22. Willful failure to pay just debts or willful failure to pay taxes due to the government
23. Contracting loans of money or other property from persons with whom the office of the employee concerned has business relations
24. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations
25. Insubordination
26. Engaging directly or indirectly in partisan political activities by one holding a non-political office
27. Conduct prejudicial to the best interest of the service
28. Lobbying for personal interest or gain in legislative halls or offices without authority
29. Promoting the sale of tickets in behalf of private persons
30. Nepotism

Classification	E.g.	1 <sup>st</sup> offense	2 <sup>nd</sup> offense
Grave offense	Serious dishonesty, gross negligence, falsification of official document, extortion	Dismissal from service; suspension of 6m1d to 1y; demotion	N/A
Less grave offense	Less serious dishonesty, disgraceful and immoral conduct, gross insubordination	Suspension of 6m1d to 1y	Dismissal from service
	Simple neglect of duty, discourtesy in the course of official duties	1m1d to 6m	Dismissal from service
Light offense	Improper or unauthorized solicitation, violation of office rules and regulations	Reprimand	Suspension 1-30d 3 <sup>rd</sup> offense: dismissal

#### Gross neglect of duty

1. Want of even slight care or by acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally with a conscious indifference to the consequences insofar as other persons may be affected.
2. Considered grave offense under CS Rules, punishable by dismissal (indivisible).

3. E.g., Failing to supervise subordinates covering with respect to 7,000 transactions amounting to P139M; "Arrovo" case.

#### *Grave misconduct*

1. Intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.
2. In one case, the SC considered lack of financial gain and the exemplary public service record of the official in downgrading his conviction from grave misconduct.

#### *Nepotism*

1. One is guilty of nepotism if an appointment is issued in favor of a relative within the 3rd degree (con/aff) by: (i) appointing authority; (ii) recommending authority; (iii) chief of the bureau or office; and (iv) person exercising immediate supervision over the appointee.
2. XPNs: (i) persons employed in a confidential capacity; (ii) teachers; (iii) physicians; and (iv) members of AFP.
3. For the purpose of determining nepotism, there should be no distinction between appointment and designation (what cannot be done directly cannot be done with indirection).
4. Also irrelevant are claims that: (i) the designation was made to a non-plantilla position; (ii) there are no additional compensation paid, or (iii) issuance of orders in GF.

#### *Mitigating circumstances*

1. Lack of financial gain
2. Exemplary service record
3. Length of service/first offense – not a mitigating circumstance for gross neglect of duty is a grave offense under CS Rules, where the impossible penalty is dismissal even for first time offense. Dismissal if an indivisible penalty which does not admit the application of mitigating circumstance (Arrovo case).
4. In criminal cases involving imprisonment, the following were appreciated as mitigating circumstance by SC: (i) long service; (ii) that he is under extreme pressure by the coddlers of the prisoners; (iii) that he was already forgiven by the complainants.

#### *b) Jurisdiction*

##### *CSC Jurisdiction*

1. Original – complaint filed by a private citizen against a government official or EE. – (i) it may hear or decide, or deputize a department, agency or group to investigate.
2. Appellate – administrative disciplinary cases involving the imposition of a penalty of suspension ≤30d, or fine ≤30d salary, demotion in rank or salary or transfer, removal, or dismissal from office.

#### *c) Dismissal, Preventive Suspension, Reinstatement and Back Salaries*

##### *Preventive Suspension by disciplining authority (RRACCS)*

1. Any subordinate officer/EE under his authority pending investigation may be preventively suspended (i) if the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, administrative offenses punishable by dismissal from service on its second or third offense, or (ii) if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from office.
2. For a maximum period of 90d in NGAs and 60d in LGUs. Upon lapse of period without resolution of the case, the officer shall be automatically reinstated, unless the delay is due to his fault.

##### *Reinstatement*

1. Appointment of an officer to a position in the same level who was separated from office without fault.
2. CSC has authority to order the reinstatement of illegally dismissed EE. – (i) The revocation of illegal appointment, and the reinstatement of former incumbent do not constitute encroachment on the discretion of the appointing authority as it is not directing the appointment of another but simply ordering the reinstatement of the rightful holder of office. (ii) As central personnel agency, it has the duty to implement and safeguard the constitutional provisions on security of tenure and due process.

#### *d) Condonation Doctrine*

The administrative liability of an elective officer for a wrongful act or omission done during a prior term is deemed condoned upon his re-election, which is not necessarily for the same position, or in the immediately succeeding election.

1. Condonation is an affirmative act that must be raised by respondent. Otherwise, the OMB cannot consider the same *motu proprio*.

##### *Abandonment*

1. The doctrine was already abandoned for having no legal or constitutional basis in Ph jurisdiction.
2. The effective date of abandonment is April 12, 2016.
3. The application of the doctrine depends of the date of the filing of complaint, not the date of commission of the offense. (i) If files before April 12, 2016, condonation doctrine may be used as defense. (ii) If filed after, the defense is no longer tenable.

#### **3. Impeachment v. Quo Warranto [See Re: Letter of Mrs. Ma. Cristina Roco Corona, AM. No. 20-07-10-SC, January 12, 2021]**

**\*\*See III.1.2.b Power of Impeachment**

#### **4. The Ombudsman and the Office of the Special Prosecutor [Sections 5 to 14, Article XI of the 1987 Constitution in relation to R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989"]**

##### *a) Functions*

OMB's mandate is to act promptly on complaints filed in any form or manner against officers or EEs of the government.

1. It has disciplinary authority over all elective and appointive officials of the government agencies, including cabinet members, LGUs, GOCCs. XPN: impeachable officials, members of Congress and judiciary.
2. It has investigative authority over – (i) impeachable officers for purposes of filing a complaint for impeachment, and (ii) private individuals in conspiracy with public official/EE.

##### *OMB's independence*

1. Creation by the Constitution. – it cannot be abolished, nor its constitutionally specified functions and privileges, be removed, altered, or modified by law.
2. Fiscal autonomy. – it is free to use or dispose its funds for purposes germane to its functions. Its budget cannot be strategically decreased by officials of the political branches of government to impair its functions.
3. Insulation from executive supervision and control. – those within the ranks of the office can only be disciplined by an internal authority.

##### *Jurisdiction over court officials*

1. For acts relating to official functions, OMB has no jurisdiction. Otherwise, it will be encroaching on the SC's administrative control and supervision over members of the judiciary.

2. For acts not relating to official functions, OMB has jurisdiction to investigate.

#### b) Judicial Review in Administrative Proceedings

Decisions of OMB in Administrative Proceedings is an exercise of QJ function, appealable to CA via R43 within 10d from receipt of notice.

XPN: The OMB's decision is final and inappealable in case of CREFS – (i) censure, (ii) reprimand, (iii) exoneration, (iv) fine ≤1m salary, (v) suspension ≤1m. Reviewable by CA via Petition for Certiorari under R65.

#### c) Judicial Review in Penal Proceedings

OMB's finding of PC in criminal action is an executive function and is not appealable. It is reviewable by SC via R65.

"No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law." – this provision under RA 6770 §14 was declared unconstitutional.

### 5. The Sandiganbayan

#### EOJ

1. Violations of RA 3019, RA 1379, Ch. II, S2, Title VII, Book II RPC – (i) RTC has jurisdiction if: (a) no allegation of damage to the government or any bribery, (b) damage alleged do not exceed 1M; (ii) RTC judgments appealable to SB.
2. Other offenses or felonies whether simple or complexed with other crimes committed by public officials in relation to their office;
3. Civil and criminal cases filed pursuant to and in connection with EO 1, 2, 14, 14-A, s. 1986 (ill-gotten wealth)

#### Officials covered:

1. Executive branch, SG 27 and higher
2. Members of Congress and officials, SG 27 and higher
3. Members of the Judiciary
4. Chairmen and members of the Constitutional Commissions
5. All other national and local officials SG 27 and higher

#### Ill-gotten wealth pertains to those:

1. Originating from the government, and
2. Taken by former Pres. Marcos and his immediate family, relatives, and close associates by illegal means.

### N. Term Limits

Official	Term (y)	Term limit (consecutive)
Pres.	6	No re-election
VP	6	2
Senator	6	2
Representatives	3	3*
Members of SC	Up to 70 y.o.	N/A
LGU officials	3	3

\*Suspension imposed by HR does not interrupt the period as the member remains as such during the period of suspension.

### II. Administrative Law

#### A. General Principles

Administrative Law is that branch of modern law under which the **executive department** of the government, acting in a **quasi-legislative or quasi-judicial** capacity, interferes with the conduct of the individual for the purpose of promoting the well-being of the community.

Scope

1. Fixes the administrative organization and structure of government.
2. Creation of AA, definition of their powers and functions, and prescription of their procedures.
3. Law, execution, and enforcement entrusted to AA.
4. Law governing public officers, their competencies, rights, duties, liabilities, elections, etc.
5. Provides remedies to those aggrieved acts and decisions of AA, judicial or administrative.
6. Rules, regulations, orders, decisions interpreting and enforcing of the laws entrusted to AA.
7. Judicial decisions and doctrines dealing with foregoing.

**\*\*Administrative Law is concerned with private rights.**

### B. Administrative Agencies

The organs of government, other than a court and the legislature, which affect the rights of private parties either through adjudication or rule-making. They may be created by the (i) Constitution, (ii) by law, (iii) by the Pres., under authority of law.

1. GRP – the corporate governmental entity through which the functions of government are exercised throughout the Ph. A GOCC is within the scope and meaning of GPR if it is performing governmental or political functions.
2. Agency of the Government – **various units** of the Government, including a department, bureau, office, instrumentality, or GOCC, or a local government or a distinct unit therein. – (i) department pertain to executive departments created by law; (ii) bureaus are principal subdivision of departments; (iii) offices are major functional unit of a department or bureau.
3. Instrumentality – any agency of the National Government, **not integrated within the department framework vested** within special functions or jurisdiction by law, **endowed** with some if not all corporate powers, **administering** special funds, and **enjoying** operational autonomy, usually through a charter. Includes regulatory agencies, chartered institutions and GOCCs.  
**NoVE AdE**

**\*\*Agency is a broader term that instrumentality. Instrumentality is broader than GOCC.**

#### GOCCs

1. Any agency organized as a stock or non-stock corporation.
2. Vested with functions relating to public needs whether governmental or proprietary in nature.
3. Owned by the GRP directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of **at least a majority** of its capital stock.

#### Rules on GOCCs

1. Pres. cannot appoint relatives up to 4<sup>th</sup> degree to GOCCs.
2. Congress members cannot hold office or position without forfeiting their seat.
3. (i) Pres. VP, cabinet members, their deputies and assistants, (ii) members of Congress, (iii) ConCom members, (vi) OMB cannot be financially interested in any contract, franchise, privilege granted by GOCCs.
4. GOCCs are subject to COA post-audit jurisdiction. However, only GOCCs with original charter can be subject to pre-audit.
5. The standardization of the compensation of government officials and EEs apply only to GOCCs with original charters, but not to their subsidiaries.



#### OGCC

1. Principal law office of all GOCC, subsidiaries, other corporate off-springs and government acquired asset corporations, representing them in all court actions.
2. It has supervision and control over all the legal departments of the GOCCs.
3. GOCCs may not secure services of private law firm, except: (i) in exceptional cases, (ii) with written acquiescence of GCC and concurrence of COA. Exceptional cases include OGCC work overload, case requiring technical expertise. If private counsel is engaged without authority, the officer so engaging him is personally liable.
4. The legal department of GOCC may participate in the case provided, (i) OGCC consents, and (ii) they act under the control and supervision of OGCC.

#### GCE

1. Government corporate entity.
2. Government instrumentality that is not GOCC but vested with corporate powers, e.g., MIAA, BCDA.
3. Their RP are exempt from RPT, unless beneficial use is vested to a taxable person.
4. They are also exempt from payment of legal fees under ROC. But GOCCs (with/out original charter) are liable.

### C. Powers of Administrative Agencies

#### 1. Quasi-Legislative (Rule-Making) Power

Power of subordinate legislation. The power of AA to make rules and regulations which results in delegated legislation to carry out the provisions of particular laws and implement legislative policy that is within the confines of (i) the granting statute, (ii) the doctrine of non-delegability, and (iii) separation of powers.

Promulgation of rules/rates that are (i) general in character, (ii) apply prospectively.

#### a) Kinds of administrative rules and regulations

(a) Legislative, (b) Interpretative

(a) Legislative

1. In the nature of subordinate legislation, designed to implement a law by providing its details.

(b) Interpretative

1. Designed to provide guidelines to the law, which the AA is in charge of enforcing.

#### b) Requisites for Validity

(a) Substantive requisites

1. Valid delegation – (i) completeness,<sup>13</sup> (ii) sufficient standard.<sup>14</sup>
2. The RR must be within the scope of the statutory authority.
3. RR must be germane to the objects and purposes of the law, not in contradiction to, but in conformity with, the standards prescribed.

Non-delegable

1. The determination of what will constitute a penal act, e.g., provision in the law stating that violations of IRR shall be punishable as crime.
2. Prescription of penalty, where there are no standards/ limits provided.

#### (b) Procedural requisites

1. Publication. – RR shall become effective within 15d after publication unless a different effectivity date is fixed by law.
2. Deposit in the UP Law Center Office of the National Administrative Register (ONAR). – (i) RR shall become effective within 15d after filing of 3 certified copies unless a different effectivity date is fixed by law, or in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule; (ii) the requirement applies only to rules promulgated by administrative agencies, not by JBC; (iii) Administrative Code requirement.

#### Notice and hearing requirement

1. An agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule, if not otherwise required by law.
2. In rate-fixing, proposed rates shall be published in NPGC at least 2w before the first hearing. Otherwise, the rule or final order shall not be valid.
3. The requirement of notice and hearing becomes mandatory of the RR goes beyond providing for the means to facilitate the implementation of the law but **substantially increases the burden** of those governed. The right to be heard is accomplished often by giving concerned persons the right to submit positions papers or comments to the proposed rule.

#### President's Ordinance Powers

1. Promulgation of RR by Pres. may either be a delegated or inherent power.
2. Delegated if the power is inherently legislative, e.g., fixing of tariff rates. Requisite of valid delegation and conformance with statutory authority must be observed.
3. Inherent if issued to implement or execute self-executory constitutional powers vested in the President. Tests of validity are the constitutional standards themselves (faithful execution).
4. The distinction is important to determine which tests to apply to determine validity.

**\*\*Questions on validity or constitutionality of administrative RR is within the jurisdiction of the RTC, unless jurisdiction is directly vested with SC.**

#### 2. Quasi-Judicial (Adjudicatory) Power

The power to hear and determine questions of fact to which the legislative policy is to apply, and to decide on the legal rights and obligations of the contending parties.

1. It involves: (i) taking and evaluating evidence; (ii) determining facts based upon the evidence presented; and (iii) rendering an order or decision supported by the facts proved.
2. Generally adversarial in nature. It covers complaint proceedings (c.f.: application proceedings) before AAs.
3. It may also cover promulgation of rulings that apply to specific persons and are immediately effective.
4. Requirements – (i) lawful jurisdiction, (ii) due process: notice and hearing.
5. Not all AA are granted QJ powers. The same must be expressly granted to them.

<sup>13</sup> Sets forth the policy to be executed.

<sup>14</sup> Fixes standards and limits which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions.

#### a) Administrative Due Process

##### Cardinal Primary Requirements of Procedural Due Process in Administrative Proceedings (Ang Tibay) HeCSS BIM

1. The right to a **hearing**, which includes the right to present one's case and submit evidence in support thereof.
2. The tribunal must **consider** the evidence presented.
3. The decision must have something to **support** itself.
4. The evidence must be **substantial**, i.e., such reasonable evidence as a reasonable mind accepts as adequate to support a conclusion.
5. The decision must be **based** on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
6. The tribunal or body or any of its judges must act on its own **independent** consideration of the law and facts of the controversy, and not simply accept the views of a subordinate. – (i) it is immaterial whether the hearing and deciding officers different so long as the latter has authority. The power to conduct hearing is delegable; (ii) and he acted independently, not merely adopting the findings of his subordinate. The findings of subordinate are not binding to their superior.
7. The board or body should, in all controversial questions, render its decision in such **manner** that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

The tribunal must also have jurisdiction over the matter. The improper constitution of a disciplinary council violates due process.

#### b) Administrative Appeal and Review

1. Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based.
2. Findings of fact of AA, if supported by substantial evidence, shall be final.
3. The decision of the AA shall become F&E 15d from notice unless an administrative appeal or judicial review, if proper, is perfected.
4. Appeal to Department Head – (i) Unless otherwise provided by law or EO, an appeal from a final decision of the agency may be taken to the Department head; (ii) the appeal shall **stay** the decision appealed from unless otherwise provided by law, or the appellate agency directs execution pending appeal.
5. Judicial Review – may be brought against the agency, or its officers, and all indispensable and necessary parties.

#### c) Administrative Res Judicata

Decisions, orders of AA rendered pursuant to their QJ authority, upon their finality, have the force and binding effect of a final judgment within the purview of the doctrine of res judicata.

### 3. Fact-finding, Investigative, Licensing, and Rate-Fixing Powers

#### (a) Fact-finding/Investigative

1. AAs have the inherent power of fact-finding/ investigation, whether in the exercise of QL or QJ powers, and to make findings and recommendations on the basis of such.

#### (b) Licensing

1. Purely administrative proceeding is one which does not involve the settling of disputes involving conflicting rights and obligations or the making of binding pronouncements as to them. It is merely concerned with either: (i) the direct

implementation of laws to certain given facts as a consequence of regulation; or (ii) an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation.

2. It includes the grant or denial of applications, licenses, permits, and contracts.
3. These are essentially non-adversarial in nature, notwithstanding that the AA may entertain oppositions – (i) the application proceeding pertains to the grant of a privilege, not the deprivation of a vested right; (ii) oppositions merely go into the determination of applicant's fitness for the grant, but not for the purpose of adjudicating rights.
4. However, persons directly interested in the grant of a license/franchise must be notified personally by the administrative agency. Notice through publication is not sufficient.

#### (c) Rate-fixing

1. Rate means any charge to the public for a service open to all and upon the same terms imposed by law or regulation to be observed and followed by any person.
2. Under RAC, in the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a NPGC at least 2w before the first hearing.
3. May either be an exercise of QL or QJ powers. – (i) QL if the rate order applies generally to members of a class and not predicated on a finding of fact but on public policy considerations; (ii) QJ if the rate order applies exclusively to a particular party and predicated on a finding of fact.
4. Requirement: must be reasonable and just – (i) question of fact dependent on the sound discretion of AA; (ii) not too low as to be confiscatory and not too high as to be oppressive.

### D. Judicial Recourse and Review

The DPAJ and the DEAR both deal with the proper relationship between the courts and AAs.

#### 1. Doctrine of Primary Administrative Jurisdiction

Courts will not intervene if (i) the question to be resolved is one which requires the **expertise** of AA and (ii) the legislative **intent** on the matter is to have uniformity in the rulings.

1. It applies when a **claim** is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.
2. The judicial process is **suspended** pending referral of such issues to the AA for its view. – (i) the case is not dismissed; (ii) the court does not lose jurisdiction over the case.

Requisites:

1. AA and regular court have **concurrent** and original jurisdiction. – (i) if AA has exclusive jurisdiction, doctrine of exhaustion of administrative remedies applies; (ii) if the matter is not without the competence of AA, regular courts have jurisdiction, e.g., pure questions of law.
2. The question to be resolved requires **expertise** of AA.
3. Legislative **intent** on the matter is to have uniformity in rulings.
4. **Administrative agency is performing a QJ function.**

#### 2. Doctrine of Exhaustion of Administrative Remedies

When the AA has exclusive jurisdiction over the controversy, the administrative action (i) must be **completed** or a final

agency action rendered, and (ii) all administrative remedies exhausted<sup>15</sup> before the aggrieved party may seek relief from the courts.

1. Requisites – (i) AA is performing a quasi-judicial function; (ii) judicial review is available; (iii) the court acts in its **appellate** jurisdiction.
2. Non-compliance deprives the complainant of a cause of action which is an affirmative defense that is deemed waived if not raised, but it does not affect the court's SM jurisdiction.
3. Its purpose is to give the AA the opportunity to perform its functions and duties, and correct its errors before resort to judicial authority is made.

XPNs: **PUG BIDS**

1. **GAD**
2. **Purely** legal questions
3. **Urgency** of judicial action, no PSA remedy in the OCL
4. Involving rule-making or QL function
5. Exhaustion will be oppressive and unreasonable.
6. Resort to exhaustion will amount to nullification of claim.
7. Administrative agency in estoppel
8. Administrative action is patently **illegal**.
9. **Blatant** violation of due process
10. Unreasonable **delay** or official inaction
11. Irreparable injury
12. **Strong** public interest is involved.
13. When the assailed order was issued by a body superior to supposed reviewing authority (appeal will be futile), etc.

Primary jurisdiction	Exhaustion of administrative remedies
AA and court have concurrent jurisdiction	AA has exclusive jurisdiction
To refer the issue to the AA having the expertise over the technical issue, and to have uniformity in rulings	To give the AA the opportunity to perform its functions and duties, and correct its errors before resort to judicial authority
Non-observance results in suspension of judicial proceeding until resolution of the matter referred to AA	Non-observance renders the complaint dismissible for lack of cause of action, if timely raised

### 3. Doctrine of Finality of Administrative Action

Findings of fact of AA, if supported by substantial evidence, shall be final.

## III. Election Law

### A. Suffrage

#### 1. Qualifications and Disqualification of Voters

##### (a) Qualifications

1. Ph citizen
2. At least 18y on election day
3. Residence – (i) at least 1y in Ph, (ii) at least 6m in the place where they propose to vote, immediately preceding the election. Temporary absence in place of residence for study, employment, etc. does not result in loss of residence.
4. Not DQ by law.

**\*\* No literacy, property, or other substantive LPO requirement shall be imposed on the exercise of suffrage.**

##### (b) Disqualifications

1. Sentenced by final judgment to suffer imprisonment for  $\geq 1y$  (conviction).
2. Adjudged by final judgment for having committed – (i) any crime involving disloyalty to the duly constituted government, (ii) any crime against national security (final conviction).

3. Insane or incompetent persons as declared by competent authority.

Notes [1] [2]:

1. DQ is removed upon grant of absolute pardon or amnesty.
2. DQ subsists up to 5y after service of sentence. The right is automatically reacquired after the lapse of 5y. However, the voter must apply for reactivation.

## 2. Registration and Deactivation of Voters

### (a) Registration

1. Ph adopts a system of continuing registration of voters where applications shall be conducted in the office of the election officer during regular office hours, to be heard and proceeded on a quarterly basis.
2. XPN: during registration ban. No special registration can be conducted by COMELEC – (i) 120d before a regular election, and (ii) 90d before a special election.

### (b) Deactivation

1. Grounds for DQ (see above).
2. Loss of Ph citizenship.
3. Failure to vote in 2 successive elections.
4. Failure to register in biometric registration.

(c) Reactivation may be applied for if: (i) the ground for reactivation no longer exists, (ii) upon filing of sworn statement.

(d) Cancellation shall be based only on death, upon submission by LCR to election officer of a list of registered deaths every 30d.

## 3. Inclusion and Exclusion Proceedings

This is expressly excluded from COMELEC's jurisdiction by the Const. "Decide, **except those involving the right to vote**, all questions affecting elections..."

1. COMELEC may only file a complaint but it has no jurisdiction over inclusion and exclusion proceedings.
2. MTC and MeTC has EOJ over inclusion and exclusion of voters in their respective cities or municipalities which is limited to – (i) determining the right of voter to remain in the list of voters (inclusion), or (ii) to declare him not qualified to vote in the precinct in which he is registered, specifying the ground for disqualification (exclusion).
3. The MTC has no power to order the change or transfer of registration from one place of residence to another which is the function of the ERB.
4. MTC's decision is appealable to RTC within 5d from notice. RTC's decision is final, and no MR shall be entertained.
5. Generally, no res judicata. A decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of res judicata.

Petitions:

1. For inclusion may be filed by a person: (i) whose registration was stricken out, or (ii) whose application was disapproved.
2. For exclusion may be filed by: (i) registered voter; (ii) representative of political party; (iii) election officer; (iv) COMELEC.

## 4. Local and Overseas Absentee Voting

### Overseas Voting

<sup>15</sup> Two (2) requisites for the judicial review of administrative decision/actions.

#### Qualifications

1. Ph citizen
2. At least 18y on election day
3. Abroad on the day of the election.
4. Not DQ by law.

#### Disqualifications

1. Loss of Ph citizenship.
2. Express renunciation of Ph citizenship or pledge of allegiance to foreign country.
3. Final conviction of offense punishable by imprisonment  $\geq 1y$ , including those convicted of disloyalty.
4. Citizen previously declared insane or incompetent by competent authority in the Ph or abroad, as verified by the Ph embassies, consulates or Foreign Service establishments concerned.

**\*\*DQ for being an immigrant or permanent resident abroad was already removed.**

#### Local absentee voting

1. Available to public officials temporarily stationed in places other than the place where he is a registered voter in the performance of his election duties. They are allowed to vote in their place of work.
2. Media practitioners are allowed to vote on specified days earlier than election day in the case they are assigned to cover an election event away from their place of registration. – it covers media, media practitioner, including technical and support staff actively engaged in the pursuit of information gathering and reporting or distribution, including, print, TV, photo, online, radio, documentary.

### 5. Detainee Voting

Detainees are allowed to vote if registered and the registration record is not transferred, deactivated, cancelled, or deleted.

A detainee is a person:

1. Confined in jail, formally charged for crime/s, awaiting, or undergoing trial (detention prisoner); or
2. Serving sentence of imprisonment for  $< 1y$  (convict by FJ); or
3. Whose conviction of a crime (i) involving disloyalty to the duly constituted government, (ii) any crime against national security is on appeal (convicted, not FJ).

**\*\*In Aguinaldo v. National Bilibid Prison, it was declared that PDLs may vote only for national positions.**

### B. Candidacy

#### 1. Qualifications and Disqualifications of Candidates

##### Candidate

1. Any person who files his COC within the prescribed period shall only be considered as a candidate **at the start of the campaign period** for which he filed his COC.
2. Election offenses, including premature campaigning may be committed only by a "candidate".

##### Qualifications

##### National elective officials

Position	Citizenship	Age	Literacy	Registered voter	Residence
Pres.	Natural-born	40	R&W	Y	10y
VP	"	40	"	Y	10y
Senator	"	35	"	Y	2y
HOR	"	25	"	Y	1y (dist.)

##### Local elective officials

1. Common qualifications – (i) Ph citizen, (ii) able to read and write, (iii) registered voter, (iv) 1y residence in LGU/district sought to be elected.
2. At least 21y – (i) Gov, V. Gov, Member of S. Panlalawigan; (ii) Mayor, V. Mayor, Member of S. Panlungsod HUC.
3. At least 18y – (i) Member of S. Panlungsod/ Panlalawigan I/CC or municipality; (ii) Punong barangay, Member of S. Pambarangay.
4. At least 18y but not more than 24y – SK.

##### Citizenship

1. Dual citizens who are formerly natural-born Filipinos must comply with the twin requirements under RA 9225: (i) taking an oath of allegiance to the RP, and (ii) executing an affidavit of renunciation of the foreign citizenship. The reacquisition restores the person of his natural born status.
2. If the person is a dual citizen by birth, the twin requirements of RA 9225 is not applicable. The mere filing of COC is sufficient renunciation of foreign citizenship that would qualify the person to run for public office.
3. Repatriation is effected by taking an oath of allegiance and registering the same in the proper civil registry and in the BI.
4. Foundling are considered natural-born Filipinos.
5. Use of foreign passport after reacquisition of Ph citizenship make a person revert to dual citizenship.
6. The citizenship is required at the time the candidate's proclamation at the **start of his term**. The qualification pertains to the holding of office.

##### Residence

1. Residence is synonymous with domicile.
2. Acquisition of Ph citizenship does not automatically establish residency.
3. Acquisition of permanent resident status abroad ("green card") constitutes abandonment of his domicile and residence in Ph.
4. The purpose of the requirement is to ensure familiarity with the issues of the locality, and prevent outsiders from taking advantage of the opportunity for public office.

**\*\*Qualifications based on property ownership are not allowed – e.g., filing of bond, ownership of RP for purposes of establishing residence.**

##### Disqualifications:

##### S68 OEC

1. Permanent **residence** or being an immigrant to a foreign country, unless such status is waived.
2. Giving **money** or material consideration to influence, induce or corrupt voters or public officials performing electoral functions.
3. Commission acts of **terrorism** to enhance his candidacy.
4. **Spending** in excess of allowable amount in his election campaign.
5. **Solicitation**, receiving or making prohibited contributions. – based on aggregate spending including donations, not just personal spending.
6. **Violated** provisions of the OEC.

**\*\*The person is DQ from continuing as candidate or if elected, from holding the office. He is a bona fide candidate until his DQ.**

S69 OEC – those who are nuisance candidates (see below)

S78 OEC



1. Material representation in COC pertaining to the candidate's dis/qualifications.
2. DQ based on citizenship requires prior judgment of court of competent jurisdiction. Other grounds, e.g., age, residence, violation of 3-term limit may be passed upon by COMELEC.
3. There must be intent to deceive or mislead the public – (i) mere use of a nickname or name different from that stated in the birth certificate is not material misrepresentation; (ii) nor is use of husband's surname despite declaration of marriage as void.
4. Must be upon verified petition, not motu proprio.
5. The cancellation renders COC void ab initio.

#### S12 OEC

1. Insane or incompetent, as declared by competent authority. Removed upon declaration of sanity or competence by competent authority.
2. Sentenced by final judgment for: (i) Subversion, insurrection, rebellion **SIR**; (ii) any offense for which he has been sentenced to a penalty of >18 months imprisonment; or (iii) crime involving moral turpitude. Unless, given plenary pardon or amnesty. The DQ is removed upon expiration of 5y from service of sentence.

**\*\*COMELEC must rely on judgment rendered by court of competent jurisdiction.**

#### LGC

1. Final conviction – (i) for an offense involving moral turpitude or, or (ii) for an offense punishable by ≥1y imprisonment; (iii) within 2y after service of sentence. The 2y limit will not apply if a penal provision directly prohibits the convict from running for elective office, e.g., where accessory penalty of perpetual absolute disqualification was imposed.
2. **Removed** from office as a result of an administrative case – the removal must have attained finality during the incumbency of the officer. Otherwise, the removal is without effect, the will not constitute DQ.
3. **Conviction** by final judgment for violating the oath of allegiance to the Republic of the Philippines.
4. Dual **citizenship**, i.e., dual allegiance. See above.
5. **Fugitives** from justice in criminal or nonpolitical cases here or abroad – not only those convicted, but also those charged when they flee to escape prosecution.
6. Permanent **residents** in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of the LGC.
7. **Insane** or feeble-minded.

**\*\*For DQ involving conviction, mere commutation of sentence does not remove the effect of accessory penalty of DQ.**

#### Effect of cancellation of COC

1. Under S68 – (i) the COC is not void ab initio, (ii) the DQ candidate may be substituted, (iii) if decided after election, succession rules apply.
2. Under S78, 69 – (i) the COC is void ab initio, (ii) the DQ candidate may not be substituted, (iii) if decided after election, the qualified candidate getting the highest no. of votes shall be proclaimed elect. Votes cast in favor of the DQ candidate are considered stray.

## 2. Filing of Certificates of Candidacy

### a) Effect of Filing

Ipsso facto resignation

1. Appointive officials are deemed ipso facto resigned. – applies to members of AFP, EEs of GOCCs with/out original charter.
2. Elective officials (local or national) are not deemed ipso facto resigned, whether the COC is for the same or different position.

There are substantial distinctions between elective and appointive officials which justify the different treatment:

1. Elective officials assume office by mandate of the electorate, while appointive officials assume office by designation of an appointing authority.
2. Elective officials have fixed term, while appointive officials generally hold the office permanently term or at the pleasure of appointing authority.
3. Elective officials may be removed only through a stringent recall process, while appointive officials may be removed upon just/authorized cause and upon observance of due process, or on account of loss of confidence of appointing authority.

*No person shall be eligible for more than one office to be filled in the same election. As a GR, if a person file multiple COCs for different positions, he shall not be eligible for any of them. XPN: if prior to the last day of filing COCs, he executes an oath indicating the position he wishes to run for, ad cancels the COC for the other positions.*

### b) Substitution and Withdrawal of Candidates

#### (a) Substitution

1. If after the last day for filing of the certificates of candidacy, an official candidate of a registered political party (i) dies, (ii) withdraws or (iii) is disqualified for any cause **DWD**, he may be substituted.
2. The substitute must be a candidate belonging to and nominated by the same political party. No substitute shall be allowed for any independent candidate, unless he joins the party of the DQ candidate, even after the latter's DQ.
3. The substitute must file his COC not later than mid-day of the election day.
4. If the COC of a candidate was cancelled or denied due course on ground of material misrepresentation on COC (S78), the COC is void ab initio and he cannot be substituted.
5. In case of party list, once the list of nominees is submitted to COMELEC, the names and order may no longer be altered or modified except in case of DWD.

#### (b) Withdrawal

1. A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.
2. Effects – (i) Filing or withdrawal shall not affect whatever civil, criminal, or administrative liabilities which a candidate may have incurred up to the point of withdrawal; (ii) if the withdrawing candidate belongs to a political party, he may be substituted by another candidate belonging to the same party, who must file his COC not later than mid-day of election day.

### c) Nuisance Candidates

Nuisance candidates are those who file COC (i) to put the election process in mockery or disrepute or (ii) to cause confusion among the voters (a) by the similarity of the names of the registered candidates or (b) by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the COC has been filed and thus prevent a faithful determination of the true will of the electorate.

1. COMELEC may refuse to give due course to or cancel a COC of a nuisance candidate motu proprio or upon a verified petition of an interested party.
2. However, the alleged nuisance candidate must be given the opportunity to be heard. The cancellation of COC before the candidate was able to attend a clarificatory hearing violates his right to due process.
3. A candidate cannot be declared a nuisance on ground of – (i) lack of proof of financial capacity to wage a nationwide campaign [property qualification], (ii) not virtually known, (iii) has no political party to help him, (iv) mere use of different name in the ballot and there is political party backing his candidacy.

Counting of votes in favor of nuisance candidate [not stray]

1. In single-slot position, the votes shall be counted in favor of the bona fide candidate.
2. In multi-slot position, (i) if the vote is in favor of nuisance candidate only, it shall be counted in favor of bona fide candidate, (ii) if the vote is in favor of either or both the bona fide and nuisance candidate, the vote for the latter shall be disregarded (to prevent double counting).

#### d) Duties of the Commission on Elections (COMELEC)

GR: The COMELEC shall have the **ministerial** duty to receive and acknowledge receipt of the COCs provided said certificates are (i) under oath and (ii) contain all the required data and (iii) in the form prescribed by the Commission. It may only look into **patent defects** in the certificate, but it may not go into matters not appearing on its face.

XPN: COMELEC may go beyond the face of the certificate of candidacy on case of: (i) Nuisance candidates, (ii) Petition to deny due course to or cancel a certificate of candidacy.

### C. Campaign

#### 1. Premature Campaigning

Campaign period

1. 90d before election for Pres., VP, Senators.
2. 45d before election for Members of House of Representatives, and local officials.

Premature campaigning

1. To be liable for premature campaigning (and other election offenses), the person must be a candidate.
2. A person becomes a candidate only upon filing of COC within the prescribed period and the commencement of the election period.

#### 2. Prohibited Contributions

Entities prohibited from giving political contributions:

1. Public or private financial institutions, except loans in the ordinary course of business.
2. Operators of public utility or those in possession of or exploiting any natural resources of the nation.
3. Contractors or sub-contractors of government.
4. Grantees of franchises, incentives, exemptions, allocations or similar privileges or concessions by the government including GOCCs.
5. Grantee of loans or other accommodations >P100k by the government including GOCCs within one year prior to the election day.
6. Educational institutions which have received grants of public funds amounting ≥P100k.
7. Officials or EEs in the CS, or members of the AFP.
8. Foreigners and foreign corporations. – This includes contribution of services such as entertainers and other forms of contribution.

**\*\*Solicitation or receipt of contributions from above persons is also prohibited.**

It is also **prohibited for any candidate**, spouse, relative within 2<sup>nd</sup> degree (con/aff) or representative **to make any contribution** for any structure for public use or for use of religious civil organization, except the normal religious dues and payments for scholarships established and school contributions habitually made before campaign period.

### 3. Lawful and Prohibited Election Propaganda

Lawful election propaganda

1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size ≤8.5x14 inches (w/l).
2. Handwritten or printed letters urging voters to vote for or against any particular candidate.
3. Posters with area ≤2x3ft, or streamers with area ≤3x8ft at the site and on the occasion of a public meeting or rally, or its announcement. The streamers may not be displayed except one week before the date of the meeting or rally and that shall be removed within 72h after the same.
4. All other forms of election propaganda not prohibited by OEC as authorized by COMELEC after due notice to and hearing. The authorization shall be published in 2 NPGC throughout the nation at least 2x within one week after grant of authorization.

Notes:

1. The removal, destruction, obliteration, tampering of lawful election propaganda shall be unlawful.
2. Any published or printed political matter shall identify the payor ("paid for by") and printer ("printed by") by their true and correct name and address.

Prohibited forms of election propaganda

1. Printed matter urging voters to vote for or against any candidate unless bearing the names and addresses of the printer and payor.
2. Billboard, tinplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party.
3. Electoral propaganda gadgets (pens, lighters, fans, flashlights, athletic goods, wallets, shirts, hats, bandanas, matches, cigarettes and the like). Campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate.
4. Advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts.
5. Any radio broadcasting or TV station to sell or give free airtime except as authorized in OEC under the rules and regulations promulgated by COMELEC.

COMELEC has no power to regulate free expression of private citizens who are neither candidates nor members of political parties.

TV airtime is per station based not aggregate. Right to reply is not deductible from airtime or airspace allotment.

### 4. Limitations on Expenses

Of candidates

1. ≤P1.50 per registered voter in the constituency where he filed his candidacy.
2. Expenses shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign.

3. If the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, COMELEC may assess the amount commensurate with the expenses for its use which shall be included in the total expenses incurred by the candidate.

Of political parties

1. ≤P1.50 per registered voter in the constituency/ies where it has official candidates.
2. Expenses incurred by branches, chapters, or committees of such political party shall be included in the computation of the total expenditures of the political party.

## 5. Statement of Contributions and Expenses

Every candidate and treasurer of the political party shall file full, true and itemized, statement of all contributions and expenditures in connection with the election.

1. Not later than 7d, or earlier than 10d before election day.
2. Supplemental SOCE not included in the prior statement shall also be filed within 30d after election.

**\*\*A candidate who withdrew is still required to file his SOCE.**

## D. Remedies and Jurisdiction

### 1. Petition to Deny Due Course or Cancel a Certificate of Candidacy §78, §69

Jurisdiction:

1. Depends on whether the COMELEC is performing an administrative or QJ function – (i) if QJ function, the procedure in IX-C(3) applies, i.e., the matter shall be heard by COMELEC division, subject to MR to COMELEC en banc; (ii) if administrative function, the procedure in IX-C(3) does not apply. COMELEC may take cognizance of the case en banc at first instance.
2. Cancellation proceedings on ground that the candidate failed to meet the residency requirement on account of being a “green card” holder is exercise of QJ functions. Determination of validity of substitution on ground that the replaced candidate made material misrepresentation in his COC is also an exercise of QJ which requires prior determination.
3. Cancellation proceedings on the basis of perpetual disqualification is exercise of administrative functions (subject to judicial notice).

**\*\*Petition must be filed 5d prior to the last day for filing COC, not later than 25d from filing of COC.**

Ground:

1. Material misrepresentation on the COC (S78) – only on verified petition (see above).
2. Nuisance candidate (S69) – motu proprio or on verified petition (see above).

**Formal defects in COC<sup>16</sup>**

1. If found prior to proclamation, fatal.
2. If found after proclamation, no effect. The will of sovereignty shall be respected.

Effect of denial or cancellation: the judgment is merely declaratory

1. COC is void ab initio; the person is not considered a candidate at all. It is immaterial when the judgment attained finality.
2. Votes in his favor shall be considered stray.
3. If rendered before election, he cannot be substituted.
4. If rendered after election, the eligible candidate obtaining the highest no. of votes shall be

proclaimed elect. The DQ officer is considered de facto officer up to the time of his DQ.

**The COC is cancelled.**

## 2. Petition for Disqualification §68, §12

Grounds:

1. Commission of election offenses, permanent residence (S68) – upon petition.
2. Insanity, conviction of crimes (S12)

**\*\*May be filed after the last day of filing COC up to proclamation.**

Effects: the judgment produces the effect of DQ

1. Administrative determination by COMELEC applicable only to the election concerned but cannot be considered as a further ground for DQ in the subsequent election, unless involving criminal conviction.
2. The candidate shall be considered bona fide up to the time of DQ.
3. If judgment was rendered before election, he shall not be voted. Votes in his favor shall be considered stray. But he may be substituted.
4. If judgement was rendered after election and he wins – (i) votes cast in his favor are valid and should be counted; (ii) his proclamation may be suspended when the evidence of guilt is strong; (iii) if proclaimed, he shall be prevented from further serving in office. Vacancy arises calling for the application of successional rules; (iv) if he assumed office, he is considered de jure officer.
5. XPN: in members of Congress, there is no successional rules. Replacement shall be determined by conduct of special election.
6. If the ground is failure to meet residency requirement, either S78 or S68 petition may be filed.

**The candidate is DQ.**

## 3. Failure of Election, Call for Special Election

Failure of election

Grounds

1. Election in any polling place has **not been held** on the date fixed due to force majeure, violence, terrorism, fraud, or other analogous causes.
2. Election in any polling place had been **suspended** before the hour fixed for the closing of the voting due to force majeure, violence, terrorism, fraud, or other analogous causes.
3. After the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof such election results in a failure to elect due to force majeure, violence, terrorism, fraud or other analogous causes.

Conditions for declaration

1. No voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect, and
2. the votes not cast would have affected the result of the elections.

Notes:

1. COMELEC may postpone, declare failure of election, call for special elections by majority of vote en banc.
2. COMELEC's power declare failure of elections is an exercise of administrative function. Meanwhile ETs have the power to provide for the annulment of elections, which is an exercise of QJ powers.

<sup>16</sup> Matters which do not go to the eligibility of the candidate.

#### 4. Pre-Proclamation Controversy

Proclamation. – (i) done after the canvass of election returns, (ii) involves declaration of candidate with highest number of votes.

Pre-proclamation controversy

1. Involves questions regarding proceedings of the board of canvassers ("BOC"), which may be raised by any candidate or by any registered political party or coalition of political parties, or by any accredited and participating party list group.
2. May be file before the concerned BOC or directly with the COMELEC.

Grounds

1. Illegality of the composition or proceedings of the BOC.
2. The canvassed election returns are incomplete, contain material defects, approved to be tampered with, or contain discrepancy in the same returns or in other authenticated copies.
3. The election returns were prepared under duress, threats, coercion, or intimidation, or are obviously manufactured or not authentic.
4. Substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

Not available:

1. For the positions of President, Vice-President, Senator, and Member of the House of Representatives (Synchronized Election Law).
2. In barangay elections.
3. If the contested candidate was already proclaimed and assumed office. In the latter, the remedy is to file an election protest. However, a void proclamation is no proclamation at all, and the proclaimed candidate's assumption into office cannot deprive the COMELEC of its power to annul the proclamation.
4. No pre-proclamation controversies regarding the appreciation of election returns and certificates of canvass maybe entertained in elections for members of the HR. The recourse is to file a regular election protest before the HRET.

#### 5. Election Protest

An election protest is a contest between the defeated and winning candidates on the ground of **fraud, terrorism or irregularities** in the casting and counting of the ballots, or in the preparation of the returns.

1. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office, or whether there were irregularities in the conduct of the election which affected the results.
2. It may be filed a candidate who duly filed COC within 10d after the proclamation. The period is suspended during the pendency of a pre-proclamation controversy.

Jurisdiction:

1. COMELEC – over all contests relating to the elections, returns, and qualifications: (i) EOJ over all elective regional, provincial, and city officials; (ii) appellate over municipal (from RTC) and barangay officials (from MTC), which shall be final, executory, and not appealable.
2. HRET – disputes of election, qualifications, returns of members of the House of Representatives after (i) proclamation, (ii) taking of oath of office, and (iii) assumption of office. The dismissal of the petition for cancellation or to deny due course the COC of a candidate on ground of his DQ does not constitute res judicata with respect to HRET's

jurisdiction (whether election contest or quo warranto).

3. HRET – disputes of election, qualifications, returns of Senators.
4. SC as PET – disputes of election, qualifications, returns of President and VP.

**\*\*Running for another office is considered abandonment the protest.**

#### 6. Quo Warranto

Quo warranto is a proceeding to unseat the respondent from office but not necessarily to install the petitioner in his place.

Grounds:

1. Ineligibility.
2. Disloyalty.

May be filed by any voter in the constituency where the winning candidate sought is sought to be DQ from office, within 10d after the proclamation of results.

**\*\*Quo warranto involving elective and appointive officials were different.**

Elective officials	Appointive officials
May be filed by voter registered in the constituency where the candidate is sought to be DQ	May be filed by SolGen or private individual claiming legal right to the office
Must be filed within 10d from proclamation	Must be filed within 1y from the time when ground for DQ arose
Grounds: ineligibility and disloyalty	Ineligibility
Issue is the candidate's eligibility	Issue is the legality of the appointment
COMELEC HRET SET PET has jurisdiction	SC has jurisdiction

#### a) COMELEC

1. EOJ over all elective regional, provincial, and city officials.
2. Appellate over municipal (from RTC) and barangay officials (from MTC), which shall be final, executory, and not appealable.

#### b) Senate Electoral Tribunal (SET)

Sole judge of all contests relating to the election, returns, and qualifications of Senators.

1. Election contests must be file within 30d from assumption of office.
2. QW petitions must be filed within 15d from assumption of office.

#### c) House of Representatives Electoral Tribunal (HRET)

Sole judge of all contests relating to the election, returns, and qualifications of Members of HR.

1. Election contests must be file within 15d from assumption of office, if proclaimed before June 30; if after, within 15d from proclamation.
2. In determining whether the petitioner's burden of proving the candidate's ineligibility was met, doubts must be resolved in favor of the winning candidate's eligibility to prevent defeating the will of the electorate.
3. The HRET is also vested with jurisdiction with respect to intra-party disputes – e.g., the expulsion of an party list nominee and his replacement by another nominee.

#### 7. Recall

Mode of removal of an elective public officer by the people before the end of his term of office.

1. Ground: loss of confidence of the people.
2. Initiated via a Petition of at least 25% of the total number of registered voters in the LGU.



3. The official sought to be recalled is automatically a candidate. He cannot resign during the recall.
4. Recall shall be effective upon proclamation of successor receiving the highest number of votes.

**Limitations:**

1. An official may be subject of recall only once during his term.
2. No recall shall take place within 1y from assumption of office or 1y before the regular local election.

*\*\*SC held that lack of budget may no longer be invoked as ground for the non-conduct of recall election.*

**E. Prosecution of Election Offenses [Exclude: Penal Provisions]**

1. COMELEC has authority to investigate and prosecute election offenses, concurrently with other prosecuting arms of the government.
2. RTC has jurisdiction to try and decide election offenses.
3. Must be filed within 5y from commission of the offense, or from finality of judgment in election contest, if the same be discovered therein.

**Electoral sabotage**

1. Special election offense.
2. Punishable acts: (i) Tampering, increasing, decreasing the votes received by a candidate by any person or member of the board of election inspectors or board of canvassers; (ii) refusal after proper verification and hearing, to credit the correct votes or deduct tampered votes by any member of the board.
3. Perpetrated on a large scale or in substantial numbers.
4. Imposable penalty is life imprisonment.

**261(w)**

1. Punishes the acts of: (i) undertaking the construction of any public works, unless excepted; or (ii) issuing, using, availing of treasury warrants or any devise undertaking future deliver of money, goods, other things of value chargeable against public funds. – w/n intended for public works, as construed by SC.
2. Within 45d before regular election, or 30d before special election.

**Conspiracy to bribe voters**

1. Proof that at least one voter in different precincts representing at least 20% of the total precincts in any municipality, city or province was offered, promised or given money, valuable consideration or other expenditure by the relatives, leader or sympathizer of a candidate for the purpose of promoting the candidacy of such candidate, gives rise to a disputable presumption of conspiracy to bribe voters (Electoral Reforms Law S28)
2. If the proof affects at least 20% of the precincts of the municipality, city or province to which the public office aspired for by the favored candidate relates, this shall constitute a disputable presumption of the involvement of the candidate and of his principal campaign managers in each of the municipalities concerned, in the conspiracy.

**IV. Local Government**

**A. Public Corporations**

**1. Concept; Distinguished from Government-Owned or Controlled Corporations**

A public corporation is one that is organized for the government of a portion of the state. LGUs are public corporations.

1. They have separate juridical personalities and vested with corporate powers under LGC. They also enjoy local autonomy.
2. Unlike GOCCs – (i) they can be created only by a special law, but not under RCC; (ii) they are neither stock nor non-stock corporations; (iii) they are created for the government of a portion of a State.

**2. Classifications**

**a) Quasi-Corporations**

A private corporation which renders public service or supplies public wants, such as utility companies. They combine the elements of both public and private. Though organized for private profit, they are compelled by law or contract to render public services.

**b) Municipal Corporations**

**(1) Elements**

1. Legal creation – law creating the municipal corporation. If law creating a MC was later declared unconstitutional – (i) it cannot be considered a de facto corporation since no valid law; (ii) but the acts of its officers before the declaration of unconstitutionality shall be recognized and given effect as an operative fact.
2. Corporate name – by which the artificial personality is known and which all corporate acts are done.
3. Inhabitants – which minimum no. is prescribed by the LGC.
4. Territory – (i) which must be fixed, definite and certain since it is only within the territory that the MC may exercise its powers and functions; (ii) pertains only to their land area, unless expanded by law to the maritime area.

**(2) Nature and Functions**

LGUs are the territorial and political subdivisions of the RP created by law: provinces, cities, municipalities, barangays.

1. They enjoy local autonomy but not independence from the State. They are not “imperium in imperio”.
2. Dual nature and functions: (a) As a body politic, and (b) as a body corporate.

**(a) As a body politic**

1. They exercise powers as a political subdivision of the NG (governmental function)
2. Taxation, PP, ED.

**(b) As a body corporate.**

1. They represent the inhabitants of their territory (corporate function)
2. Corporate powers – (i) To continuous succession in its corporate name, (ii) To sue and be sued, (iii) To have and use a corporate seal, (iv) To acquire and convey real or personal property, (v) To enter into contracts, (vi) To exercise general powers of corporations subject to the limits under LGC.
3. They can exercise powers that are express granted, necessarily implied from the express grant, incidental to their purpose.

**(3) Requisites for Creation, Conversion, Division, Merger or Dissolution**

**Creation**

1. LGUs, other than barangays, are exclusively created by law. Barangays may be created by Sangguniang Panlalawigan and Panlungsod.
2. They are deemed incorporated on the day their charter is approved by a majority of the votes cast in a plebiscite in the political units directly affected.
3. They commence corporate existence upon election and qualification of its Chief Executive and

- a majority of the members of its Sanggunian, unless otherwise provided by law.
- The territorial boundaries of an LGU must be fixed since it defines the limits of its jurisdiction.

Creation, division, merger, abolition, substantial alteration of boundaries **CDMAS** (i) must comply with the criteria under LGC, and (ii) approved by a majority of the votes cast in a plebiscite in the political units directly affected.

#### Criteria

Indicator	Province	City	Municipality	Barangay
Income	20M	50M – HUC 100M – CC	2.5M	
Population	250k	200k – HUC 150k – CC	25k	2k 5k (MM)
Land Area	2,000 sq. km.	100 sq. km.	50 sq. km.	Contiguous

- Income AND Population or land area. The legislative intent is that population and land area requirements may be overridden by the established economic viability (income).
- Exempted from contiguous and land area requirements if the province is: (i) composed of one or more islands, or (ii) separated by a chartered city/ies which do not contribute to the income of the province.
- In case of division/merger, the IPL shall not be reduced below minimum.
- Abolition is proper, if IPL is reduced below the minimum.

#### Plebiscite

- Plebiscite is required whenever the act involves **material change** in the political and economic rights of the LGUs affected and the people therein, which is commonly present in **CDMAS**
- Applies to (i) LGUs, (ii) special metropolitan political subdivisions created by law, (iii) creation of autonomous regions. However, an amendment to the organic law of the autonomous region need not be subject to plebiscite, unless there will be alteration of its political structure.
- Plebiscite is not required for legislative apportionment.

#### “Political units directly effected”

- If a component city is converted to HUC the entire province shall be entitled to vote in the plebiscite – (i) political effect: removal of the city of the supervision of the province [direct spv of Pres.]; (ii) economic effect: reduction of IRA of the province. However, the HUC is not entitled to participate in a plebiscite to approve the division of the province. e.g., Puerto Princesa in the case of Palawan.
- Same rule applies if a new municipality is created from a portion of another municipality. All voters of the original municipality shall be entitled to vote.
- Considerations: (i) Territorial alteration, (ii) Political effects, and (iii) Economic effects.

### B. Principles of Local Autonomy

Adopts as system of decentralization to make local governments more responsive and accountable.

- In case of doubt, laws shall be interpreted in favor of local autonomy.
- Ph's system of government is unitary but decentralized.
- Local autonomy does not exclude general supervision of the national government to ensure consistency with national policies.
- Categories of decentralization: (a) political decentralization or devolution, (b) administrative

decentralization or deconcentration, (c) fiscal decentralization, and (d) policy or decision-making decentralization.

#### (a) Political decentralization (devolution)

- Occurs when there is a transfer of political powers, responsibilities, and resources from the central government to the LGUs for the performance of certain functions, especially to enable a closer **delivery of vital services** from government to the public.
- Autonomous governments are free to chart their own destinies and shape their future with minimum intervention from central authorities.
- Sec. 16-19 LGC.

#### (b) Administrative decentralization (deconcentration)

- Involves the transfer of functions or the delegation of administrative authority and responsibility from the national office to the regional and local offices, for the performance of certain functions to better cope up with the needs of particular localities.
- E.g., creation of Local School Boards, the Local Health Boards, and the Local Development Councils and transfer of some power to them from DepEd, DOH, etc.

#### (c) Fiscal decentralization

- (i) LGUs have the power to create their own sources of revenue; (ii) they shall have a just share in the national taxes which shall be automatically and released to them without need for further action, and (iii) they shall share in the proceeds from the utilization of national wealth in their territories.
- They also have power to allocate these resources in accordance with their own priorities.
- Just share in the national taxes (IRA) – includes all taxes collected by BIR, BOC, not limited to internal revenue taxes.
- They shall share in the proceeds from the utilization of national wealth in their territories pertain only to those found within their land areas.

#### (d) Policy or decision-making decentralization.

- Exists if at least one sub-national tier of government has exclusive authority to make decisions on at least one policy issue

### C. Autonomous Regions and Their Relation to the National Government

- The autonomy is granted to allow the separate development of peoples with distinctive **cultures and traditions**.
- Its objective is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business.
- This is achieved through the establishment of a special governance regime for certain member communities who (i) choose their own authorities from within the community and (ii) exercise the jurisdictional authority legally accorded to them to decide internal community affairs.
- MOA-AD which attempted to create a Bangsamoro Juridical Entity (BJE) exceeded both the concept of decentralization and that of local autonomy envisioned in the Const. The associative concept is not recognized by the Ph Const. as the “state” contemplated therein pertains only to the Ph state., whereas the associative concept implies a recognition of an associated state having all elements as such, or of a transitory status preparatory for independence.
- The territory of autonomous regions remains integral and inseparable part of the national

- territory. They must uphold the Const. and owe allegiance to the Republic.
6. They shall exercise their powers according to their organic acts and shall be under the general supervision of the President.

#### D. Local Government Unit (LGU)

##### 1. Powers

###### a) Police Power

1. Under the GWC of the LGC, LGC may exercise such powers as are essential for the promotion of the general welfare.
2. This may be exercised by the local Sanggunians.
3. In addition to the usual tests for validity of PP (lawful object + lawful means), the exercise of PP by LGUs is subject to limitations set forth by laws or executive issuances.
4. It includes the power to close or open roads (see below)
5. Police power cannot be invoked to defeat the mandate of government agencies operating within the LGU. E.g., order of the LDDA for the municipality to cease and desist from operating a garbage dump site on ground that it pollutes the Laguna de Bay is valid considering that LDDA's mandate is to adopt measures for the discontinuance of pollution, including the issuance of CDO.

###### b) Eminent Domain

###### Limitations

1. Must be exercised by the local chief executive through an ordinance, not by a mere resolution of the Sanggunian.
2. For public use, or purpose or welfare for the benefit of the poor and the landless
3. Upon payment of just compensation
4. Subject to the provisions of the Constitution and pertinent laws
5. Previous **valid and definite offer** made to the owner
6. Non-acceptance by owner of the offer

###### Public use

1. Public use means public advantage, even if it incidentally benefits specific persons or class.
2. Property to be expropriated must be suitable for its intended use (residential lots for housing). However, that there are more suitable properties not yet expropriated is not a justification for the denial of the expropriation proceeding, unless there is showing of GAD. Choice of property to be expropriated can be challenged only on the basis of GAD.
3. If public use is abandoned, the owner is entitled to its return upon refund of JC.

###### Conditions for taking

1. Filing of the expropriation proceedings.
2. Deposit with the proper court of at least 15% of FMV based on the current tax declaration.

###### ED as implement of PP

1. The taking may not be compensable if done in exercise of police power.
2. If the taking is of wholesome objects or property to be devoted to public use, the taking is compensable.
3. If the taking is of noxious objects or property to protect the public from its harmful effects, the taking is not compensable but an exercise of PP. E.g., removal of billboard ads for being a nuisance.

###### c) Taxing Power

1. By express grant of the Constitution, LGUs have the power to create their own sources of revenue, and levy TFC, which shall exclusively accrue to

them. These resources may be allocated by them in accordance with their own priorities.

2. This is also based on the principle of decentralization, which includes fiscal decentralization.
3. The power is exercised by the local Sanggunians through the passage of tax ordinance or revenue measures.
4. Limitations – (i) constitutional and statutory, (ii) limitations prescribed by Congress consistent with the basic policy of local autonomy.

###### Common Limitations

###### (a) Already subject to national tax

1. Income tax, except if levied on banks and other financial institutions.
2. DST
3. Estate/donor's tax, except local transfer taxes imposed by municipalities.
4. Customs duties, wharfage, tonnage dues, other customs fees, charges, dues, except wharfage on wharves constructed and maintained by LGUs.
5. Excise taxes under NIRC, TFC on petroleum products. N.B.: The prohibition on the imposition of TFC on petroleum products is **absolute** and does not qualify as to whether the tax is imposed on the business or the article. The distinction is immaterial.
6. VAT/OPT, (i) except those expressly granted, e.g., amusement tax; (ii) LGU may impose LBT already subject to VAT/OPT, provided the rate is  $\leq 2\%$  of GS/R.
7. Taxes on common carriers – includes petroleum pipeline operators, international carriers.
8. TFC on export products
9. TFC on vehicle registration, all licenses, permits for driving (LTO), except tricycles.

###### (b) Public policy considerations

1. TFC on passing goods, i.e., carried in and out territorial jurisdiction of the LGU.
2. TFC on agricultural and aquatic products sold by marginal farmers or fishermen.

###### (c) Exemption under special laws

1. Taxes on pioneer or non-pioneer enterprises, certified by BOI for 6 and 4 years, respectively, from date of registration (not the date of actual operations).
2. Taxes on reinsurance or retrocession premiums.
3. TFC on BMBEs, duly registered cooperatives.

###### (d) Inherent limitation

1. TFC on NG, agencies, instrumentalities, LGUs **NAIL**. XPN: where beneficial use of government property is granted to a taxable entity the property is not exempt from RPT and the beneficial user shall be liable for it.
2. **Principle of pre-emption or exclusion:** when the NG elects to tax a particular area, it impliedly withholds from the LGU the delegated power to tax the same field.

###### Exemptions from RPT

###### (a) Government RP [O]

1. RP owned by RP, political subdivisions, including LGUs and GCEs. But GOCCs are generally liable.
2. XPN: When beneficial use was granted, for consideration or otherwise, to taxable person.
3. Tax is personal liability of the beneficial user. In case of non-payment, the remedy is not to execute on the public property but to file a personal action for collection against the beneficial user.
4. Under UP Charter, properties of UP devoted for educational purposes are exempt from RPT. This includes the land leased to Ayala Techno Hub. However, Ayala was assessed for RPT not on the

land but on the improvements which by terms of the lease contract is owned by Ayala during the duration of the lease, to be turned over to UP only upon its termination.

(b) RP of **charitable**, religious, educational institutions [C/U]

1. Charitable institutions, churches, parsonages, convents, appurtenant thereto, mosques, NP or religious cemeteries, all lands, buildings, improvements ADE (including incidental use) used for REC purposes.
2. Machineries, even if ADE for REC purposes is taxable since it is not included in the term "improvements". XPN: machineries of NS NP EI since "all assets" are exempt.

(c) RP of **water** districts and GOCCs [O/U]

1. Machineries, equipment ADE by LWD, GOCCs engaged in supply/distribution of water or generation/transmission of electric power.
2. Requirements – (i) Machineries, equipment owned and ADE by LWD, GOCCs; (ii) LWD, GOCCs engaged in supply/distribution of water or generation/transmission of electric power. Property under BOT scheme which will transfer to GOCC after 25y where GOCC assumes tax obligation is not exempt since its ownership remained with the taxable person. The contractual assumption of liability is not binding on the LGU.

(d) RP of duly registered **cooperatives** [O]

1. With CDA or NEA (electric cooperatives).
2. The exemption is based on ownership. It is not lost even if beneficial use is with a taxable person, e.g., roads constructed by lessee on property owned by duly registered cooperative is exempt from RPT.

(e) RP for **pollution** control and environmental protection [U] PCEP

*\*\*All exemption from RPT previously enjoyed, granted to, or presently enjoyed by any person, including GOCCs, are withdrawn upon effectivity of LGC (blanket withdrawal).*

Special types of levy on property

1. SEF – 1% of assessed value, or lower at discretion of LGU (province, city, municipality in MMIA).
2. Tax on idle lands – (i) imposed if: (a) at least ½ of land other than agricultural > 1,000sqm. is uncultivated, or (b) at least ½ of agricultural land > 1ha. is uncultivated. XPN: lands with at least 50 trees to a ha.; (ii) ≤ 5% of assessed value; (iii) XPN: Force majeure, civil disturbance, natural calamity, other causes (physical or legal) which prevents improvement of the land.
3. Special levy – (i) may be imposed by provinces, cities, municipalities (within and outside MMIA) when lands are benefited by public works or improvements funded by LGU; (ii) ≤ 60% of actual cost of projects/improvement apportioned to owners of RP benefited. E.g., imposition of charge to business establishments located in a subdivision for the construction and maintenance of roads inside the same which can be used by them. The imposition is not a tax but a special assessment, which is based solely on the benefits derived from the public works. It will be invalid if charges were likewise imposed to business establishments outside the subdivision.

d) Closure and Opening of Roads

LGU has the power close or open local road, alley, park square, either temporarily or permanently.

1. Must be through an ordinance.
2. If permanent closure: (i) the ordinance must be approved by at least 2/3 of all the members of the

Sanggunian; and (2) necessary, adequate substitute for the public facility subject to closure was provided.

Public streets are property for public use, thus outside the commerce of men. It cannot be leased or otherwise be the subject of contract.

e) Legislative Power

(1) Requisites of Valid Ordinance

(a) Formal test

1. Within the corporate powers of the LGU to enact.
2. Conduct of mandatory **public hearings** for the purpose prior to enactment.
3. Publication of TO RM – (i) 10 days from approval; (ii) 3 consecutive days in NPGC or conspicuous public places.
4. Copies shall be furnished to respective treasurers for public dissemination.

Approval of ordinances

1. Ordinances must be submitted by the Sanggunian to the LCE for approval who may approve or veto the same – (i) the ordinance is approved if the LCE signs the same, or he fails to veto it within the prescribed time [15d for province, 10d for city/municipality]; (ii) veto power (see below).
2. Review by higher Sanggunian – (i) Sanggunian Panlalawigan reviews ordinances enacted by municipalities or component cities. The only ground for disapproval is ultra vires; (ii) Sanggunian Bayan o Palungsod reviews ordinances enacted by barangays. The only ground for disapproval is inconsistency with law, city or municipal ordinance.
3. Posting in conspicuous places

LCE's veto power

1. If the ordinance is vetoed, the LCE must return the same to the Sanggunian together with his objection which may either be on the grounds that (a) the ordinance is ultra vires or (b) it is prejudicial to public welfare.
2. LCE also has line-item veto power with respect to appropriation ordinances.
3. The Sanggunian may override the veto by the vote of 2/3 of all its members which will render the ordinance effective.
4. The LCE may exercise veto power only once.

N.B.: an ordinance authorizing the payment of money (appropriation ordinance) must be approved by all the sanggunian members, not only of those present.

(b) Substantive test CUPGUP

1. Must not contravene the Constitution or any statute. – (i) an ordinance prescribing the use of local dialect as the primary medium of instruction in primary grades is not valid. The constitution provides that regional dialects may be allowed only as auxiliary medium of instruction.
2. Must not be unjust, excessive, oppressive, confiscatory, UE CO or contrary to declared national policy.
3. Must not be partial or discriminatory.
4. Must be general and consistent with public policy.
5. Must not be unreasonable.
6. Must not prohibit but may regulate trade.

*\*\*Applies to Tax Ordinances TO and Revenue Measures RM.*

(2) Local Initiative and Referendum

(a) Local initiative – power of the electorate to propose ordinances.

(b) Local referendum – power of the electorate to approve or reject a proposed ordinance.



#### f) Corporate Powers

1. To continuous succession in its corporate name.
2. To sue and be sued.
3. To have and use a corporate seal.
4. To acquire and convey real or personal property.
5. To enter into contracts.
6. To exercise general powers of corporations subject to the limits under LGC.

##### Power to enter into contracts

1. The particular contract must be within the powers of LGU.
2. **Prior authorization** by the sanggunian concerned – (i) the Sanggunian has standing to petition for the declaration of nullity of a contract entered by the LCE without their authority; (ii) but if the SM of the contract was already identified in sufficient detail in the appropriation ordinance, a separate authorization by the Sanggunian is no longer required.
3. If the contract involves the expenditure of public funds, there must be an **appropriation** and a **certificate of availability of funds** by the local treasurer (Admin Code).
4. The contract must conform to the **formal requisites** of written contracts prescribed by law.
5. If a province is a party to a contract conveying title to real property, the contract must be **approved by the President**. If a municipality is a party to a contract conveying real property or any interest in it or creating a lien upon it, the contract must be approved by the **provincial governor** (Admin Code).

#### g) Ultra Vires Acts

1. LGUs may exercise powers that are expressly granted to it, those that are implied from the express grant, and those incidental for its purpose. Otherwise, the acts are ultra vires.
2. Ordinances enacted by cities and municipalities may be disapproved by the Sangguniang Panlalawigan for being ultra vires.
3. Ultra vires acts are void ab initio and cannot be cured by supervening circumstances. E.g., a municipality passed a tax ordinance imposing a franchise tax. It is ultra vires since only provinces and cities may impose franchise tax. Hence it is void ab initio. The subsequent conversion of the municipality to a city did not cure the void ordinance.
4. Under LGC, the maximum penalty that may be imposed for the violation of municipal ordinance fine of P1,000.00 or imprisonment for 6m, or both at the discretion of the court. An ordinance imposing a fine of P1,000.00 or imprisonment for **1y**, is ultra vires.
5. The governor does not have the power to call out AFP and PNP to set-up checkpoints as measure of public safety during a state of national emergency. Such power is exclusively vested by the Const. to the Pres. The governor is also without authority to declare a state of emergency. Exercise of such powers is ultra vires.

#### 2. Liability of LGUs

1. Under LGC, LGUs and their officials are not exempt from liability for **death or injury** to persons or damage to property. – (i) if acting in governmental function, LGU is exempt; (ii) if acting in proprietary function, LGU is liable.
2. Under NCC, LGUs are liable for damages for the death or injury of any person due to the defective condition of public works under their control or supervision. – ownership of the public works is

irrelevant so long as the LGU has control and supervision over it.

##### Enforcement of LGU liability

1. Levy on the patrimonial property of LGU – (i) bank deposits of LGUs are presumed public; (ii) it may be garnished but only up to the extent of appropriation.
2. Petition for mandamus for the appropriation of funds for satisfaction of the judgment debt. – provided there is already a final judgment by the court fixing the LGU's liability, and not merely by way of financial assistance. The latter is illegal as it constitutes payment of public funds for private interests.
3. Action for money claim filed before the COA.

#### 3. Settlement of Boundary Disputes

Policy of LGU is **amicable settlement** boundary disputes between and among LGUs.

1. Barangays in the same city/municipality – referred to s. panlungsod or bayan concerned.
2. Municipalities in the same province – referred to s. panlalawigan concerned.
3. Municipalities/cc in different provinces – jointly referred to s. panlalawigans concerned.
4. CC/municipality and HUC, or HUCs – jointly referred to sanggunians of the parties concerned.

##### In case of failure of amicable settlement

1. Certification shall be issued to such effect within 60d from the date the dispute was referred.
2. Upon certification, the Sanggunian concerned shall decide the dispute within 60d from date of certification.

##### In cases not covered, jurisdiction lies with RTC (residual)

1. E.g., Dispute between municipality and icc in the same province.

#### 4. Vacancies and Succession of Local Officials

##### (a) Permanent vacancies

###### By automatic succession

Vacancy	Successor
Governor	Vice Governor
Mayor	Vice Mayor
Governor and Vice	Highest, and second highest ranking member of Sanggunian; subsequent vacancies to be filled by Sanggunian members according to ranking
Mayor and Vice	Highest, and second highest ranking member of Sanggunian
Punong barangay	

1. Grounds: (i) filling of a higher vacant office, (ii) refusal to assume office, (iii) failure to qualify, (iv) death, (v) removal from office, (vi) resignation, (vii) permanent incapacity.
2. Tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.
3. Successors shall serve only the **unexpired terms** of their predecessors.

###### By appointment

Vacancy	Successor
S. Panlalawigan	Appointment by Pres. through Executive Secretary
S. Panlungsod HUC ICC	Appointment by Gov.
S. Panlungsod CC	
S. Bayan	
S. Barangay	Appointment by Mayor upon recommendation of S. Barangay concerned

1. Applies when the automatic succession is not applicable.
2. If member of political party (other than barangay), the appointee shall come from the same political party of the member who caused the vacancy.

- The appointee shall serve the unexpired term. – a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non.
- If not member of political party, appointment shall be made by the LCE (mentioned above), upon recommendation of Sanggunian concerned (where there is vacancy).

(b) Temporary vacancies

- Of Gov., Mayor, Punong Barangay – Vice Gov., Vice Mayor, highest ranking S. Barangay Member shall automatically exercise the powers of LCE. XPN: power to appoint, suspend, or dismiss EE can be exercised only if the period of temporary incapacity >30wd.
- Temporary incapacity shall terminate upon submission to the appropriate sanggunian of a written declaration by the LCE that he has reported back to office.
- GR: only the Vice Gov., Vice Mayor, highest ranking S. Barangay Member may be authorized to assume the powers of LCE. XPN: OIC may be designated in case LCE is traveling within the country outside his territorial jurisdiction for ≤3d. The authority must specify the powers and functions to be exercised by OIC, except the power to appoint, suspend, or dismiss EEs.
- If no authorization was issued, Vice Gov., Vice Mayor, highest ranking S. Barangay Member may assume powers on 4<sup>th</sup> day of absence of LCE.
- If the Vice Gov. or Vice Mayor was the acting LCE, he may not continue presiding in Sanggunian sessions. He cannot simultaneously perform executive and legislative functions. The temporary vacancy in office of LCE creates a corresponding vacancy in the office of Vice Gov. or Vice Mayor.

*\*\*The rule on succession presupposes the creation of vacancy by a bona fide candidate. It will not apply if the candidate is not bona fide as his COC is void ab initio. E.g., S78 (material misrepresentation), S69 (nuisance candidates) petitions.*

## 5. Recall

Mode of removal of an elective public officer by the people before the end of his term of office.

- Ground: loss of confidence of the people.
- Initiated via a Petition of at least 25% of the total number of registered voters in the LGU (initiation via a preparatory recall assembly was already repealed).
- The official sought to be recalled is automatically a candidate. He cannot resign during the recall.
- Recall shall be effective upon election and proclamation of successor receiving the highest number of votes.
- Recall election shall not be counted for purposes of the three-term limit.

Limitations:

- An official may be subject of recall only once during his term.
- No recall shall take place within 1y from assumption of office or 1y before the regular local election.

*\*\*SC held that lack of budget may no longer be invoked as ground for the non-conduct of recall election.*

## 6. Term Limits

Local elective officials (other than barangay: to be fixed by law) shall have a term of 3y and shall not serve for more than 3 consecutive terms.

- Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.
- Requirements for application – (i) The official was elected; (ii) he has fully served the term.

*Term interrupting events (involuntary)*

- Losing an election protest during the incumbency of official.
- Temporary deprivation of office, to which the official was reinstated only after winning an election protest.
- Assumption of higher position by operation of law due to a vacancy in such office for the unexpired term
- Non-incumbent wins in recall election. (i) the term is deemed interrupted from end of the official's last term up to his proclamation as winner in the recall election when he is considered a private citizen; (ii) recall is not considered an immediate reelection; (iii) recall term is not a full term. N.B.: recall election cannot be made earlier than 1y from assumption of office by the incumbent.
- Dismissal by administrative order by OMB which is immediately executory results in the loss of title. Even if the official is reinstated during his term upon exoneration on appeal (R43 CA), his term is already interrupted.

*Not term-interrupting events*

- Losing an election protest after he had already fully served his term. The decision has no legal effect.
- Voluntary renunciation of office for any length of time – e.g., resignation.
- Conversion of municipality to city. Same territory and constituents.
- Reapportionment, reconfiguration, renaming of legislative district. The three-term limit attaches to the position.
- Incumbent wins in recall election.
- Preventive suspension. Mere temporary disability.
- Suspension as penalty does not cause loss of title over the office. Hence, not considered an involuntary interruption of the term.

*\*\*The three-term limit applies whether the official was elected as district or as party list representative.*

## PART TWO: PUBLIC INTERNATIONAL LAW

### I. Sources of Obligations

Under ICJ Statute

- International conventions**, whether general or particular, establishing rules expressly recognized by the contesting states (treaties).
- International custom**, as evidence of international practice accepted as law (customary IL).
- General principles of law** recognized by civilized nations.
- Judicial decisions and teachings of the most highly qualified publicists as *subsidiary* means of determining what the rule is.

### A. Treaties

- In general, agreement between states or international organizations, and governed by international law.
- Under VCLT, IA between States in **written** form, governed by IL, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
- Oral treaties are recognized in IL, but not for purposes of the VCLT. E.g., undertaking made via phone between two heads of state to pullout their

- vessel from a disputed island is binding between them under CIL although not a treaty under VCLT.
- GR: International agreements create law for the State parties thereto. XPN: if the treaty provision simply codifies jus cogens norms, all States are bound, even those not party to treaty.
  - Principle of auto-limitation. – By consenting to IAs, a State limits its otherwise plenary sovereign rights.

#### Limitations

- Jus cogens restrictions:** a treaty is void if, at the time of its conclusion, it conflicts with a PNGIL.
- Principle of Charter Supremacy: obligations of member states under the UN Charter prevails of their obligations under other IAs.
- It must not be violative of IL: (i) violation of jus cogens norms; (ii) procurement by threat, use of force.

#### Treaties are invalid if:

- In manifest violation of internal law of fundamental importance
- Failure of state representative to observe the restrictions specified in his authority, e.g., lack of full powers.
- Error of fact or situation
- Fraud by the other negotiating state
- Corruption of state's representative
- Coercion of state's representative
- Coercion of the state by the threat or use of force
- Conflict with jus cogens

#### Unilateral declarations

- Not a source of law but it may be the source of rights and obligations.
- It becomes binding when: (i) the declaration is very specific; (ii) it shows clear intent to be bound by its terms, (iii) the same was conveyed publicly, or to the world at large, (iv) the undertaking relates to domains which the state declarant has exclusive competence; and (v) not to give effect to the declaration would be detrimental to the security of international intercourse. It partakes the character of a legal undertaking, even though not made within the context of international negotiations.
- E.g., (i) The undertaking of France not to conduct nuclear tests as a result of the public statements made by the President and other Ministers was binding.

#### In Ph Law

- See III.F.7.C *Entry into Treaties or International Agreements*
- In Ph Law, treaty is used in a restrictive narrow sense pertaining to that defined in the Const. In IL, treaty is used in a generic sense to cover all kinds of IA, including those not concurred in by the Senate.
- Under international law, the distinction between a treaty, IA, or executive agreement is irrelevant in determining international rights and obligations. As long as the negotiating functionaries remained within their powers, the State are bound, and its provision must be complied with in GF. *Pacta sunt servanda*.

### 1. Concept of Jus Cogens (Peremptory Norms of International Law)

PNGIL is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted. It can be modified only by a subsequent norm of international law of the same character (VCLT).

- A treaty is void if at the time of conclusion, it conflicts with a PNGIL. If a new PNGIL emerges, existing treaty in conflict with the same is void and terminates.
- E.g., (i) prohibition against use of force against the territorial integrity or political independence of any state under UN Charter; (ii) law on genocide; (iii) principle of self-determination; (iv) crimes against humanity; (v) prohibition against slavery and slave trade; (vi) piracy; (vii) principle of racial non-discrimination; (viii) freedom of the high seas.

### 2. Reservations, Withdrawal, Termination, and Rebus Sic Stantibus

#### (a) Reservations

- Qualifications/conditions of consent by State in entering IA.
- A unilateral statement made by a State when consenting to a treaty excluding or modifying the legal effect of certain treaty provisions as applied to it.
- A state when expressing its consent to an IA may formulate its reservation (VCLT).
- XPNs: (i) if prohibited by the treaty; (ii) treaty allows only specific reservations which do not include the reservation in question; (iii) incompatible with the purpose and object of the agreement.

#### (b) Withdrawal

- Allowed when: (i) the IA allows withdrawal, and the requirements are complied with; (ii) all parties consent to the withdrawal, even without specific provision; (iii) it is discernible from the text that parties intend to allow parties to withdraw; (iv) by nature of the IA, there is an implied right to withdraw.

#### Guidelines on unilateral withdrawal by Pres. (Ph)

- In Ph, the authority of the Pres. to abrogate a treaty without Senate concurrence is a political question – (i) it pertains to the President's authority in the conduct of foreign relations; (ii) the Constitution is silent.
- The President may unilaterally withdraw from a treaty when he determines the same to be contrary to Constitution or statutes.
- The President cannot unilaterally withdraw from a treaty: (i) when the Senate concurred on express condition that any withdrawal must also be made with its concurrence; (ii) when the withdrawal is contrary to a legislative authority to negotiate and enter into a treaty; or (iii) contrary to an existing law which implements a treaty, or any law.

#### On Rome Statute

- A State party may withdraw, by written notification addressed to the Secretary-General of the UN.
- Withdrawal shall take effect 1y from date of receipt of notification. Ph withdrew in 2018 which took effect in 2019.
- Withdrawal of a State party will have no effect on an investigation or action already initiated before its withdrawal.

#### (c) Termination

- Termination causes a treaty to be without effect as to all parties.
- However, any right, obligation, legal situation of the parties created through the execution of the treaty prior to its termination are not affected.

#### Grounds

- Consent of all parties, or in conformity with the provision of the treaty.
- Implied from the action of all parties – e.g., entering in a new treaty covering the same SM

which provisions are incompatible with existing treaty.

3. Material breach committed by a party by (i) express repudiation not sanctioned by the convention; or (ii) violation of a provision essential for the accomplishment of the object or purpose of the treaty.
4. Impossibility of performance, physically or legally.
5. **Rebus Sic Stantibus**
6. Emergence of new PNGIL (jus cogens) which conflicts with the treaty.

#### *Rebus Sic Stantibus*

1. "things standing thus"
2. Unforeseen fundamental change in the essential circumstances which prompted the states to enter into the agreement, which will radically transform the nature of the obligation (exception to pacta sunt servanda).
3. Does not automatically render the treaty inoperative. Must be invoked by a State party through a formal act of rejection stating the reasons therefore.
4. Conditions – change of circumstances (i) existing when the treaty was concluded; (ii) which is fundamental; (iii) unforeseen; (iv) and constituted an essential basis of the parties' consent; (v) its effect must be radically to transform the scope of the obligations still to be performed under it.

## **B. Customary International Law**

### **1. Elements**

Customary IL are binding unwritten rules in IL.

#### Elements

##### (a) Objective element

1. General, uniform, and consistent GUC practice common to a significant number of states over a long period of time.
2. General – most states perform the act, although adherence by all is not required. Adherence by a majority of the specially affected and interested states is sufficient.
3. Consistent – states do it most of the time, although only substantial and not absolute uniformity is required.
4. There is no specific standard as to time so long as it is sufficient to make manifest the existence of the two elements.

##### (b) Subjective element

1. *Opinio juris sive necessitates*.
2. The belief that what is being done is obligatory by the existence of rule of law requiring it, i.e., a sense of legal obligation.

#### *Persistent objector rule*

1. Customary IL does not apply to the persistent objector.
2. (i) Persistent opposition to the application of the general norm to itself, (ii) at the time when the general norm was still in the process of formation.
3. Even if the norm consolidates or crystalizes into a binding customary rule of international law, then the persistent objector will not be bound.

### **2. Obligations Erga Omnes**

1. "Towards all". It governs the conduct of states, in relation to the international community in view of its common values and its concern from compliance.
2. Obligations owed to the world or the international community as a whole.
3. Any entity in the world may claim violation of their rights if the obligation was not performed.
4. E.g., obligation not to pollute the air; outlawing acts of aggression, of genocide; basic human

rights as protection from slavery and racial discrimination; observance of jus cogens norms; respect to right of self-determination.

c.f.: obligations inter se which are owed to one another, or to a specific entity in the legal system.

## **C. General Principles of Law**

General principles of law recognized by civilized nations

1. General principles common to the major legal systems, established by a process of reasoning or judicial logic
2. E.g., general principles of **equity**, as fairness and justice, and non-discrimination; recognition of foreign judgments; status of foundlings as natural-born citizens of the country where they are found; presumption of GF; presumption of innocence; unjust enrichment; right to due process; right to notice and hearing; right to impartial tribunal; laches; estoppel; res judicata.
3. These are extension of principles generally recognized and established in domestic law to IL. **Same core principles underlying Ph Constitution**, as embodied in the due process and equal protection clauses.
4. May be invoked as **supplementary rules** of IL where appropriate.

## **D. Application of International Law by Domestic Courts**

### **1. Monism**

1. There is one legal system which consists of all the national legal rules where international law is superior.
2. Municipal law is considered merely an aspect of the IL.

### **2. Dualism**

1. Rules of international law are created, exists, and are enforced and interpreted in the international legal system, which is **separate, distinct, and apart** from any national legal system.
2. Each state ascertains the extent that IL is incorporated in the domestic legal system using domestic law.
3. **Ph adopts the dualist view.**

#### *Pacta sunt servanda*

1. "What has been agreed must be respected"
2. A state that has contracted valid international obligations is bound to enact laws or make modifications thereto to ensure the fulfillment of the obligations undertaken. E.g., terms of an international loan instrument on a government infrastructure project must prevail over the requirements of the government procurement act. In any case, RA 9184 provides for the observance of treaties and IAs.

In IL sphere, national law is inferior to IL

1. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.
2. A State may not invoke the fact that its consent to be bound by a treaty was expressed in violation of a provision of its internal law regarding competence to conclude treaties to invalidate such consent. XPN: (i) the violation was manifest, and (ii) concerned a rule of its internal law of fundamental importance.
3. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

In domestic sphere

1. Constitution is supreme over treaties. If the treaty violates the Const., the Ph may deviate from its



obligation under the same. In this case (i) the violation was manifest, and (ii) concerned a rule of its internal law of fundamental importance. Even if the treaty was executed prior to the ratification of Const.

2. GAPIL are considered as part of the law of the land (doctrine of incorporation).
3. Treaties concurred by Senate have the status law – (i) it may amend local laws, (ii) it may be amended by the same.
4. Executive agreements the status of an executive regulation – (i) they have the force of law; (ii) but law prevails in case of conflict; (iii) they cannot amend law existing prior to its execution.
5. SC has the power to review cases involving the constitutionality or validity of any treaty, international or executive agreement<sup>17</sup> - (i) only to determine consistency with the applicable limitations; (ii) but not to look into the proper form of IA, whether treaty of EA, except when the Const., prescribes a form. The determination of the form of IA is a political question which determination is lodged with the President as the chief architect of Ph foreign policy.

### 3. Inverted Monism

There is one legal system which consists of all the national legal rules where the national legal rules is superior.

### 4. Harmonization

1. One must avoid conflict between international and national legal rules and strive for the harmonization of the two conflicting rules to give effect to both legal systems.
2. Seeks to eliminate major differences among different legal systems by creating minimum standards or requirements.
3. Usually used in trade law to facilitate free trade or reduce regulatory burdens.

## II. International Legal Person

### A. States

States are the primary active and predominant subject of IL and enjoy the fullest personality in IL.

### 1. Elements

Montevideo Convention 1933 (Objective criteria of statehood)

1. Permanent population – community of persons held together by a common bond of law that is sufficient in number and capable of maintaining the permanent existence of the community.
2. Defined territory – (i) area of land, regardless of size, attached to the crust of the planet over which a State exercise effective control; (ii) must be a natural territory, not an artificial platform above the water; (iii) undisputed borders is not required, what matters is effective **control**; (iv) effective control means territorial sovereignty, i.e., the power to exercise functions in the State to exclusion of other states.
3. Effective and independent government – (i) the permanent population must be socially organized, governed by authorities which can effectively enforce international obligations in the territory and the population; (ii) the government must be independent, i.e., not adhering to external orders, and must act in an autonomous way.
4. Capacity to enter relations with other states – external aspect of effective government.

*\*\*The creation of a State is a factual question. Once the elements concur, a state is created.*

The MOA AD seeking to create the BJE vests the latter with the elements of a State. It seeks to create an associative relation with the Ph state which is not recognized in Ph Const. The MOA AD was declared unconstitutional.

## 2. Recognition of States and Governments

### (a) Recognition of States

1. State recognition is the act by which existing states officially takes notice of the existence of a new state and admit it as one of their peers.
1. It is a discretionary act. – (i) There is no duty to recognize the existence of a new state; (ii) the recognizing State may impose conditions on the recognition.
2. It is a unilateral act.
3. It is a political, rather than a juridical act. – (i) It has no legal effect on the creation of a State; (ii) Denial to recognize is merely a denies the State of political legitimacy, but not its existence; (iii) hence, recognition mere enforces the status of a state, or consolidates its statehood.
4. Recognition may be explicit or implicit. The establishment of diplomatic relations with another State is an implicit recognition of such State.
5. State recognition is permanent and irrevocable.

### Theories on state recognition

1. Constitutive view – recognition give the state its status as such and its legal personality.
2. Declarative view – (i) recognition by a state is merely a declaration of a prior pre-existing condition; (ii) this is the view reflected in the Montevideo Convention and is more widely accepted.

### (b) Recognition of governments

1. Merely affects the status of the administrative authority in the State, not the State itself.
2. Other states have the option to choose which government of a particular state to recognize. If a new government is recognized, no new state is created. It is the same state governed by a new government.
3. May be de jure or de facto – (i) De jure recognition results from a change in government through ordinary constitutional procedure; (ii) De facto recognition results from a change of government through extra-constitutional means. The recognition does not imply legitimacy of the government, merely that it is the one effective within the territory at a particular point in time.

## B. Non-State Entities

Groups, entities, individuals not constituting states but which are affected by IL, or are affected by IL in a manner which perhaps does not fully recognize the many difference between such persons.

## C. International Organizations

Associations of states and/or other organizations established to serve specific tasks which are equipped for that purpose with permanent organs.

1. They may be created by treaties or other instrument governed by IL which – (i) vests them with legal personality, and (ii) determines their capacities.
2. **Their status is determined by agreement** and not by general or CIL.
3. GR: the personality of IOs is relative and subjective. It depends on whether they are able to acquire certain rights and duties with respect to other subjects of IL. XPN: UN has objective personality (see below).

<sup>17</sup> Const., Art. VIII, Sec. 5(2)(a)

#### Elements

1. Associations established by treaty or other instrument governed by IL.
2. Has members, either States and/or other IOs.
3. Intended to serve specific tasks (element of functionalism/specialization)
4. Equipped with permanent organs.
5. Regulated by IL
6. Endowed with legal personality – they can acquire rights and incur obligations which can be enforced by or against them in international tribunals.

#### The United Nations

1. A legal person under international law created through its Charter.
2. UN has objective personality. Its existence is recognized, and it may acquire rights and incur liabilities not only with respect to its member states but also as to non-member states. It may bring international claims (i) on its own behalf, or (ii) on behalf of its agents.

#### Resolutions of UN General Assembly

1. Merely recommendatory and not binding. Not norm creating, even if adopted unanimously.
2. XPN: (i) If it merely articulates a customary international norm; (ii) If it merely reiterates a treaty obligation; (iii) If it embodies a reflection of emerging international norms and standards (soft law).
3. They have an impact on the formation of customary IL by providing crucial evidence of opinion juris, i.e., statements of states in support of UNGA may be evidence of belief of obligatoriness.

#### Resolution UN Security Council

1. Binding on member states pursuant to its power under the UN charter to take measures for the maintenance of international peace and security
2. Does not deal with abstract points of law, but mere enforcement acts.

### D. Status of Individuals and Corporations

#### (a) Individuals

1. They have human rights and corresponding obligations such as not to commit terrorism, genocide.
2. They can be sued. Violation of international obligations may render an individual personally liable under IL (**individual responsibility for international criminal conduct**). Under the Genocide Convention, persons may be tried in international penal tribunal or court of competent jurisdiction.
3. Generally, they cannot sue. Individuals may not bring an international claim as they are not traditionally subjects of IL. XPN: if their claims are espoused by their State of nationality (espousal of claims)

#### Two views:

1. Traditional view – individuals are considered object or beneficiaries of IL.
2. Modern view – individuals are considered subjects of IL based on agreement by states, especially in field of human rights.

#### Under 1949 Geneva Convention

1. Insurgents have international personality for purposes of the application of Protocol II in relation to the protection of victims of non-international armed conflicts.
2. National Liberation Movement. People fighting against colonial domination, alien occupation and racist regimes in the exercise of their right to self-determination under the UN Charter have international personality only for the purposes of

application to them of Protocol I relating to the protection of victims of the international armed conflicts. They are bound by rules on the conduct of war.

#### (b) Corporations

1. Their international personality depends on their contract with States. If the contract provides that the governing law is IL or that disputes shall be settled by international arbitration, they have personality and can make claims before international tribunals for this limited purpose only.
2. E.g., Under the UNCLOS, natural and juridical persons who are parties to a contract for the exploitation and exploration of the area concerned may settle their disputes before the Seabed Disputes Chamber.

### III. Jurisdiction

Jurisdiction is the right of states to exercise authority over persons and things within its boundaries, subject to certain exceptions.

#### Some XPNs:

1. The principle of auto-limitation by which a State imposes upon itself restrictions in the exercise of its sovereignty by entering into treaties/IAs.
2. GAPIL in recognition of the sovereignty of other states and international comity.
3. Universality principle – when an international crime is involved, all states have jurisdiction to try, decide and eventually punish the wrongdoer, without regard to his nationality or the place of commission. E.g., piracy, slavery, genocide, hijacking, war crimes, other crimes against humanity.

### A. Bases of Jurisdiction

#### 1. Territoriality Principle

A State has absolute (but not necessarily exclusive) jurisdiction over its national territory and over persons and things found in it, subject to immunities enjoyed by such persons and things under IL.

1. Corollary to this, a State cannot exercise jurisdiction over an area where another State exercises lawful jurisdiction.
2. Considered the strongest basis of jurisdiction.
3. A vessel of the State is considered its extension.
4. Kinds of territoriality – (i) subjective: a state has jurisdiction to punish crime commenced within the state but consummated abroad; and (ii) objective: a state has jurisdiction to punish crime commenced abroad but consummated within the state.

#### 2. Nationality Principle

Exercise of jurisdiction over the State's **citizen** who performed an act subject of the rules of the same State, regardless of where he was at the time of commission of the act or the nature of the offense.

1. Applies when a State wants to assert its extra-territorial jurisdiction.
2. Each state has the right to decide who its nationals are, e.g., jus sanguinis, jus soli. It is possible for a person to be considered a national of different states as a result of the application of the states' national laws.
3. Under IL, foundlings are presumed natural-born citizens of the State where they are found.
4. Principle of effective nationality – a person with >1 nationality shall be treated as if he only had one nationality, that of the State with which he appears in fact to be the most closely connected, e.g., because he habitually resides or maintains his principal residence therein.

### 3. Protective Principle

Exercise jurisdiction by a State over conduct outside its territory that threatens its security, and which conduct is generally recognized as criminal by states in the international community.

1. Applies when a State wants to assert its extra-territorial jurisdiction over an act or event of vital national interest, and the actor or victim are not its citizens.
2. E.g., in counterfeiting Ph notes or bills.
3. States may assert jurisdiction over offenses committed against its citizens abroad based on its legitimate interest in protecting their safety when they journey outside national boundaries.

### 4. Passive Personality Principle

Exercise jurisdiction by a State over conduct outside its territory involving its citizen who has been the recipient or subject of the action, or its victim.

1. E.g., vindication of tortious acts committed against Ph citizens.

### B. Title to Territory

Title is the factual and legal conditions under which territory is deemed to belong to one particular authority. It is evidence which may establish the existence of a right and the actual source of that right.

1. In the concept of imperium – control over a certain area, subjecting it to the authority of the State.
2. In the concept of dominium – title in the concept of ownership.

Modes of acquisition:

1. Accretion/Avulsion
2. Cession – voluntary act of a State of ceding, giving, transferring title to its territory to another, usually through a treaty. Its validity depends on the validity of the title of the ceding state (derivative mode).
3. Discovery of an area of dry land that is not part of the territory of any other state (terra nullius).
4. Occupation – discovery (as above), coupled with effective exercise of sovereignty. Effective control may be shown by the apparent, continuous and peaceful display of sovereignty.
5. Conquest/Subjugation – (i) the act of defeating an opponent and occupying all or part of its territory, coupled with formal annexation of territory or international recognition; (ii) this mode became illegal in 1945 upon the prohibition of use of force.
6. Prescription – (i) acquisition of sovereignty over a territory through continuous, undisturbed exercise of sovereignty during such period as necessary to create the general conviction of conformity with international order; (ii) effective control is also an element, but the object need not be terra nullius.

### C. Adjacent Maritime Seas

Territorial sea	12NM from baselines	Full sovereignty extending to the airspace and seabed, subject to right of innocent passage <sup>18</sup>
Contiguous zone	24NM from baselines	Functional jurisdiction to punish the violation or prevent the infringement of customs, fiscal, immigration and sanitary regulations CIFS

<sup>18</sup> Rights of navigation and overflight in the normal mode, solely for the purpose of continuous, expeditious, unobstructed transit or navigation, pursuant to IL principle of Freedom of Navigation. The passage is innocent if it is not prejudicial to the peace, good order, security of the coastal state.

<sup>19</sup> Includes the right to: (i) establish and use artificial islands, offshore terminals, installations, structures, (ii) prevent and control of pollution, (iii) scientific research, (iv) preservation of marine environment.

Exclusive economic zone	200NM from baselines	Sovereign <b>rights</b> for economic purposes only, i.e., exploration, exploitation, management, conservation, EEMC of the natural resources. <sup>19</sup>
Continental shelf <sup>20</sup>	200NM to 350 NM <sup>21</sup> from baselines	Sovereign rights for the purpose of exploration, exploitation (not management, conservation) of natural resources consisting of minerals, non-living resources, living resources of the sedentary species (immobile).

### D. Jurisdiction Over Persons and Economic Activity

#### 1. Criminal Jurisdiction

##### a) General Theory

##### (a) Territoriality

1. Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Ph territory, subject to principles of PIL and to treaty stipulations.
2. May be subjective or objective (see above).

##### (b) Protective principle

1. Exercise of criminal jurisdiction over extraterritorial acts based on their injurious effects on the State.
2. In Ph, this is provided, among others, Art. 2 of RPC on exercise of extra-territorial jurisdiction over certain crimes injurious to Ph interest.
3. Art. 2 RPC – (i) offenses committed while onboard a Ph ship or airship; (ii) forgery or counterfeiting of coin/ currency note of Ph, or obligations and securities issued by GRP; (iii) introduction of such obligations and securities in Ph [i]; (iv) commission an offense in the exercise of functions as public officers; (v) commission of any of the crimes against national security and the law of nations under RPC.

##### (c) Universality principle

1. Recognizes that certain offenses are so heinous and widely condemned that any state may prosecute and punish the offender on behalf of the world community, regardless of the nationality of the offender or victim, or where the crime was committed, so long as jurisdiction over him can be obtained.
2. E.g., piracy.

##### (d) Other bases

1. Nationality principle – exercise of jurisdiction based on nationality of the offender.
2. Passive personality principle – exercise of jurisdiction based on nationality of the victim.

##### b) Extradition

The right of a foreign power, created by treaty, to demand the surrender of a person accused or convicted of a crime cognizable by it, and the correlative duty of the other state to remove such person from its territory and place him the disposal of the former for purposes of punishment, criminal investigation, or trial.

<sup>20</sup> Seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land mass of the coastal state, (i) up to the outer edge of the continental margin beneath the maritime zones, or (ii) to a distance of 200NM from the baselines.

<sup>21</sup> Extended continental shelf – if the outer margin extends beyond 200 NM from the baselines, the outer limit of the continental shelf shall not exceed 350 NM from the baselines.

1. GR: No state is bound to extradite a person. XPN: **If such obligation was undertaken by a state under an international agreement.**
2. Elements – (i) Acts of sovereignty on the party of two states; (ii) Request by one state to another state for delivery to it of an alleged criminal; (iii) Delivery of the person requested for the purposes of trial or sentence in the territory of requesting state.
3. Attentat clause – provision in extradition treaties considering as extraditable (rather than political) offense attempt against, or the taking of, the life of a head of state or members of his family.
4. c.f.: Asylum whereby a State allows an alien to enter and remain in its territory even if his own state objects. This is not a demandable but merely the right of a State to grant it.

#### Basic principles

1. Principle of dual criminality – a person may be extradited only when their actions constitute a crime in both the requesting state and the requested States at the time when the request was made.
2. Principle of speciality – an extraditee can only be prosecuted for the offense for which their extradition was granted as specified in the request for extradition. He may not be extradited to a third state for offenses committed before their extradition to the requesting state.

#### Extradition is sui generis proceeding

1. Its objective is to prevent the escape of a person accused or convicted of a crime and to secure his return to the state from which he fled, for the purpose of trial or punishment.
2. Neither civil nor criminal – (i) requires only the establishment of prima facie case not PBRD or preponderance of evidence; (ii) does not require a full-blown trial but only summary proceeding that is administrative in character; (iii) Evidence may be admitted under less stringent standards; (iv) notice and hearing is available only after the petition for extradition is filed in court but not during the evaluation stage conducted by DOJ upon receipt of request.
3. Bail is not a matter of right. It may be granted only upon showing by clear and convincing evidence that (i) the respondent is not a flight risk, and (ii) there exists special, humanitarian and compelling circumstances.
4. It traces existence wholly to treaty obligations by virtue of which the jurisdiction of a foreign state is extended to its nationals found in the territory of another State.

## 2. Civil Jurisdiction

GR: The State has jurisdiction over its territory and over persons and things found therein, subject to immunities and exceptions found under IL. XPN: Laws relating to family rights and duties, status and legal capacity of personal are binding upon citizens of the Ph, even living abroad.

In Ph, exercise of jurisdiction over disputes arising from acts performed abroad is merely permissive.

#### Ph jurisdiction over foreign national or their property

1. If found within Ph territory, provided that personal jurisdiction over the defendant is acquired, and the SM of litigation has points of contact to Ph.
2. Points of contact may be in the form of presence of the property in the territory, commission of tort in the territory, or Ph is the place of performance of the contract.

#### Ph jurisdiction over foreign merchant vessel

1. If the vessel is in the internal waters.
2. If the vessel is in the territorial sea, UNCLOS provides that (i) the coastal State cannot stop or divert a ship for the purpose of exercising civil jurisdiction over a person on board. (ii) It also cannot levy execution against or arrest the ship for any civil proceedings. XPN: re: obligations and liabilities assumed or incurred by the ship itself in the course or for its voyage through the waters of the coastal State.

## 3. Immunity from Jurisdiction

Immunity is the exemption of the state and its organs from the judicial jurisdiction of another state. However, immunity does not exempt compliance with local laws.

### a) Sovereign Immunity

#### (a) Act of state doctrine

1. Requires forum court to exercise restraint in the adjudication of disputes relating to legislative, or other governmental acts performed by a foreign state within its territory.
2. E.g., when not proper – a private recruitment agency, cannot evade responsibility for the money claims of OFWs which it deployed abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit.

#### (b) Sovereign immunity

1. Immunity from judicial processes (immunity from suit) granted to: (i) foreign **states**, (ii) their **properties**, and (iii) officials or **agents** acting on their behalf, including certain **high-ranking** officials, ambassadors and **diplomats**, and consuls.
2. Based on independence and equality of States, reciprocity, and comity.
3. Applies in suits against the State for acts jure imperii. – (i) a suit is against the State if it will result to a pecuniary liability against the foreign government and will require a positive act on its part, even if directed against its agent; (ii) An act is jure imperii if it pertains to sovereign and governmental acts and acts incidental thereto. E.g., the establishment of a diplomatic mission and lease agreement in relation thereto.
4. The immunity does not apply to acts jure gestionis or private, commercial and proprietary acts.
5. It also does not cover acts of state agents not in the discharge of their official duties, are ultra vires, or done in BF, which are considered performed in their personal capacities. For such acts, the State agent may be held personally liable.

#### (c) Immunity of IOs

1. Defined by their respective constitutive treaties.
2. Purpose is to prevent a situation where the IO is compelled to defend itself instead of focusing on the performance of their mandate, to shield its affairs from political pressure or control by the host country (legal and practical independence).
3. The immunity extends to the IOs, its officials and functionaries. As to the latter, with respect to acts performed by them in official capacity.
4. They are granted immunity from civil, criminal, administrative actions, including in labor disputes.
5. Entitlement of IO to immunity is a "political question" committed to the executive branch. But the immunity of its agents is open to judicial review to determine in what capacity agent was acting in relation to the particular case.

E.g.,

1. Under the UN Charter, the UN and its specialized agencies are immune from suit in the territory of its member States. Its agents are also immune to



	the extent necessary for the independent exercise of their functions.
2.	Under the ADB Charter, ADB enjoys immunity from legal process of every form, except in the specified cases of borrowing and guarantee operations, as well as the purchase, sale and underwriting of securities. Its officers also enjoy immunity in respect of all acts performed by them in their official capacity.
3.	ASEAN, ICMC, <sup>22</sup> IRRI.

#### b) Diplomatic and Consular Immunity

##### (a) Diplomatic immunity

- Covers representatives of the foreign states in political relations (i) heads and members of the mission; (ii) members of the staff of the mission; (iii) members of the diplomatic staff; (iv) diplomatic agent; (v) members of the administrative and technical staff; (vi) private servants; (vii) premises of the mission.
- The heads and members of the mission enjoy complete immunity. Service staff enjoy immunity only with respect to the exercise of their functions. Private servants enjoy no immunity unless provided for.
- The purpose of the immunity is not to benefit the individual but to ensure the efficient performance of their functions.
- Diplomatic agents enjoy blanket immunity from civil and criminal suits, and administrative processes.
- Determination of whether agents of IOs are entitled to diplomatic immunity is a political question, determination of which is vested solely to the executive branch.
- In case of abuse, the remedy of the host state is to (i) ask the sending state for a waiver of immunity, (ii) ask the sending state to withdraw the agent or terminate his functions, or (iii) declare the agent persona non grata.

##### Immunity from criminal jurisdiction

- The person of the diplomat shall be inviolable. He shall enjoy immunity from criminal jurisdiction and shall not be liable to any form of arrest or detention (VCDR).
- Under the Convention on Protection and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, the receiving state has the duty to either extradite or prosecute the diplomatic agent who commits a very serious crime within its territory.

##### From civil and administrative jurisdiction

- GR: Diplomats also enjoy immunity from the receiving state's civil and administrative jurisdiction.
- XPNS: (i) In case of real action relation to private immovable property in the territory of receiving state, unless held on behalf of the sending state for purposes of the mission; (ii) In actions relating to succession where the diplomat acts as executor, administrator, heir, legatee (as private person not on behalf of sending state); (iii) In actions relating to professional, commercial activity exercised in the receiving state outside official functions.

##### Inviolability of premises of the mission

- Premises of the mission shall be inviolable. Agents of the receiving state shall not enter them except with the consent of the head of mission.
- The premises, furnishings, property, means of transport shall also be immune from search, requisition, attachment, execution.

- Premises are also generally exempt from all national, regional, municipal dues and taxes, whether owned or leased.

##### (b) Consular immunity

- Covers persons representing the State who are not diplomats, in concerns of commerce and navigation, and perform certain administrative and notarial duties, such as the issuance of passports and visas, authentication of documents, and administration of oaths (state representatives in commercial or economic relations).
- Consular relations is established by mutual consent – (i) consent to establish diplomatic relations implies the establishment of consular relations, unless otherwise stated; (ii) severance of diplomatic relations shall not ipso fact sever consular relations.
- Consuls do not enjoy the same blanket immunity enjoyed by diplomatic agents,

##### From civil and administrative jurisdiction

- The consul shall not be liable to arrest or detention **pending trial**. XPN: in case of grave crimes and pursuant to decision by the competent judicial authority (VCCR).

##### From civil and administrative jurisdiction

- GR: Consular officers shall not be amenable to the jurisdiction of the judicial or administrative authority of the receiving state **in relation to acts performed in their consular functions** (functional immunity).
- XPNS: (i) Civil actions arising out of contracts entered in his own name (not of the sending state); (ii) Civil actions by third parties for damage arising from accident caused by vehicle, vessel, aircraft.

##### Inviolability of premises of the mission

- Premises of the mission shall be inviolable. Agents of the receiving state shall not enter them except with the consent of the head of the consular post or of diplomatic mission.
- The premises, furnishings, property, means of transport shall also be immune from requisition, subject to right of expropriation.
- Consular premises and residence of career head of consular post shall be exempt from national, regional, municipal dues and taxes.

Distinctions	Diplomatic	Consular
Governing principles	Ratione personae, i.e., immunity relating to status and is operationalized	Ratione materiae, i.e., immunity relating to functionality
How operationalized	In terms of or by reason of and individual's person	In terms of and by reason of categories or nature of acts being performed by every acting state organ or agent
Question	Who is immune, by virtue of the office he holds	What is immune, whether particular acts are rendered in official or private capacity

##### Waiver of immunity:

- Express waiver by sending state.
- By initiation of proceedings by the diplomat or consul in respect of any counterclaim directly connected with the principal claim.

**\*\* The waiver of immunity from suit does not extend to execution for which separate waiver shall be necessary.**

#### 4. Areas Not Subject to Jurisdiction of Individual States

##### a) High Seas

Area beyond the EEZ over which not state may claim jurisdiction or sovereign rights.

1. It is open to all states and no state may subject it to its sovereignty.
2. Freedom in the high seas cover – Freedom: (i) of navigation; (ii) of overflight; (iii) to lay submarine cables and pipelines; (iv) to construct artificial islands and other installations permitted under IL; (v) of scientific research.
3. A State has exclusive jurisdiction over ships sailing under its flag in the high seas, except as provided for in international treaties or under UNCLOS.
4. Warships, other ships for government use have complete immunity from the jurisdiction of any state other than the flag state.
5. Right of hot pursuit – allows competent authorities of the coastal state to pursue a foreign ship in the high seas if they have good reasons to believe that the ship has violated its laws or regulations.

##### b) Deep Seabed

Area beyond the continental shelf or the extended continental shelf over which no state has jurisdiction.

1. It is considered as common heritage of mankind.
2. It consists of the seabed, ocean floor and its subsoil and with resources found in them.

##### c) Outer Space

1. Beginning of space exploration by satellites or space objects put an end to the claim ad infinitum extension of sovereignty over airspace.
2. Exploration and use of outer space is the province of mankind and shall be carried out for the interest of all countries.
3. The outer space and celestial bodies are not subject to national appropriation by claim of sovereignty or by means of occupation or other means.
4. It is also considered as a common heritage of mankind.

#### IV. International Responsibility

##### A. Concept of Imputability of Internationally Wrongful Act or Omission

###### (a) Doctrine of state responsibility

1. When a state commits an internationally wrongful act IWA against another state, international responsibility is established between the two.
2. Requisites: (i) unlawful act/omission; (ii) attributable or imputable to the state.
3. As to the element of intent, there are two theories – (i) Objective responsibility: Once IWA was committed by an agent of a state causing injury, the State shall be responsible for the damage, irrespective of GF or BF; (ii) Subjective responsibility: elements of dolo and culpa on the part of the offender is necessary to hold the State liable for the injury.
4. Claim against the offending state may be admitted only if – (i) effective nationality link is established; (ii) local remedies are exhausted.
5. The offended state may also take countermeasures such as the severance of diplomatic and economic relations, or other measures that will not constitute the use of force.

###### Internationally wrongful act

1. Violation of any source of obligation in IL at the time when that obligation was in force for that State.
2. Elements – (i) A/O is attributable to the State under IL, (ii) A/O constitutes breach of IL of the State.

3. Circumstances precluding IWA – (i) Consent of affected State; (ii) Lawful defense; (iii) Commensurate countermeasures; (iv) Force majeure; (v) Acts in situation of distress; (vi) Necessity of act; (vii) Compliance with jus cogens.

###### Principle of attribution

1. Under IL, to hold a state responsible, the act or commission which constitutes the breach of an international obligation must be attributable to the state (through its organ or state official) and not to private individuals.

###### Acts attributable to State

1. Conduct of state organs: executive, legislative, judicial or other functions.
2. Conduct of persons exercising elements of governmental authority.
3. Conduct of organs placed at the disposal of a state by another state acting in the exercise of elements of the governmental authority of the former which is held accountable.
4. Acts done in excess of authority or in contravention of instructions (ultra vires).
5. Conduct of persons or groups directed or controlled by the state.
6. Conduct carried out in the absence or default of the official authorities.
7. Conduct of insurrectional or other movements.
8. Conduct acknowledged and adopted by state as its own.
9. (i) the act violative of IL could not have been made without the State's knowledge; or (b) it failed to prevent the same or give due notice to persons concerned.

###### Acts not attributable to State

1. Acts of private individuals, unless empowered by national law to act on behalf of the state or are acting on the instruction or under the control of the state.
2. Acts of revolutionaries or insurgents.
3. Acts of armed groups in another state's territory as regards the state allegedly supporting them, unless there is evidence of direct control over such groups and dependency by them on the accused state.

##### B. Reparation

Breach of international obligation gives rise to a requirement for reparation, which shall as much as possible, restore the situation that existed before the breach.

###### Forms:

1. Restitution – obligation to reestablish the situation which existed before the wrongful act was committed, if not materially impossible.
2. Compensation – obligation to compensate for financially assessable damage caused by the IWA, including lost profits, to the extent not made good by restitution.
3. Satisfaction – acknowledgement of breach, expression of regret, formal apology, or another appropriate modality (official apology).

##### C. International Protection of Human Rights (Including Refugees and Stateless Persons)

###### (a) Human Rights

1. Inherent liberties, immunities, benefits which by accepted contemporary values, all human beings should be able to claim 'as of right' of the society in which they live.
2. Inalienable, indivisible rights recognized by the international community as a whole.
3. International human rights instruments enjoin States to take positive actions to eliminate all

<p>forms of discrimination, not just restrain certain acts.</p> <p><i>Categories</i></p> <ol style="list-style-type: none"> <li>1. First generation – Civil and political rights, governed by ICCPR.</li> <li>2. Second generation – Economic, social, and cultural rights, governed by ICESCR.</li> <li>3. Third generation – Right to development, right to peace, right to environment.</li> </ol> <p><i>International Bill of HR</i></p> <ol style="list-style-type: none"> <li>1. Consists of the three main instruments of HR in the international plane: UDHR, ICCPR, ICESCR.</li> <li>2. In Ph, the country remained bound by these international agreements during the interregnum (regime of the revolutionary government) for the protection of individuals. Even under a revolutionary government without constitution, the country is still bound to comply with its international obligations.</li> </ol> <p><i>UDHR</i></p> <ol style="list-style-type: none"> <li>1. Not a treaty; not obligatory.</li> <li>2. Adopted by UN GA as an authoritative guide and evidence in the interpretation and application of UN Charter.</li> <li>3. In Ph, SC considered UDHR as an authoritative listing of HR which has become a basic component of CIL, binding on all states, not only UN members.</li> <li>4. Three premises – (i) All human beings are born free and equal in dignity and rights; (ii) Everyone is entitled to a social and international order in which the rights and freedoms set forth in the declaration may be fully realized; (iii) Those rights apply to everyone without any form of discrimination whatsoever.</li> <li>5. It embodies the first and second generations of HRs.</li> </ol> <p><i>ICCPR</i></p> <ol style="list-style-type: none"> <li>1. Treaty; binding to state parties.</li> <li>2. Derogation clause – Provision in HR treaty which permits a state party to contract out of its obligation under the treaty in times of war and other public emergencies threatening the life of the nation.</li> <li>3. Non-derogable rights – (i) Right to life; (ii) Freedom from torture, inhuman or degrading treatment or punishment; (iii) Freedom from slavery or servitude; (iv) Freedom from imprisonment merely for inability to fulfill contractual obligation; (v) Freedom from post facto legislation and other judicial guarantees; (vi) Right to recognition before the law; (vii) Freedom of thought, conscience, religion.</li> <li>4. Optional protocols – (i) First OP: Creating of HR Committee having the power to receive and consider communications from individuals claiming to be victims of human rights violations; (ii) Second OP: Abolition of death penalty.</li> <li>5. Principle of self-determination: All people have the right to self-determination – (i) to determine their political status, (ii) pursue economic, social, cultural development, and (iii) dispose their natural wealth and resources.</li> </ol> <p><i>ICESCR</i></p> <ol style="list-style-type: none"> <li>1. Treaty; binding to state parties.</li> </ol> <p><i>(b) Refugees</i></p> <ol style="list-style-type: none"> <li>1. A person outside the country of his nationality and unwilling to avail himself of the protection of that country, owing to a well-founded fear of persecution.</li> </ol>	<ol style="list-style-type: none"> <li>2. A person without nationality outside the country of his former habitual residence and is unable or unwilling to return to it owing to such fear.</li> <li>3. Persecution may be for reasons of race, religion, nationality, membership of a particular social group or political opinion.</li> </ol> <p><i>Convention relating to the Status of Refugees</i></p> <ol style="list-style-type: none"> <li>1. The contracting states shall not penalize refugees for their illegal entry or unauthorized presence in the territory. If: (i) they come directly from a territory where their life or freedom was threatened of persecution, (ii) they present themselves without delay to authorities, and (iii) show good cause for their illegal entry or presence.</li> <li>2. The refugee must conform to the laws, regulations, measures taken for maintenance of public order of the country where he finds himself.</li> <li>3. Principle of non-refoulement – (i) No contracting state shall expel or return (refouler) a refugee in any manner to the frontiers or territories where his life or freedom is threatened. XPN: If there are reasonable grounds for regarding him as danger to the security of the country in which he is; or having been convicted by final judgment of a serious crime, constitutes danger to the community of the country.</li> </ol> <p><i>(c) Stateless persons</i></p> <ol style="list-style-type: none"> <li>1. Those who do not have a nationality, or not considered as a national by any state.</li> <li>2. May either be de jure or de facto – (i) De jure StP are those who have lost their nationality and have not acquired a new one, or not considered a national by any state under the operation of its laws; (ii) De facto StP are those who have a nationality but to whom protection of their state is denied.</li> <li>3. Policy on StP – The common thread of the UDHR, UNCRC and ICCPR is to obligate the grant nationality from <b>birth</b> and ensure that no child is stateless.</li> </ol> <p><i>Convention relating to the Status of Stateless Persons</i></p> <ol style="list-style-type: none"> <li>1. StP are entitled to the right to religion, access to courts, elementary education (UDHR).</li> <li>2. They also have the right – (i) To be naturalized; (ii) To acquire and dispose property; (iii) Access to courts; (iv) To gainful employment; (v) To enjoy benefits under social welfare legislation; (v) To administrative assistance, etc.</li> </ol> <p><b>1. Remedies Under Treaty-Based Mechanisms</b></p> <p><i>Under ICCPR</i></p> <ol style="list-style-type: none"> <li>1. Notice to the violating state party in writing.</li> <li>2. After 6m without resolution, either State may refer the matter to the HR Committee by notice to the Committee and the other State.</li> <li>3. Subject to rule on exhaustion of local remedies – the State shall solve their own internal problems in accordance with their own constitutional procedures before accepted international mechanisms can be invoked.</li> </ol> <p><i>Under ICESCR</i></p> <ol style="list-style-type: none"> <li>1. Does not contain a complaint system.</li> <li>2. Provides for a reporting system to monitor the measures taken by the member states for its observance, subject to review by the UN Economic and Social Council.</li> </ol> <p><i>For specific crimes under relevant Conventions</i></p> <ol style="list-style-type: none"> <li>1. Genocide – (i) The offender shall be tried by a competent court of State where committed, or by the international penal tribunal as may have jurisdiction with respect to those Contracting</li> </ol>
---	---

Parties; (ii) the grant of amnesty to those to committed mass killings of members of IPs is contrary to IL; (iii) Genocide is an international crime, whether committed in times of peace or in times of war.
2. Torture – The state where the offense was committed shall take the offender in custody or take other legal measures to ensure his presence, subject to the rule on extradition.
3. Discrimination – Parties shall assure everyone within its jurisdiction effective protection and remedies against any act of racial discrimination, and shall implement judicial, administrative, other measures to give effect to the provisions of CEDAW.

#### D. International Minimum Standard and National Treatment (Including Expropriation of Foreign-Owned Properties)

Two schools of thought
1. There is an international minimum standard IMS for the protection of foreign nationals and their property that must be upheld irrespective of how the state treats its own nationals ( <b>IMS</b> ) – (i) IMS is said to receive extensive support in case-law; (ii) however, there is no consensus as to the obligatory IMS. It was said that to be responsible internationally, the treatment of alien should amount to an outrage, bad faith, willful neglect of duty or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency.
2. There is no IMS and all that the state needs to do is treat the alien as it does its own nationals ( <b>national treatment standard NTS</b> ).
<i>**In general, IMS apply for human rights, NTS for property rights.</i>
Calvo doctrine
1. Reaffirms the principle of non-intervention coupled with the assertion of the NTS (IMS has been used as a means of interference in internal affairs).
2. Redress for grievances must be sought exclusively in the domestic arena.
3. It provides that a State is not responsible for losses suffered by aliens in times of civil war.
4. c.f.: Calvo clause. Used primarily in contracts between a government and aliens which prevents appeals by the aliens to their home governments for diplomatic intervention on behalf of their contract rights. Under the clause, the alien agrees that any dispute that may arise out of the contract is to be decided by the national courts in accordance with national law and is not to give rise to any international reclamation.
Expropriation of foreign property
1. May be considered and international wrong if done contrary to principles of IL.
2. In case of unlawful expropriation, full restitution of the property owner to a situation prior to the expropriation is required of the expropriating state.
3. In case of lawful expropriation, full value of the undertaking at the moment of dispossession shall be paid by the expropriating State.

#### E. Environmental Harm

Significant Instruments
-------------------------

1. 1972 Stockholm declaration – (i) first instrument to recognize the right to a healthy environment [soft law]; (ii) Principle 21: States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control <u>do not cause damage</u> to the environment of other states or of areas beyond the limits of national jurisdiction [considered customary IL by ICJ].
2. 1992 Rio declaration – (i) Principle 14: Precautionary Principle; (ii) Principle 7: <b>Principle of common but differentiated responsibility</b> which requires the protection of specified environmental resource or areas as common responsibility but takes into account the differing circumstances of certain states in the discharge of responsibilities.
3. UN Framework Convention on Climate Change
4. Paris Agreement – (i) Implements UNFCCC; (ii) agreement among member states to reduce their emissions to prevent global warming.
<b>Rule on transboundary harm:</b> No state has the right to permit the use of its territory in such a manner to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and injury is established by clear and convincing evidence.

#### 1. Precautionary Principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
1. Evidentiary rule which bridges the gap in cases where scientific certainty in factual findings cannot be achieved. It shifts the burden of evidence of harm away from those likely to suffer and onto those desiring to change the status quo.
2. When in doubt, cases must be resolved in favor of the constitutional right of the people to a balanced and healthful ecology.
3. Should be treated as last resort where the application of the regular rules of evidence would cause inequitable result for the environmental plaintiff.
4. Factors to consider – (i) Uncertainty risks of harm; (ii) Possibility of irreversible harm; (iii) Possibility of serious harm.
5. Also a risk management principle which may be invoked only after scientific inquiry or empirical study took place. It should not be based on anxiety or emotion.

#### F. International Claims

1. International claims are claims against a state under IL.
2. Traditionally, only States may bring international claims either: (i) for itself, or (ii) for its citizen (espousal of claims), subject to the doctrine of effective nationality link.
3. Recently, IOs, even individuals, were recognized as having personality to bring about such claims.

#### V. Dispute Resolution

##### A. Legality of the Use of Force

Under UN Charter
------------------



1. All members shall settle their **international disputes** by peaceful means in such a manner that international peace, security, and justice are not endangered [Art. 2(3)]. (i) Peaceful means include: negotiations, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, other means. (ii) This is considered part of customary IL, binding on all states not only on UN members.
2. All members shall refrain in their **international relations** from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN [Art. 2(4)]. This is also considered part of customary IL, and a jus cogens norm.
3. Force may either be: (i) Armed force or aggression: the use of armed force by a State against sovereignty, territorial integrity, political independence of another State; or (ii) Economic force.

**\*\*Before UN Charter, States have the right to resort to war (jus ad bellum).**

#### Categories of force

1. Reprisal – (i) Acts of self-help, or retaliation for acts contrary to IL remaining unredressed after demand for amends. (ii) Intended to compel the offending state to make reparation for breach of international obligation.
2. Retortions – Adoption by one state of an unfriendly or harmful act, which is nevertheless lawful, as a method of retaliation against the injurious legal activities of another State.
3. Self-defense

#### Self-defense

1. An exception to the prohibition against use of force available to a State who becomes a victim of an legitimate armed attack by another State.
2. Requirements: (a) existence of necessity of self-defense; (b) action taken must be proportional to the injury sustained, not unreasonable or excessive.
3. This is not available in case of terrorist attacks which are acts of private persons not attributable to the State.
4. Collective self-defense occurs upon declaration by the state concerned that it was a victim of an armed attack, and a request by the victim state for assistance.

### **B. Concept of International and Non-International Armed Conflicts**

#### (a) International humanitarian law

1. **The law of war or of armed conflicts.**
2. Body of international law regulating the conduct of armed conflicts whether of an international or non-international character.
3. It provides for instances when the use of armed force is justifiable (jus ad bellum) and regulates conduct in armed conflict (jus in bello) and seeks to limit the effects of conflict on individuals.
4. Distinct from International Human Rights Law, although they both intend to increase the protection of individuals, alleviate pain and suffering and secure the minimum standard of persons in various situations.

IHRL	IHL
Apply to all people	Applies only to certain groups of persons, e.g., prisoners of war, wounded, civilians
Applies at all times	Applies only times of armed conflict

#### 1949 Geneva Conventions (Red Cross Conventions)

- I. Wounded, sick members of the armed forces in the field. Hors de combat shall not be the object of an attack – (i) one who is in the power of adverse party; (ii) he clearly expresses intention to surrender; (iii) he was rendered unconscious or otherwise incapacitated to defend himself by wounds or sickness; (iv) he abstains from any hostile act and does not attempt to escape.
- II. Wounded, sick, shipwrecked members of the armed forces at sea. – They shall be respected and protected in all circumstance, and treated humanely, and receive medical care and attention required by their condition.
- III. Prisoners of war. – Combatants who fall into the power of and adverse party. They shall be evacuated ASAP after their capture to camps far from combat zone to be out of danger. They are subject to the laws of the detaining state.
- IV. Civilians. – They shall not be the object of attack, discriminate or indiscriminate.

#### Protocols

- I. Victims of international armed conflict (national liberations movements).
- II. Victims of non-international armed conflict (insurgents).
- III. Additional distinctive emblem

#### Types of war covered

1. International armed conflict – (i) State v. state; (ii) Wars of national liberation; (iii) includes War of National Liberation, i.e., conflict in which people fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.
2. Non-international armed conflict – State v. Non-state organized groups, e.g., rebels; or between such organized groups within the State's territory.

**\*\*Non-armed conflicts include: (i) Riots, (ii) Isolated and sporadic acts of violence, and (iii) Other acts of similar nature.**

#### Basic principles

##### (a) Principle of distinction

1. Duty of State parties to distinguish between civilians and combatants, and between civilian objects and military objects, and direct their operations only against military objects, subject to the principles of proportionality in use of force and of necessity.
2. (i) Civilians are those not identified as combatants. In case of doubt, the person shall be considered a civilian. (ii) Combatants are those belonging to the armed forces of a party to a conflict, participating directly in hostilities. (iii) Levee en masse are inhabitants of unoccupied territory, who on approach of enemy, spontaneously take up arms to resist the invading troops without having had the time to organize themselves provided only that they carry arms openly and observe the laws and customs of war
3. Military objects are those which by nature, location, purpose or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. All other objects are civilian.
4. Atomic bombs are unacceptable weapons since these cannot distinguish between civilians and members of the armed forces.

**(b) Military necessity – use of force shall be limited to the extent necessary.**

**(c) Proportionality – weapons used must be proportional.**

(d) Humanity/Martens clause

1. Humane conduct of war.
2. Martens clause provides that civilians and combatants remain under the protection and authority of the principles of IL derived (i) from established custom, (ii) from the principles of humanity and (iii) from the dictates of public conscience, even if not covered by provisions of the Geneva Convention.

*Neutrality*

1. Legal status of a state in times of war adopting impartiality in relation to belligerents with their recognition. It terminates (i) Upon conclusion of treaty of peace between belligerents, or (ii) when the neutral state joins the war.
2. Rules – (i) The territory of neutral powers shall be inviolable; (ii) Belligerents are forbidden to move troops or munitions of war and supplies across the territory of a neutral power; (iii) A neutral power is forbidden to allow belligerents to use its territory for moving troops, establishing communication facilities or forming corps of combatant.
3. No special mode of assertion required.
4. Prize court is a domestic tribunal of belligerent state which determines the legality of the capture of an enemy or a neutral merchant vessel and of their liability to confiscation.

*Neutralized state*

1. States upon which the state of permanent neutrality in all future wars was formally imposed by a group of great powers.
2. Act of neutralization generally takes the form of a treaty between parties and was as a rule, accompanied by a guarantee of the independence and territorial integrity of the neutralized state.

### 1. The Role of the International Criminal Court

ICC is established by the Rome Statute.

1. Its jurisdiction is limited to the **most serious crimes** of international concern – i.e., genocide, crimes against humanity, war crimes, crime of aggression.
2. **Principle of complementarity** recognizes the primary jurisdiction of national courts with respect to international crimes within ICC jurisdiction. ICC may exercise jurisdiction only if domestic courts refuse or are unwilling to prosecute the crime.
3. ICC has international personality and may exercise functions and power on the territory of any state party, and of other states by special agreement.
4. Under the Rome Statute, a person shall be criminally responsible under the ICJS only if the conduct in question constitutes a crime within ICC jurisdiction at the time of its commission.
5. Criminal proceedings may be initiated: (i) by referral to the Prosecutor (a) from State party, or (b) from UN Security Council, or (ii) by the Prosecutor himself with respect of such crime.
6. Imprisonment may be served in the State designated by ICC, which expressed willingness to accept the sentenced person.

Substantive rights of accused under IL

1. Presumption of innocence
2. Right to remain silent
3. Right to public and fair hearing without delay
4. Right to be informed of the nature and cause of the charges against him
5. Right to legal assistance through counsel
6. Right to examine witnesses against him
7. Right not to be compelled to be a witness against himself or to confess.

Withdrawal from Rome Statute

1. A State shall not be discharged from obligations arising from the State while a party thereto, including from financial obligations which may have accrued.
2. It shall not affect the State's cooperation with ICC in connection with criminal investigations and proceedings in relation to which the withdrawing state had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective.
3. It shall not prejudice the continued consideration of any matter which was already under consideration by ICC prior to the date of which the withdrawal became effective.

### C. Judicial and Arbitral Settlement

(a) Judicial settlement

1. One wherein the parties submit themselves to tribunal already established by a statute which also provides for its jurisdiction and rules of procedure.
2. In IL, the jurisdiction of an international tribunal is generally based on the consent of parties.

(b) Arbitral settlement

1. Procedure for dispute settlement between States by a binding award based on law and as a result of a voluntarily undertaking.
2. Combines the elements of both diplomatic and judicial procedures.

Under UNCLOS

*Disputes may be settled at:*

1. International Tribunal for the Law of the Sea
2. ICJ
3. Arbitral Tribunal constituted under Annex VII – default procedure under UNCLOS if a State party to a dispute is not covered by other declaration in force.
4. Special Arbitral Tribunal constituted under Annex VIII

*\*\*It includes disputes concerning the interpretation or application of UNCLOS, which may be submitted to the competent court or tribunal at the request of any party to the dispute.*

### 1. International Court of Justice

1. ICJ is the principal judicial organ of the UN. All its members are ipso facto parties to the ICJ Statute.
2. ICJ may exercise jurisdiction upon **consent** of the parties of the case. XPN: compulsory jurisdiction (see below).
3. It may decide cases based on: (i) International conventions; (ii) international customs; (iii) general principles of law recognized by civilized nations; (iv) judicial decisions and teachings of the most highly qualified publicists [Source of IL]. XPN: ICJ may decide a case ex aequo et bono where the judgment is based on the judge's sense of abstract fairness and justice.
4. Decisions of ICJ are final and unappealable. In case of dispute on the meaning and scope of judgment, the ICJ shall construe the same at the request of a party.
5. Enforcement may be had with assistance of UN SC.
6. Stare decisis is not applicable in ICJ judgments. By express provision of ICJ Statute, its decisions have no binding force except between the parties and in respect of that particular case (res judicata).
7. Categories of jurisdiction – (i) to decide contentious cases; (ii) to give advisory opinion.

Contentious Cases

Advisory Proceedings

Legal disputes between States submitted to it by State parties	Requests for advisory opinions on legal questions referred to it by UN organs and specialized agencies
States members of the UN; States which have become parties to the ICJ Statute; States which have accepted ICJ's jurisdiction	Open only to 5 organs of the UN and 16 specialized agencies of the UN family or affiliated organizations. The UN GA and UN SC may request advisory opinions on "any legal question". Other UN organs and specialized agencies can only do so with respect to "legal questions arising within the scope of their activities"
The judgment is final, binding on the parties, without appeal (at the most it may be subject to interpretation or, upon the discovery of a new fact, revision). Any judge wishing to do so may append an opinion to the judgment.	Not binding, except to certain instruments or regulations e.g., the conventions on the privileges and immunities of the UN. Nevertheless, the Court's advisory opinions are associated with its authority and prestige, and a decision by the organ or agency concerned endorses an opinion as if it were sanctioned by international law.

#### *Compulsory jurisdiction*

1. State parties may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the ICJ in all legal disputes concerning – (i) interpretation of a treaty; (ii) an question of IL; (iii) existence of any fact which, if established, would constitute a breach of international obligation; and (iv) the nature and extent of the reparation to be made for the breach of international obligation.
2. Only instance in IL where the compulsory jurisdiction of an international tribunal is recognized.

c.f.: ICC

ICJ	ICC
Pertains to international responsibility in the concept of civil liability	Pertains to criminal liability
States	Individual natural persons

## **2. Permanent Court of Arbitration**

Established by the Conventions for the Pacific Settlement of International Disputes of 1899 and 1907, as a result of The Hague Peace Conference of 1899.

1. Not a court. It consists of a panel of people nominated by the contracting states acting as a machinery to facilitate the establishment of arbitral tribunals.
2. States are not obliged to submit a dispute to the procedure of arbitration without their consent. Consent may be expressed in arbitration treaties, or in specific provisions of general treaties.
3. Upon constitution of a tribunal, it is empowered to decide its own jurisdiction and interpret for this purpose, the instruments which govern that jurisdiction (principle of competence de la competence).
4. The rules of procedure are often specified in the compromis and decided by the parties by agreement as the process commences. In the absence of stipulation, Hague Convention will apply.
5. Arbitral awards are final and binding upon the parties. XPNs: (i) Compromis was defective or invalid; (ii) Tribunal exceeds its powers under the compromise; (iii) Excess of power, corruption of a member of the tribunal or serious departure from a fundamental rule of procedure.

# COMMERCIAL AND TAXATION LAWS

<b>PART ONE: COMMERCIAL LAW</b>	<b>1</b>
I. Business Organizations	1
A. Partnerships	1
B. Corporations	6
II. Banking Laws	38
A. New Central Bank Act (R.A. No. 7653, as amended by R.A. No. 11211)	38
B. General Banking Law of 2000 (R.A. No. 8791)	40
C. Secrecy of Bank Deposits (R.A. No. 1405, as amended, and R.A. No. 6426, as amended)	43
D. Anti-Money Laundering Act (R.A. No. 9160, as amended by R.A. No. 9194, 10167, 10365, 10927, and 11521)	44
III. Insurance Law	47
A. Basic Concepts	47
B. Perfection of the Insurance Contract	53
C. Rights and Obligations of Parties	53
D. Rescission of Insurance Contracts	53
IV. Transportation Law	54
A. Common Carriers	54
B. Vigilance Over Goods	55
C. Safety of Passengers	57
D. The Montreal Convention of 1999	59
V. Intellectual Property Code (R.A. No. 8293) [Note: Exclude Implementing Rules and Regulations]	60
A. Patents	60
B. Trademarks	64
C. Copyright	67
VI. Electronic Commerce Act (R.A. No. 8792)	70
A. Legal Recognition of Electronic Data Messages, Documents, and Signatures	70
B. Presumption Relating to Electronic Signatures	71
C. Admissibility and Evidential Weight of Electronic Data Message or Electronic Document	71
D. Obligation of Confidentiality	72
VII. Foreign Investments Act (RA 7042, as amended by RA 11647)	72
A. Policy of the Law [Sec. 1, RA 11647]	72
B. Definition of Terms [Sec. 2, RA 11647]	72
C. Registration of Investment of Non-Philippine Nationals [Sec. 6, RA 11647]	73
D. Foreign Investments in Export Enterprises [Sec. 7, RA 11647]	73
E. Foreign Investments in Domestic Market Enterprises [Sec. 7, RA 7042]	73
F. Foreign Investment Negative List [Sec. 8, RA 11647]	74
VIII. Public Service Act (Commonwealth Act No. (CA) 146, as amended by RA 11659)	74
A. Critical Infrastructure [Sec. 2(e), RA 11659]	74
B. Foreign State-Owned Enterprise [Sec. 2(g), RA 11659] FSE	74
C. Public Service as Public Utility [Sec. 4, RA 11659]	74
D. Unlawful Acts [Sec. 9, RA 11659]	75
E. Powers of the President to Suspend or Prohibit Transaction or Investment [Sec. 23, RA 11659]	75
F. Investments by an Entity Controlled by or Acting on Behalf of the Foreign Government, or Foreign State-owned Enterprises [Sec. 24, RA 11659]	75
G. Reciprocity Clause [Sec. 25, RA 11659]	75
<b>PART TWO: TAXATION LAW</b>	<b>76</b>
I. General Principles	76
A. Power of Taxation as Distinguished from Police Power and Eminent Domain APPEBAR	76
B. Inherent and Constitutional Limitations of Taxation PENIT	76
C. Requisites of a Valid Tax JUNP	77
D. Tax as Distinguished from Other Forms of Exactions	77
E. Kinds of Taxes	78
F. Doctrines in Taxation	78
II. National Taxation	80
A. Taxing Authority	80
B. Income Tax	81
C. Value-Added Tax (VAT)	98
D. Tax Remedies Under the National Internal Revenue	102
III. Local Taxation	106
A. Local Government Taxation	106
B. Real Property Taxation	110



<b>IV. Judicial Remedies .....</b>	<b>113</b>
A. Court of Tax Appeals (CTA) .....	113
B. Procedures.....	113

© Minute Digests ni Atty. G | amicusph.com

## PART ONE: COMMERCIAL LAW

### I. Business Organizations

#### A. Partnerships

##### 1. General Provisions

###### a) Definition, Elements, and Characteristics

###### Definition

By the **contract** of partnership, two or more persons bind themselves to contribute MPI to a common fund with the intention of dividing the profits among themselves.

Two or more persons may also form a partnership for the exercise of profession.

###### Elements

1. Must be a valid contract: consent, object (common fund), cause (mutual undertaking)
2. Legal capacity
3. Mutual contribution of MPI to a common fund (distinguishing attribute)
4. Lawful object: if unlawful: (i) void ab initio; (ii) profits confiscated in favor of government; (iii) tools, proceeds of crime forfeited; (iii) P contributions shall not be forfeited unless tools or proceeds of crime.
5. Primary purpose is to divide profits among themselves – (i) presumptive but not conclusive proof of partnership; (ii) loss shall be divided (a) by agreement; (b) same ratio as profits, if w/o agreement.

###### Characteristics

1. Bilateral – (i) two or more persons; (ii) rights/obligations are reciprocal
2. Onerous – benefit is expected out of the contribution
3. Nominate
4. Consensual
5. Commutative – undertaking of each is considered equivalent of that of the others
6. Principal
7. Profit-oriented
8. Mutual agency – each partner represents the partnership if manner of management not provided
9. Delectus personae – (i) admission to partnership requires consent of all partners; (ii) admission is subjective novation subject to the mutual trust; (iii) associating 3p in P's share in profits does not constitute the associate as P without consent of all the other Ps; (iv) XPN: a limited P's interest is assignable.

###### Consensual

1. The registration of Articles of Co-partnership with SEC is not required for acquisition of juridical personality but merely for administrative convenience, i.e., issuance of licenses, permits, TIN, clearance from government agencies, etc.
2. XPNs: (i) If personal property  $\geq 3k$  is contributed (directory) – (a) must be in public instrument; (b) registered with SEC; (c) non-compliance does not affect validity and liability to 3p as it is merely for administration, licensing purposes; (ii) If **real property** or real rights contributed (mandatory) – (a) must be in public instrument; (b) inventory of property signed by parties, attached to the public instrument, registered with RD to bind 3p; (c) non-compliance renders the contract void but may be considered as evidence of ordinary contract and be the basis to enforce rights/obligations as between the partners.

###### Kinds of partners

1. As to contribution – (i) capitalist; (ii) industrial;
2. As to time of entry – (iii) original; (iv) incoming

3. Other – (v) managing; (vi) liquidating; (vii) retiring; (viii) continuing; (ix) dormant, silent, secret; (x) partner by estoppel.

###### Limitations

1. As to engaging in business: (i) capitalist – (a) cannot engage in the **similar** business as the partnership for himself, unless expressly permitted; (b) if violated: he must bring profit to the common fund, shall personally bear losses (not ground for expulsion). (ii) industrialist – (a) cannot engage in **any** business for himself, unless expressly permitted; (b) if violated: capitalist P may exclude, or avail benefits obtained in violation, with damages in either
2. As to liability for losses: (i) capitalist – proportionately liable for losses; (ii) industrial – not liable. But both are liable pro rata with their separate assets for obligations arising from contracts entered in the name and on behalf of partnership, after exhaustion of partnership properties (contrary stipulation void, except as between partners). Industrial P may seek reimbursement from capitalist P if the liability can be considered loss.

###### Kinds of partnership

1. As to object – (i) **universal**: (a) of all present property: all properties owned at time of establishment; all profits acquired for said properties; (b) of all profits: all that may be acquired through industry, work; usufruct of properties owned at time of establishment; (c) if no agreement, of all profits only since less onerous; (ii) **particular**: object is determinate thing, its use, specific undertaking, or exercise of profession
2. Disqualified from entering universal partnership – (i) spouses, legal and common law; (ii) parties guilty of adultery or concubinage; (ii) parties guilty of same offense in consideration of the same; (iii) with public officer, his spouse, as/descendant by reason of office. But spouses may form a limited partnership established for a particular undertaking.

Partnership	Co-ownership
Always created by contract	May be created by law, contract, succession, fortuitous event, occupancy
Purpose is to obtain profits	Purpose is the common enjoyment of the undivided thing
Has personality	No separate personality
Agreement not to divide partnership assets is valid regardless of period since there is no legal limitation of partnership duration	Agreement not to divide co-owned property for more than 10y is void as to the excess
Mutual agency	No power to represent or bind other co-owners unless otherwise agreed; he only represents his ideal share. XPN: acts beneficial to co-ownership
Transfer of interest to 3p does not render the latter a partner, unless agreed to by all partners	Transfer of share to 3p automatically render the latter as co-owner
Division of profits/loss may be the subject of agreement	Division of profits/loss is fixed by law (proportionate)
Death of a partner dissolves the partnership	Death of one does not have effect in co-ownership; interest is transmissible to heirs

###### b) Rules to Determine Existence

GR: Persons who are not partners as to each other are not partners as to 3p. XPN: partners by estoppel.

*Does not of itself establish partnership*

1. Co-ownership –sharing of gains may be mere incidental to the co-ownership
2. Sharing of gross returns – since partners intent to share in the profits

*Prima facie evidence of partnership*

1. Receipt of share in profits
2. XPNs – if received in payment (i) of debt; (ii) as **wages** or rent; (iii) as annuity to widow or representative of deceased; (iv) of interest, though varying with profits of business; (v) as consideration for sale of goodwill or other property
3. In case of XPNs, the burden to prove existence of partnership is shifted to the one claiming its existence.

*c) Partnership Term*

(a) At will

1. With indefinite term
2. Dissolves upon happening of act or cause of dissolution

(b) With a fixed period, or a particular undertaking

1. Dissolves upon (i) expiration of stipulated term, or (ii) achievement of stipulated particular undertaking

*d) Partnership by Estoppel*

(i) equitable principle; (ii) if a person represents himself as a partner or allows others to represent him as such, he is barred from denying participation in the partnership with respect to obligations incurred in favor of 3p relying on the representations.

Partner by estoppel is one who by words of conduct

1. Directly represents himself as partner in non-/existing partnership;
2. Indirectly represents himself as partner by consenting to such representation in non-/existing partnership;
3. E.g., if a partner who already withdrew from the partnership but the other partners continued the partnership business without any notification or publication of such withdrawal – (i) the withdrawing partner may be held liable as to 3p; (ii) but he may seek reimbursement from his co-partners.

Elements

1. Representation as partner (see above), coupled with failure to deny or refute;
2. Reliance by plaintiff on the representation;
3. Defendant's statement is not refuted.

*e) Partnership as Distinguished from Joint Venture*

JV

1. Association of persons or companies jointly undertaking a commercial enterprise – generally temporary in nature (akin to partnership with particular undertaking)
2. Involves contribution of assets and sharing of risks
3. Requires community of interest in the subject matter; right to direct policy; duty to share in profits and losses (subject to agreement)
4. Common characteristics with partnership – (i) community of interest; (ii) sharing in P/L; (iii) mutual right of control. Also: (i) contribution of MPI to a common fund, and (ii) intention to divide profits
5. SC considered it a form of partnership.
6. Governed by: (i) stipulation; (ii) NCC provisions on obligations and contracts; (iii) rules governing

most analogous contract (i.e., partnerships); (iv) customs of place.

7. Corporations may form JV.
8. An agreement which provides that in exchange of the acquisition of shares, the buyer will give the seller share in the sale of subdivision lots is a mode of payment of the shares, and not division of profits as to constitute an element of JV. Moreover, the obligation to remit 40% of the revenues to the seller notwithstanding that the buyer is incurring losses runs contrary to the nature of a JV requiring the sharing in the P/L.

JV	Partnership
Ordinarily limited to single transaction; <b>temporary</b>	Contemplates undertaking of general and continuous business of particular kind
No firm name	Required to operate under a firm name
No mutual agency	Mutual agency – a partner acting on partnership business binds himself as principal, other agents, and the partnership
No separate personality; mere agreement	Has separate personality after compliance with legal requirements <sup>1</sup>
Governed by agreement, supplemented by law on partnership	Governed by law on partnership

*f) Professional Partnership*

Partnership (i) formed solely for the exercise of common profession; (ii) no part of its income is derived from engaging in any trade or business.

**\*\*Considered a particular partnership, i.e., for exercise of profession.**

*g) Management*

(a) May be provide in partnership agreement

1. Manager appointed in the AOP may execute all acts of administration despite opposition of his partners, unless he acts in BF.
2. His power is irrevocable without just or lawful cause. N.B.: as a GR, agency is revocable at will w/ or w/o cause.
3. If concurrence of all managing partners is provided in the AOP: (i) concurrence of all is necessary for validity of the contract, the absence/disability of anyone cannot be alleged; (ii) XPN: in case of imminent danger of grave or irreparable injury to partnership.
4. E.g., hiring of an EE is an act of administration which should be decided by the managing partners.

(b) If no agreement, NCC governs – Mutual agency

1. All partners are agents;
2. What one can do alone shall bind the partnership, each may separately execute all acts of administration;
3. In case of opposition: (i) majority prevails; (ii) in case of tie, matter shall be decided by partners owning controlling interest;
4. (i) Acts covered: those involving partnership business, execution of instrument in partnership name for apparently carrying on the usual way of partnership business; (ii) acts not covered: Acts involving important alteration in the immovable property, even if useful to partnership. (a) cannot be entered by one P without consent of the others; (b) in case refusal to consent is manifestly

<sup>1</sup> N.B.: registration with SEC is not requirement for acquisition of legal personality.

prejudicial to partnership interest, court intervention may be sought

5. XPN: partnership is not bound if (a) partner acts without authority in particular matter; (b) 3p dealing with him has knowledge of limits of his authority. N.B.: 3ps may rely on presumption of mutual agency and not bound to inquire on limits of partner's authority.

## 2. Rights and Obligations of Partnership and Partners

### a) Rights and Obligations of the Partnership

1. Refund amounts disbursed by partners in its behalf with interest from time incurred (without need for demand);
2. Answer for obligations contracted by a partner in GF in the interest of partnership business;
3. Answer for risks in arising from its management.

### b) Obligations of Partners Among Themselves

#### Obligations

1. To contribute property – (i) partner is considered a **debtor** of partnership with respect to his promised contribution; (ii) if determinate property, (a) he warrants against eviction, and he is liable for fruits from time they should have been delivered without need of demand.
2. To pay interest and damages – (i) from time he should have delivered, in case of delay in delivery of sum of money promised to be contributed; (ii) from time of conversion, if he converts partnership funds to his own use.
3. Not to engage (i) in any business, if industrialist, or (ii) in similar business, if capitalist; (iii) unless expressly permitted; (iv) violation is ground for exclusion of industrialist partner, unless the others want to avail of the benefits; (v) not a ground for exclusion for capitalist partner but he must bring to common fund the profits earned; (vi) damages are collectible in case of violation.
4. To make additional contribution in case of imminent loss of business of partnership to save the venture – (i) partner refusing is obliged to sell in interest to other partners; (ii) XPNs: (a) industrial partner is not required to contribute, (b) contrary stipulation.
5. Of managing partner who collects sum: (i) To apply sum collected proportionately to own credit and partnership credit, even if receipt was issued in his own name only; (ii) to apply entire sum collected to partnership debt, if receipt was issued in partnership name only; (iii) application of payment may apply only if the personal credit is more onerous (partner may apply to his credit).
6. To bring to partnership capital his share in partnership credit if: (i) other partners have not collected theirs; (ii) debtor becomes insolvent; (iii) even if he gave receipt in his own name only.
7. To pay for damages suffered by partnership through his fault – (i) he cannot compensate them with benefits earned by his industry; (ii) may be mitigated if due to his EO efforts, the partnership realized unusual profits.
8. To keep partnership books – (i) in principal place of business, unless otherwise agreed; (ii) every partner shall have access, may copy, and inspect them at reasonable hour.
9. To render true and full information of all things affecting partnership – (i) to any partner; (ii) legal representative of deceased or incapacitated partner.
10. To account and hold as trustee for partnership, benefits derived by him without consent of others from any transaction related with the formation, conduct, liquidation of partnership; or from use of partnership property.

#### Rights

1. To be reimbursed of funds disbursed for partnership with interest from time of disbursement.
2. To be indemnified for risk arising from management of partnership.
3. To share in profits or losses – (i) as agreed; (ii) if no agreement as to losses, same as in profits; (iii) if no agreement, proportionately; (iv) industrial partner (a) not liable for losses; (b) share in profits shall be just and equitable under the circumstances; (c) if also capitalist, he shall receive share in proportion to contributed capital.
4. To associate another person in his share – N.B.: the associate does not become a partner of the partnership without consent of the others, even if by a managing partner.
5. To free access, inspect, copy partnership books at reasonable hour.
6. To a formal account of partnership affairs in case of: – (i) wrongful exclusion from partnership business or possession of partnership property; (ii) provided in the agreement; (iii) if a partner derives benefits without consent of the others [see 10OB]; (iv) just and reasonable under the circumstances.
7. To have the partnership dissolved (even in violation of agreement).
8. Property rights – (i) in specific partnership property; (ii) interest in partnership; (iii) to participate in management.

### c) Obligations of Partnership/Partners to Third Persons

#### (a) Operation under a firm name

1. To distinguish the partnership from the partners.
2. If name of non-partner is included in partnership name – (i) he is liable as partner re: 3p w/o notice.

#### (b) Liable with separate properties for contractual obligations of partnership

1. **Pro rata.** Contrary stipulation void, except as among the partners.<sup>2</sup> XPNs: Solidarily liable for (i) loss/injury to 3p or penalty incurred arising from wrongful act/omission of any partner acting in the ordinary course of partnership business; (ii) misapplication of money or property of 3p by a partner received (a) by partnership or (b) by said partner acting within the scope of apparent authority (partnership tort).
2. **Subsidiary,** i.e., after exhaustion of partnership properties. Partnership has a separate personality, and it shall be liable for its debts. Separate properties of partners cannot be levied for partnership debts without proof that the partnership assets have been exhausted.<sup>3</sup>

#### (c) Liable for act of every partner for apparently carrying on in the usual way the partnership business

1. XPN: if acting partner has no authority, and the 3p knew.
2. The act of a partner does not bind the partnership, unless authorized by other partners if: (i) not for apparently carrying on in the usual way the partnership business; (ii) specifically (a) assignment of partnership property in trust for creditors; (b) deposition of goodwill; (c) doing an act which would make it impossible to carry on the ordinary partnership business; (d) confession of judgment; (e) entry to compromise re: partnership claim or liability; (f) submission to arbitration; (g) renunciation of partnership claim.

#### (d) Conveyance of partnership property

<sup>2</sup> Partners may agree to different sharing agreement.

<sup>3</sup> Defense of partner: premature execution of judgment.



<ol style="list-style-type: none"> <li>1. Titled in name of partnership, conveyed in name of partnership by a partner – (i) valid; (ii) but a partner may recover. XPNs: (a) if mere act of administration, (b) if conveyed to grantee in GF and for value without knowledge that the partner making the conveyance is without authority;</li> <li>2. Titled in name of partnership, conveyed in name of a partner – passes equitable interest of the partnership only if the transfer is within partner's authority for apparently carrying on in the usual way the partnership business;</li> <li>3. Titled in name of one or some partners, conveyed in name of such partners – (i) partners may convey title to the property if the record does not disclose the right of the partnership; (ii) but partnership may recover if the at does not bind the partnership (not in ordinary course of business). XPN: if transferee acted in GF and for value.</li> <li>4. Titled in name of one or some partners, conveyed in partnership name or partner/s' name – passes equitable interest of the partnership only if the transfer is within partner's authority for apparently carrying on in the usual way the partnership business;</li> <li>5. Titled in name of all partners, conveyed in their name – passes all rights to partnership property.</li> </ol> <p>(e) Admission of representation of a partner concerning partnership affairs within the scope of his authority is evidence against the partnership.</p> <p>(f) Imputed knowledge</p> <ol style="list-style-type: none"> <li>1. Following are imputable to the partnership: (i) notice to a partner relating to partnership affairs; (ii) knowledge of a partner acting in particular matter acquired while a partner; (iii) knowledge of other partner who could or should have communicated with the acting partner</li> <li>2. XPN: in case of fraud on partnership, committed by or with partner's consent.</li> </ol> <p>(g) Solidary liability for partnership tort</p> <ol style="list-style-type: none"> <li>1. For loss/injury to 3p or penalty incurred arising from wrongful act/omission of any partner acting in the ordinary course of partnership business;</li> <li>2. For misapplication of money or property of 3p by a partner received (a) by partnership or (b) by said partner acting within the scope of apparent authority (partnership tort).</li> <li>3. Liability is for any damage or penalty arising from partnership tort.</li> <li>4. N.B.: generally, liability of partners is joint and pro rata.</li> </ol> <p>(h) Liability of incoming partner</p> <ol style="list-style-type: none"> <li>1. Incurred before admission, to be satisfied only out of partnership property unless there is contrary stipulation;</li> <li>2. Incurred after admission, to be satisfied out of partnership and separate property</li> </ol> <p>(i) Preference of creditors over partners with respect to partnership property</p> <ol style="list-style-type: none"> <li>1. Separate creditors are preferred with respect to separate properties of a partner,</li> <li>2. Separate creditors may ask the attachment and public sale of partner's share in partnership assets, without prejudice to preferred right of partnership creditors.</li> <li>3. Remedies of separate creditors – (i) secure judgment on their credit; (ii) apply for charging order subjecting interest of debtor-partner in the partnership for payment of judgment credit; (iii) if unsatisfied despite issuance of charging order, court may order appointment of receiver, sale of interest, other actions.</li> </ol>	<h3>3. Dissolution and Winding Up</h3> <p>Final stages: (a) dissolution; (b) winding up; (c) termination</p> <p>(a) Dissolution;</p> <ol style="list-style-type: none"> <li>1. Change in relation of partners caused by any partner ceasing to be associated in carrying on the business;</li> <li>2. Effects: (i) partnership is not terminated and partners remain co-partner as among themselves until partnership is terminated; (ii) it continues for a limited purpose; (iii) transaction of new business is prohibited</li> <li>3. Terminates all authority of any partner to act for the partnership. XPNs: (i) insofar as necessary to wind up partnership affairs or complete transactions begun but not yet finished; (ii) with respect to liability created by any partner acting for the partnership without knowledge of the act, death or insolvency of a partner causing dissolution; (iii) with respect to creditors who extended credit prior to dissolution and had no knowledge of the same; (iv) with respect to those who has not extended credit if they knew the partnership prior to dissolution and had no knowledge of the same. N.B.: advertisement of dissolution in a newspaper of general circulation is sufficient notice</li> <li>4. (i) Previous obligations: partners remain liable; (ii) New obligations: (a) partners are not liable if they did not consent; (b) XPN: if the obligation is essential for winding up.</li> <li>5. If a partner assigns his interest, the remaining partners may cause dissolution of the partnership without violation of agreement. The partner-assignor's consent is not required. The assignee's consent is also not required since he is not made a partner by virtue of the assignment. He also cannot petition for the dissolution of partnership unless: (i) fixed term or specific undertaking was already terminated; (ii) when charging order was issued.</li> <li>6. Despite dissolution, claims against partnership shall still be directed against the partnership and not the specific partner since its personality continues for the limited purpose of winding up its affairs and completing transactions commenced but not yet finished.</li> </ol> <p>Causes</p> <ol style="list-style-type: none"> <li>1. Without violating agreement: (i) termination of fixed term or specific undertaking; (ii) express will of any partner in GF (in case of partnership by will); (iii) express will of all partners before termination of fixed term or specific undertaking (consent of partners who have assigned their interest or whose interest were charged is dispense with); (iv) expulsion of any partner in GF of a member;</li> <li>2. In violation of agreement: the party in violation is liable to the other partners and the partnership for damages which may be suffered as a result of the violation;</li> <li>3. Unlawfulness of the business;</li> <li>4. Loss of object (i) of specific thing promised as contribution before delivery, (ii) of specific thing before or after delivery, if only its use was contributed, (iii) but not in case of loss of property after partnership acquires title thereto</li> <li>5. Death, insolvency, civil interdiction of any partner – (i) if remaining partners continue the business despite death of a partner without settlement of accounts, they are liable for continuing the business despite such dissolution; (ii) creditor may sue the estate of deceased partner for liabilities incurred prior to his death, subject to preference of separate creditors as to separate properties; (iii)</li> </ol>
---	--

	liabilities incurred after death shall be the liability only of the continuing partners.
6.	By decree of court upon application of a partner if – (i) a partner was declared insane; (ii) he becomes incapable of performing his part of the partnership contract; (iii) he has been guilty of conduct prejudicial to carrying on partnership business; (iv) he willfully and persistently breaches partnership agreement; (v) the business can only be carried at a loss; (vi) other equitable circumstances.
7.	By decree of court upon application of the <b>purchaser</b> of partner's interest: (a) after termination of fixed term or specific undertaking; (b) at any time in case of partnership at will when interest was assigned, or when charging order was issued.
8.	N.B.: conveyance by a partner of his whole interest in a partnership does not of itself dissolve the partnership absent any agreement; the assignee cannot participate in the management, he can only receive the profit share of the assignor-partner
(b) Winding up;	
1.	Settlement of partnership affairs after dissolution
2.	Ways: (i) judicial, upon cause shown by any partner; (ii) EJ, by partners themselves.
3.	Who may wind-up: (i) partner/s designated in the agreement; (ii) partner/s who have not wrongfully dissolved the partnership; (iii) legal representative of last surviving partner who is not insolvent; (iv) receiver appointed by court if shown to be in the best interest of all concerned;
4.	No right to wind-up partnership affairs: (i) insolvent partners; (ii) those who wrongfully caused the dissolution of partnership.
5.	Order of preference in settlement of accounts: (i) to creditors, following preference of credits; (ii) to limited partners on account of profit share, other income on contribution; (iii) to limited partners on account of contribution; (iv) to general partners other than for capital and profits; (v) to general partners on account of profits, then of capital.
(c) Termination	
1.	End of partnership life when all partnership affairs are wound up or completed after dissolution and winding-up.
2.	Partnership no longer has juridical personality.

#### 4. Limited Partnership

Partnership consisting of one or more general partners and one or more limited partners.

- Limited partners – not personally liable for partnership debts, limited only to contribution on the partnership.

##### Characteristics

- Must comply with statutory requirements;
- General partner/s (i) control the business, and (ii) personally liable to creditors;
- Limited partner/s (i) contribute to the capital and share in the profits (he can only contribute MP but not I), (ii) but do not participate in the management of the business, and (iii) are not personally liable for partnership debts beyond their capital contribution; (iv) they may also ask for the return of their capital under conditions prescribed by law (assets > liability); (v) if he participates in the management of partnership affairs, he shall be liable as a general partner.
- Partnership debts are paid (i) out of common fund, and (ii) individual properties of general partner/s

##### Essential requisites

- Certificate of AOLP – (i) signed and sworn; (ii) must state the name of partnership, adding the word “limited”. Otherwise, the partnership will be considered general.
- Certificate must be filed for record in the SEC.
- \*\*Substantial compliance in GF is sufficient.**  
*Otherwise, partnership becomes liable as general partner with respect to 3p.*

##### Powers of general partners

- GR: has all the rights and powers and subject to all restrictions and liabilities as in a general partnership
- XPNS: certain specific acts require the written consent and ratification of all limited partners – (i) any act in contravention of certificate; (ii) any act which will make it impossible to carry on the ordinary business of partnership; (iii) confess judgment against partnership; (iv) possess partnership property, assign rights to specific partnership property, other than for purposes of the partnership; (v) admit general partner; (vi) admit limited partner, unless authorized in certificate; (vii) continue partnership business upon death, retirement, insanity, civil interdiction, insolvency of general partner, unless authorized in the certificate

##### Rights of limited partner

- To have partnership books kept are principal place of business
- To inspect/copy books at reasonable hours
- To have on demand true and full information of all things affecting partnership
- To have formal account of partnership affairs if just and reasonable under the circumstances
- To ask for dissolution and winding up by decree of court
- To receive share in profits/other compensation by way of income
- To receive return of contributions if partnership assets > liabilities. N.B.: a general partner is not entitled to the return of his capital contribution during the life of the partnership.

##### Liabilities of limited partner

- Generally, their liability is to the partnership, not the creditors. But general partners cannot waive the liability of a limited partner to the prejudice of creditors;
- Liability to partnership – (i) difference between the actual contribution and that stated in the certificate; (ii) unpaid contribution which be agreed in the certificate to make in the future in the time and conditions stated;
- Liability to creditors and other partners if: – (i) he contributed services, (ii) he allows his surname to appear in firm name; (iii) he fails to have a false statement in the certificate corrected, knowing it to be false; (iv) he take part in the control of business; (v) he receives partnership property as collateral security, payment, conveyance, release in fraud of creditors; (vi) he fails to substantially comply with legal requirements governing formation of limited partnership
- Separate creditors of limited partner may also apply for a charging order subjecting the interest in the partnership of the debtor-partner for payment of his obligation

##### Assignment of interest

- Interest of limited partner is assignable.
- Substituted limited partner – (i) one admitted to all rights of a limited partner who has died or has assigned his interest in the partnership; (ii) (a) upon consent of all members or if authorized by assignor pursuant to authority under the

- certificate, and (b) amendment of the certificate; (iii) he has all rights and liabilities of assignor. XPN: those which he is ignorant at the time he became limited partner and could not be ascertained from certificate; (iv) substitution does not release assignor from its liability to the partnership
3. If the assignee did not become a substituted limited partner, he is only entitled to (i) share in profits; (ii) other income on contribution; (iii) return of contribution, which the assignor would otherwise be entitled; (iv) but he cannot demand information, account, inspection of partnership books.

General	Limited
Personally liable for partnership debts	Not personally liable for partnership debts; limited only to capital contributions
Mutual agency, unless managing partner is appointed in certificate	May not participate in management; otherwise, he becomes liable as GP
May contribute MPI	May contribute MP only but not I; otherwise, he becomes liable as GP
Proper party to proceedings by/against partnership	Not proper party to proceedings by/against partnership. XPNs: (i) if also a general partner; (ii) if object is to enforce limited partner's right
Not assignable without consent of other partners (delectus personae)	Interest is freely assignable
Must operate under a firm name <sup>4</sup> which may include the name of one or more partners	Must operate under a firm name, following by "Limited" or "Ltd."; the surname of limited partner shall not appear in the firm name. <sup>5</sup> XPN: if also the surname of general partner, and prior to admission of the limited partner, the business had been carried on under said name
Capitalist cannot engage in same business; industrialist cannot engage in any business; unless expressly permitted	No prohibition
Retirement, death, insolvency, insanity of GP dissolves the partnership	Retirement, death, insolvency, insanity of LP does not dissolve the partnership; rights are transferred to legal representatives
Consensual, unless real property or real rights are contributed	Requires substantial compliance in GF with legal formalities
Composed of GPs only	Composed of at least 1 GP and at least 1 LP

## B. Corporations

### 1. Definition of Corporation

A corporation is (a) an artificial being (b) created by operation of law, (c) having the right of succession and (d) the powers, attributes, and properties expressly authorized by law or incidental to its existence.

#### (a) An artificial being

- Has separate juridical personality from the persons composing it. It may (i) own properties, (ii) exercise rights, and (iii) incur obligations. Provided these are within its express, implied and incidental powers.
- Entitled to the rights of a person under the **Bill of Rights**. XPN: those that are inherent to a natural person. E.g., A corporation may invoke the right

<sup>4</sup> If non-partner's name appears in the partnership name, he shall be liable as general partner.

<sup>5</sup> If limited partner's name is included not falling under the exception, he shall be liable as general partner with respect to creditors without notice that he is a limited partner.

<sup>6</sup> In *Stonehill v. Diokno*, the SC held that only the corporation may invoke the right against unreasonable searches and

against unreasonable search and seizure,<sup>6</sup> but it cannot invoke the right against self-incrimination.

- GR: a corporation cannot claim moral damages. XPN: In case of libel, slander, or any other form of defamation – (i) for besmirched goodwill or reputation; (ii) Art. 2219 NCC did not make a distinction as to natural or juridical persons; (iii) the nexus between the libelous remarks and the moral damage must be established.
- A corporation may be prosecuted criminally if the imposable penalty is not imprisonment, e.g., fine, forfeiture of license, or revocation of franchise.
- A corporation is civilly liable in the same manner as natural persons for torts. It is liable whenever a tortious act is committed by an officer or agent under express direction or authority from the stockholders or members acting as a body, or, generally, from the directors as the governing body. In a close corporation, stockholders who are actively engaged in the management or operation of the business and affairs of the corporation shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance.
- E.g., upon death of majority SH (even up to 99%), the probate court cannot order the rentals on corporate property to be paid to the estate or the heirs – (i) the property itself does not form part of the estate of the deceased as it belongs to the corporation; (ii) only the shares of stock form part of the estate, but not the specific corporate property.

#### (b) Created by operation of law

- The operative act which brings about the birth of a corporation is the SEC's issuance of the certificate of incorporation – not the mere agreement of the incorporators (c.f.: consensual partnership), the execution of AOI, or its filing.
- Once the requirements under RCC for incorporation were complied with, SEC's duty to approve the application and issue COI becomes ministerial – (i) it cannot inquire into the purposes of the corporation beyond that stated in the AOI; (ii) mandamus will lie.
- There ought to be a law from which the corporation derives its legal existence. Either (i) a general law governing the formation of private corporations (RCC), or (ii) a special law to create a GOCC.
- The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations (Const., art. XII, sec. 16). A law creating a private corporation is unconstitutional – not a de facto corporation<sup>7</sup> but may be considered a corporation by estoppel.

#### (c) Right of succession

- The power for continued existence either (i) by opting to have perpetual existence<sup>8</sup> or (ii) by extending its corporate life.
- Its existence is not affected by (i) any change in the composition of corporators or SH; (ii) death, insanity, insolvency or sale of shares by a SH.

#### (d) Powers, attributes, and properties expressly authorized by law or incidental to its existence.

seizures of its property, and a SH has no standing to question the same.

<sup>7</sup> N.B.: one element of a DFC is a valid law under which the supposed corporation is organized.

<sup>8</sup> The RCC provides for perpetual existence as the default life of corporations organized under it, or for the automatic conversion to perpetual existence for corporations organized under the OCC still in existence at the time of its effectivity.

1. A corporation may exercise only express, implied, and incidental powers. Otherwise, ultra vires.
2. Express powers are those provided by law or its **AOI**.
3. Incidental powers lawful act that is not prohibited and done to serve corporate ends. E.g., suspension of delinquent members which is necessary for the continued survival of the corporation.
4. Test: logical relation (related to or in furtherance) of the corporate act with the corporation's purpose as expressed in its AOI. (i) is directly and immediately related to the furtherance of the corporation's business; (ii) fairly incidental to the expressed powers, and (iii) reasonably necessary to their exercise.

Distinctions	Corporation	Partnership
Definition	See above	See above
Creation	By operation of law (COI)	Consensual
Composition	No minimum (OPC)	At least 2
SJP	Yes	Yes
Commencement of SJP	From issuance of COI	From agreement <sup>9</sup>
Liability	SH's liability is limited to the subscription	General partners are personally liable for partnership debts
Transfer of interest	Does not require consent of other SH or corporation, if <b>fully-paid</b> <sup>10</sup>	Requires consent of all
Management	BOD	Managing partner in AOP, or mutual agency
Governing law	RCC	NCC
Powers	Express, implied, incidental	Any act not contrary to lmgcpopp

## 2. Classes of Corporations

1. As to capital structure: (a) Stock; (b) Non-stock
2. As to legal status: (c) De jure; (d) De facto; (e) Corporation by estoppel
3. As to organizer/function/governing law: (f) Public; (g) Private; (h) GOCC
4. As to relationship of management and control: (i) Holding; (j) Parent/Subsidiary; (k) Affiliates;
5. As to nationality: (l) Domestic; (m) Foreign
6. Other classification: (n) Close; (o) Special; (p) One-Person

### (a) Stock

1. (i) has a capital stock divided into shares; (ii) authorized to distribute dividends.
2. AOI which provides that "The authorized capital stock of ABC Corporation is P1 Billion" is void. It is not sufficient to state the ACS, it must also be divided into shares of stock.
3. Provisions which do not make a corporation NS: (i) mere silence in AOI and/or bylaws on the power to declare dividends, since the RCC is deemed read into them, and the RCC expressly empowers corporations to declare dividends. Without prohibition, the corporation is deemed authorized to declare dividends; (ii) provision authorizing distribute of corporate assets to NSC upon dissolution, since upon dissolution, the properties are no longer owned by the corporation but by the stockholders who may decide what to do with them.

### (b) Non-stock

1. (i) has no capital stock, and/or (ii) not authorized to distribute dividends, and (iii) organized for one of the of the allowable purposes under §87 RCC.
2. Purposes of NSC: charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination **CREP-CuSS-FraLiCi TIA**. Cannot be organized for profit or political ends.

### (c) De jure

1. One that has fulfilled all the requirements mandated by law.
2. It may be subject to a quo warranto proceeding by State if it is only an alter-ego of another corporation and the interests of the two corporations are intertwined.
3. There must be compliance with all requirements for incorporation, e.g., if accreditation by the relevant government agency is made a condition for the legal existence of a corporation, such must be complied with for the corporation to acquire legal existence (Philippine Sports Federation).

### (d) De facto

1. One organized with colorable or substantial compliance with the requirements of a valid law and allowed to exist and exercise the powers of a (de jure) corporation until its corporate existence is assailed by the State in a **quo warranto proceeding** (its due incorporation cannot be attacked collaterally in any private suit).
2. Elements: (i) Existence of a valid law under which it is incorporated; (ii) bona fide attempt to incorporate, including, at the very least, the issuance of COI; (iii) actual use or exercise of corporate powers in good faith.
3. The issuance of COI marks the commencement of a DFC.
4. Powers and privileges – same as DJC. It has the power to sue and be sued, and the suit filed by it is not dismissible on ground that it has not personality to sue.
5. Liabilities and obligations – same as DJC; the members are not liable as general partners c.f.: CBE.
6. Examples of defects: false treasurer's certificate; non-compliance with Filipino equity requirement; misrepresentation of incorporator's age; failure to submit bylaws.
7. The provisions on DFC may also be applied to corporations created by special law.

### (e) Corporation by estoppel

1. Exists when two or more persons assume to act as a corporation knowing them to be without authority to do so.
2. They are liable as general partners for all debts, liabilities, and damages incurred or arising as a result thereof. But not all SH are liable as general partners. Those who are mere passive subscribers are not liable. XPN: estoppel on account of their acceptance of benefits.
3. Two sides: (i) when sued on any transaction or tort committed by it as such, it cannot use as a defense its lack of corporate personality; (ii) one who assumes an obligation to an ostensible

<sup>9</sup> Unless real property is contributed, in which case and inventory of the property must be made and signed, and attached to the public instrument.

<sup>10</sup> If the subscription was not yet paid, the corporation may require that its consent be secured before any transfer of the

subscription contract – akin to novation by substituting the debtor's person, hence, the consent of the corporation as creditor must be secured.



	corporation as such, cannot resist performance on the ground that there was, in fact, no corporation.
4.	E.g., (i) officers of a pretend recruitment agency are liable as general partners for debts and damages arising from their operation as such; (ii) donation made in favor of a non-incorporated entity <sup>11</sup>
5.	Who cannot invoke: (i) the party benefited by the transaction; (ii) the party who assumed an obligation to the ostensible corporation; (iii) as between the parties assuming to act as a corporation where no third persons are concerned. It can only be invoked by the aggrieved party who relied on the representations by others that they are legally formed as a corporation.
6.	CBE is an equitable principle designed to prevent injustice and unfairness. Where there is no third party involved and the conflict was only among those assuming the form of a corporation, who know that it has not been registered, there is no CBE. E.g., dispute between the presidents (as to who won the election) of the two associations which agreed to consolidate but were not actually consolidated, the proposed consolidated corporation cannot be considered a CBE.
7.	Good faith belief of incorporation is not an element of a CBE, its essence being a group of people acting as a corporation without authority to do so.
8.	A single person acting on behalf of a non-existent corporation is personally liable for the contract entered into or for other acts performed as such agent (not CBE). Judgment may be enforced against such without need to implead him as a defendant or file a separate case against him.
9.	A private corporation created through a special law is a corporation by estoppel.
10.	A CBE may be impleaded as a party defendant.
11.	Subsequent incorporation cures its defects.
(f) Public	
1.	Organized by the State for the government of a portion of the state, e.g., LGUs (municipal corporations).
2.	Created and governed by special laws.
(g) Private	
1.	Organized by private persons alone or with the State, usually for profit.
2.	Created under the RCC. They cannot be created by special laws.
(h) GOCC	
1.	May be created by (i) special law (chartered), or (ii) under the RCC (non-chartered). RCC applies suppletorily; in case of conflict, the charter prevails.
2.	Elements: (i) organized under special, or a general law either as a stock or nonstock corporation; (ii) vested with functions relating to public needs (governmental or <b>proprietary</b> ); (iii) owned and controlled by the government directly or through instrumentalities; in the case of a stock corporation, to the extent of at least 51% of its capital stock (majority). The concurrence of 3 elements is required to constitute a GOCC.
3.	It is possible for the corporation to be considered a GOCC even if it engages in proprietary transactions or earns profit for as long as the

<sup>11</sup> Missionary Sisters of Our Lady of Fatima v. Alzona.

<sup>12</sup> Although organized as a nonstock corporation, it is not owned by the government but by private individuals. However, the consular and verification fees it collects on behalf of DOLE are government funds subject to the audit jurisdiction of COA.

	dominant character of its function relates to public need.
4.	Government corporate entity – government instrumentality vested with corporate powers. They do not have SJP. E.g., MIAA is a GCE. It is not GOCC: (i) it is not organized as a stock or NSC. It has no capital stock divided into shares and does not have members. Assuming the government is its sole member, its charter mandates remittance of 20% of its annual income to the national treasury, which is contrary to the nature of a NSC. It is also not organized for any of the purposes allowed for a NSC (public utility).
5.	Not GOCCs – MECO is not GOCC <sup>12</sup> , Prevention of Cruelty to Animals, <sup>13</sup> Executive Committee of MMFF
6.	GOCCs – Water Districts, BSP
<i>PNRC is sui generis</i>	
1.	Although created by special law, it is not owned or controlled by the government. Its funds come from donations/grants, not from Congressional appropriation.
2.	It is neither a subdivision, agency, or instrumentality of the government nor a GOCC or its subsidiary.
3.	It is also not a private corporation; it enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law.
4.	Controversies involving the PNRC must be approached on a case-by-case basis. N.B.: re: enforcement of labor laws and penal statutes, CSC has jurisdiction.
5.	Liban v. Gordon – (i) PNRC charter is not unconstitutional; (ii) ex-Senator Gordon did not forfeit his seat in the Senate by accepting PNRC Chairmanship.
<i>BCDA is GCE</i>	
1.	It is not liable to pay filing fees.
2.	It is not a stock, nor a non-stock corporation. It is not a stock corporation because there is only one owner, which is the government, and the capital is not divided into shares of stock. It is also not a non-stock corporation, considering that its purpose of making productive use of military reservations, is not one of the allowable purposes for a non-stock corporation.
3.	It is also not a GOCC because it is neither a stock nor a non-stock corporation, and to be a GOCC, an entity must be either.
4.	It is a government instrumentality exercising corporation powers.
<i>Jurisdiction over GOCCs</i>	
1.	If there is doubt/issue as to the status of the corporation, whether GOCC or not, it cannot be considered as such until the quantification of shares is resolved with finality. (i) in case of complaint for misconduct of officials, the OMB cannot acquire jurisdiction; (ii) in labor disputes, NLRC, not the CSC, has jurisdiction.
2.	Jurisdiction over labor disputes – (i) CSC, if chartered; (ii) NLRC, if non-chartered.
3.	SEC has jurisdiction over (i) non-chartered GOCCs, and (ii) acquired-asset corporation. (a) Acquired asset doctrine – if the government becomes the owner of the corporation by

<sup>13</sup> Though created through an original charter, it eventually became a private corporation when its "sovereign powers" to arrest offenders of animal welfare laws and the power to serve processes in connection therewith were withdrawn via an amendatory law (second element [public character of functions] is absent)

	acquiring its assets, it is akin to a GOCC without original charter subject to the jurisdiction of the SEC; (b) Acquired-asset corporation – a corporation under private ownership, the voting or outstanding shares of which were conveyed to the government in the satisfaction of debts.
4.	The determining factor of the COA's audit jurisdiction is government ownership or control of the corporation.
(i) Holding	
1.	A corporation that holds stocks in other companies for purposes of controlling their policies rather than mere investment.
2.	It is a separate entity although it does not directly engage in operating activities. It does not own the assets of and does not answer for the liabilities of the subsidiary or affiliate.
3.	The purpose is to allow various businesses having different corporate purposes to operate under single umbrella structure.
4.	It has a SJP from that of its investees.
(j) Parent/Subsidiary	
1.	Parent corporation – a corporation that owns enough voting stock in another company (subsidiary) to control management and operation by influencing or electing its board of directors. c.f.: holding company, a parent company may engage in operating activities.
2.	Subsidiary corporation – a company owned or controlled by the parent company.
3.	The parent company and the subsidiary has separate legal personalities. However, in <i>Gokongwei v. SEC</i> , the SC said that the stockholder of a parent company has the right to inspect the records of the subsidiary that is in the control and possession of the parent company.
4.	The parent or holding company may be held liable for the obligations of the subsidiary only if there is ground to pierce the veil of corporate fiction, e.g., alter-ego test.
(k) Affiliate – two companies are affiliates when one company owns less than the majority of the voting stock of the other.	
(l) Domestic – formed, organized, or existing under Ph laws.	
(m) Foreign	
1.	Formed, organized, or existing under foreign laws, and whose laws allow Filipino citizens and corporations to do business in its own country or State.
2.	Even if composed entirely of Filipinos.
3.	A foreign corporation may be considered a “Ph national” under the FIA, authorized to engage in nationalized activities if: (i) wholly-owned by Filipinos; (ii) licensed to do business in Ph.
(n) Close	
1.	One whose AOI provides that all of the corporation's issued stock of all classes, exclusive of TS, (i) shall be held of record by not more than a specified number of persons, not exceeding 20; (2) subject to specified restrictions on transfers; and (3) it shall not list in any stock exchange or make any public offering of its stocks of any class.
2.	See Other Corporations.
(o) Special – includes educational corporations and religious corporations (See Other Corporations)	
(p) One-Person – corporation with single SH (See Other Corporations).	

### 3. Nationality of Corporations

Tests to determine nationality of the corporation; (a) Place of incorporation test; (b) Domiciliary test; (c) Control Test; (d) Grandfather Rule

#### (a) Place of incorporation test

1. The nationality of the corporation is determined by the state of incorporation, regardless of the nationality of the SH.
2. Domestic corporation is one formed, organized, or existing under Ph laws.
4. Foreign corporation is one formed, organized, or existing under foreign laws, and whose laws allow Filipino citizens and corporations to do business in its own country or State.
5. Applied if the corporation is not engaged in nationalized activities.

#### (b) Domiciliary test

1. The nationality of the corporation is determined by its principal place of business.
2. Usually observed in States governed by the federal system.

#### (c) Control Test/(d) Grandfather Rule; Common requirements

1. The corporation is engaged in nationalized activities;
2. There are corporate shareholders with foreign shareholdings;
3. Foreign SH are present either by owning shares directly in the corporation or owning shares in its investor-corporation.

#### Interpretation of the term “capital”

1. Must be reflected in (i) total OCS; (ii) total voting shares – to ensure that Filipinos maintain effective control and beneficial ownership over the public utility corporation (or other corporation engaged in nationalized activity).
2. But the percentage need not be reflected in each class of shares as this will affect the capacity of the corporation to raise funds from the public.

#### a) Control Test

1. AKA liberal test where the nationality of the corporation is determined by the nationality of the controlling SH.
2. If the capital of the investor-corporation is at least 60% owned by Filipinos, its entire shareholdings is recorded as Filipino-owned, without need of further attribution, making both the investor and investee-corporations Philippine nationals.
3. Prevailing mode of determining the nationality of a corporation engaged in nationalized areas of activities.
4. Applied when there is no doubt as to where beneficial ownership and control of the corporation lies.

#### b) Grandfather Rule

1. To determine the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are considered by attributing to the corporate SH the nationality of the second or even subsequent tier of ownership.
2. Applies if: (i) control test is not satisfied, only the actual % pertaining to Filipino SH shall be recorded as Filipino-owned; (ii) control test is satisfied BUT there is **doubt as to the where the beneficial ownership and control of the corporation lies**.
3. Doubt may arise from circumstances as: (i) when Filipino subscribers did not actually pay the shares; (ii) the foreign corporation financed the corporation of the public utility company. Basically,

- the foreign corporation contributed all or almost all of the capital of the public utility company.
- The control test and GF rule are cumulative, not mutually exclusive, or alternative. Control test shall be applied first. If conditions under [2] are present, GF rule shall also be applied.

#### 4. Corporate Juridical Entity

##### a) Doctrine of Separate Juridical Personality

A corporation has a personality separate and distinct from the personality of its directors, officers, owners, SH, and persons composing it.

- The assets of the corporation are not assets of the SH – (i) SH cannot demand its exclusive use; (ii) SH of a judgment corporate-creditor cannot intervene in an action involving the corporation; (iii) SH have no standing to move for the nullification of the writ of preliminary attachment issued against corporate properties (they are not RPI). Before dissolution, the SH's right over corporate assets is merely inchoate.
- Obligation incurred by corporate agents are not their personal obligations but that of the corporation which they represent.
- Ownership by a shareholder of all the stocks of the corporation does not, by itself, justify the disregarding of the separate personality of the corporation.

*\*\*The directors, officers, SH/M of the corporation may be examined to determine the existence of corporate assets without violating the doctrine of separate legal personality. In a proceeding for the examination of corporate debtor, the corporate agents are not being held liable for the corporate debts but are merely being examined to determine the existence of corporate properties.*

##### b) Doctrine of Piercing the Corporate Veil

An **equitable** doctrine which allows the state to disregard the fiction of separate legal entity of a corporation under justifiable reasons, or when being misused, or abused.

- The doctrine of SJP is merely a legal fiction intended to promote public convenience. If being used to defeat public convenience, the same may be disregarded.
- The people composing the corporation and the corporation are considered as one. Corporation is merely considered an aggregation of individuals without separate personality.
- Basis: not express provision of law but equity. It is a consequence of breach of fiduciary duties of directors and officers of the corporation.
- Application is limited to the transaction in question where the elements are established, and not to all transactions involving the corporation and the persons composing it.
- May be applied even to NSC by considering the substance of the transaction, even though the element of control may be harder to establish.

Kinds: (i) traditional piercing; (ii) reverse piercing

- Traditional piercing – corporate liabilities are attributed to the persons composing the corporation, as if they themselves have directly performed the act. Reaches the assets of the persons composing the corporation for corporate liabilities.
- Reverse piercing – personal liabilities of the persons composing the corporation are attributed to the latter. Reaches corporate assets to satisfy the liabilities of the individual/s composing it.

Procedural requirement

- GR: the veil of corporate fiction cannot be pierced without a full-blown trial where the corporation itself is impleaded as a party through the service of summons.

- XPN: when the separate and distinct personality of the corporation is purposefully employed to evade a legitimate and binding commitment and perpetrate fraud or wrongdoings (in one case, the SC allowed the piercing of corporate veil during the execution stage even if the runaway corporation was not impleaded in the original case).
- The piercing of a corporate fiction is a judicial function. The sheriff, by himself, cannot determine the same, and execute the judgment against, for instance, the President of corporation.

Basis areas of application: (a) Defeat public convenience; (b) Fraud cases; (c) Alter ego cases

##### (a) Defeat public convenience

- When the fiction of separate legal personality is being used to evade an obligation.
- E.g., A SH filed a derivative suit in behalf of the corporation despite previous ruling of the court against the corporation – SJP is used to circumvent the rules against forum shopping.

##### (b) Fraud cases

- Where the corporate vehicle is being used to perpetrate a fraud, justify a wrong, or defend a crime.
- E.g., Evasion of EE claims by dissolving a corporation and incorporating a runaway corporation.

##### (c) Alter ego cases

- The corporation is a mere alter ego of a person or another corporation. It is a farce as, being a mere instrumentality, agency, conduit or adjunct of another.
- Elements: (i) Control, not only in terms of ownership, but complete domination in financial aspects, policy and business practices; (ii) Use of control to commit a fraud or wrong in breach of the plaintiff's right; (iii) The control and breach of duty were the proximate cause of the injury or loss complained of.
- The SH of a corporation cannot invoke the alter ego doctrine to secure affirmative reliefs without securing a Board resolution.
- Ownership of almost all of the capital stock of the subsidiary is not sufficient reason to disregard its separate legal personality and treat it as one with its parent company without establishing the elements of alter ego test.
- The presence of interlocking shareholders, directors, and officers, per se, is not enough reason to disregard the doctrine of SJP.

*\*\*In one case, the SC held that the allegation of bad faith on the part of the directors/officers/agents of the corporation is an attempt to pierce the corporate veil.*

#### 5. Capital Structure

##### a) Number and Qualifications of Incorporators

Incorporators

- Those who come together for the formation of a corporation, mentioned in the AOI as originally forming and composing the corporation, and who are signatories therein.

Number

- No minimum number (OPC) but must not be more than 15.
- XPN: Banks must have at least 5, and at most 15 directors (with at least 2 independent directors). In case of merger, the merged bank can have at most 21 directors if indicated in its AOI.

Qualifications

1. May be natural or juridical persons. (i) If natural, must be of legal age; (ii) if juridical, must have a nominee<sup>14</sup>
2. Must be SH/M. XPN: independent trustee of corporation vested with public interest need not be a member.
3. Professionals, and juridical persons organized to *exercise profession* may form corporations only if authorized by special law.
4. No more residency and nationality requirement, save in case of corporations engaged in nationalized activities. Even foreigners residing abroad can be incorporators of a private domestic corporation.

#### b) Subscription Requirements

1. No more minimum subscription and paid-up capital requirements, unless required by special law.
2. After incorporation, the 25-25 rule applies in case of increase in ACS. (i) 25% of the increase must be subscribed, and (ii) 25% of the subscription must be paid.

#### c) Corporate Term

Under the RCC, the following shall have perpetual existence:

1. Corporations organized under RCC;
2. Corporations organized under OCC still in existence at the time the RCC took effect (ipso facto conversion) – appraisal right of dissenting SH is available.
3. XPN: contrary provision in AOI.
4. If the AOI is silent, the term is deemed perpetual.

Option to retain fixed term

1. On or before Feb 19, 2021 – Requirements: (i) notice to SEC; (ii) vote by majority OCS; (iii) appraisal right not available.
2. After Feb 19, 2021 – (i) the corporation automatically acquires perpetual existence; (ii) to retain fixed term, the AOI must be amended by approval of majority BOD and ratification of 2/3s OCS.

Extension of term

1. Done by amending AOI. Must be approved by majority BOD/T and ratified by 2/3s OCS/M.
2. Can be done only during the lifetime of the corporation but not earlier than 3y prior to the date of original or subsequent expiry dates, except if there are justifiable grounds to allow earlier application for extension.
3. After expiration of term, the corporation may no longer apply for extension during the 3y winding-up period,<sup>15</sup> but it may apply for revival of corporate existence.
4. Takes effect upon approval by SEC of amended AOI.
5. Extended term takes effect on the day following expiry of the original or subsequent term so extended.

Shortening of term

1. Done by amending AOI. Must be approved by majority BOD/T and ratified by 2/3s OCS/M.
2. Mode of dissolution.

Expiration of term

1. Corporation not ipso fact dissolved.
2. Options: (i) Wind-up or liquidate corporate affairs; (ii) Apply for revival of corporate existence; (iii) Re-incorporation

*Revival of corporate existence*

1. Corporations has the same rights and privileges, and subject to duties, debts, liabilities existing prior to its revival.
2. Takes effect upon: (i) approval by SEC, and (ii) issuance of certificate of revival. Favorable recommendation of the appropriate government agency is required for SEC approval in case of banks, banking and quasi-banking institutions, pre-need, insurance, trust, NSSLA, pawnshops, corporations engaged in money service business, other financial intermediaries.
3. Revived term is generally perpetual. XPN: contrary provision application for revival.

#### Re-incorporation

1. Organization of a defunct corporation into a new corporation.
2. GR: Name of defunct corporation may be adopted by new corporation only upon lapse of 5 years from dissolution of the former. XPN: The use is approved by at least majority of OCS of the dissolved corporation.
3. Assets are not automatically transferred.
4. Liabilities are not automatically assumed. XPN: if the new corporation is mere alter ego of the old corporation.

#### d) Classification of Shares

Shares of stock are units representing equity ownership in a corporation. They are a form of securities.

Classes: (a) Common; (b) Preferred; (c) Par/No par; (d) Voting/ Non-voting; (e) Founder's; (f) Redeemable; (g) Treasury

1. Other classifications may be made, provided; (i) stated in the AOI, and (ii) not contrary to law.
2. Unless provided for in the AOI, shares are presumed equal in all respects (doctrine of equality of shares).
3. To be valid, the classification of shares must appear in the AOI. In definition questions, always indicate "shares classified as such in the AOI".

##### (a) Common

1. Issued without privileges or advantages.
2. Represents residual ownership in the corporation.
3. May not be denied right to vote.
4. Entitled to proportionate participation in: (1) profits, (2) assets upon dissolution and liquidation, and (3) management.

##### (b) Preferred

1. May be given preferences (i) in dividends, (ii) in distribution of assets, or (iii) other preferences as may be provided in AOI.
2. T&C – (i) may be fixed by BOD, if authorized in AOI; (ii) to take effect upon filing of certificate with SEC.
3. May be denied right to vote.
4. Preferred SH are investors, not creditors. Preference in dividends or assets does not give them lien over corporate property. Their interest is subordinate to corporate debtors as regards corporate assets.
5. Preference as to dividends is conditional on the availability of URE (not guaranteed), even if denominated as "interest" and the corporation agrees to absolutely pay the same. Giving preferred SH guaranteed interest is contrary to law for being prejudicial to the priority right of creditors over corporate assets.
6. May be non-/cumulative, non-/participating, or combination.
7. They must be issued with par value.

<sup>14</sup> Not automatically qualified as director, unless he himself is a SH in his own right.

<sup>15</sup> Extension of corporate term is inconsistent with winding-up.



(c) Par/No par

1. Par value – (i) amount per share fixed in the AOI and used in the computation of ACS; (ii) preference shares must always be issued with par value; (iii) there is no minimum par value for which the shares can be issued; (iv) SEC opined that the excess of proceeds over par (share premium) cannot be declared as dividends.
2. NPV shares – (i) corporations authorized to obtain or access funds from the public, e.g., banks, pre-need, insurance, trust, public utilities, building and loan association, are not authorized to issue NPV shares; (ii) deemed fully paid and non-assessable; (iii) minimum issue price is P5; (iv) entire amount received constitutes capital which cannot be declared as dividends.

(d) Voting/ Non-voting

1. Voting – (i) shares entitled to vote on all corporate acts requiring SH approval; (ii) a corporation must always have shares with complete voting rights.
2. Non-voting – (i) shares which may be denied voting rights; (ii) denial must be in AOI; (iii) preferred and redeemable shares may be denied voting rights; (iv) TS and delinquent shares are non-voting by nature.

*Instances when non-voting shares may vote*

**AOI, By-laws ALC MID**

1. AOI amendment\*
2. By-laws adoption and amendment
3. Sale, exchange, lease, security agreement, **SELS** other disposition of all or substantially all of corporate property\*
4. Incur, create, increase bonded indebtedness
5. Increase, decrease in capital stock
6. Merger or consolidation with other corporation/s\*
7. Investment of corporate funds in other corporation or business\*
8. Dissolution

\*Appraisal right available.

(e) Founder's

1. Shares classified as such in the AOI, which may be granted exclusive rights and privileges as compared to other classes of shares, including the exclusive right to vote, and be voted in the election of directors.
2. Exclusive right to vote and be voted in the election of directors – (i) subject to 5y limit from date of incorporation (does not apply to other privileges, e.g., preference as to dividends); (ii) must not be used to circumvent relevant laws, e.g., anti-dummy, FIA; (iii) this constitutes impairment on the rights of the SH to nominate directors of the corporation since holders of Founder's share are entitled to a guaranteed seat in the Board regardless of shareholding.
3. May be granted expanded voting rights, which must be indicated in the AOI and by-laws as it constitutes a restriction on the rights of the SH.
4. Assignable. The holder may exercise the corresponding rights, including the exclusive right to vote, and be voted in the election of directors. The corporation is bound, provided the assignment is recorded in the STB.

(f) Redeemable

1. Shares classified as such in the AOI which may be purchased by corporation from holders (i) upon expiration of period, (ii) **regardless of existence**

**of URE** (iii) upon such terms and conditions stated in AOI, stock certificate, and SEC rules and regulations, (iv) **provided that the corporation is not insolvent, and the redemption will not result to insolvency.**

2. Corporations issuing redeemable shares are required to provide a sinking fund.
3. Upon redemption, the shares were placed in treasury as TS.
4. They are equity instruments and not debt instruments.
5. Kinds: (i) Mandatory; (ii) Optional; (iii) Perpetual.
6. Mandatory – (i) SH may compel the corporation to redeem the share despite absence of URE; (ii) XPNs: (a) corporation is insolvent; (b) redemption will result to insolvency; (c) a bank suffers from chronic reserve deficiency.
7. Optional – (i) option to redeem belongs to corporation; (ii) if silent, redemption is optional.
8. Perpetual – (i) may be redeemed at any time; (ii) not retired and may be reissued.

(g) Treasury

1. Characteristics: (i) Previously issued shares, (ii) fully paid for, (iii) subsequently reacquired by issuing corporation through purchase, redemption, donation, other lawful means, but not retired.
2. Requirements of acquisition: (i) Existence of URE; (ii) For lawful purpose – (a) Elimination of fractional shares; (b) Collection or compromise of indebtedness from unpaid subscription in delinquency sale, and to purchase delinquent sales in delinquency sale; (c) Payment dissenting or withdrawing SH exercising appraisal right; (d) When shares are trading at less than book value.
3. URE is not required if the mode of acquisition is (i) redemption; or (ii) does not require a payout on part of the corporation (e.g., dacion en pago, collection or compromise of debt)
4. Acquisition of shares pertaining to the unpaid portion of the subscription and issuing shares to the SH for the paid portion is not lawful – (i) it amounts to condonation of unpaid subscription in violation of TF doctrine; (ii) it also violates the doctrine of indivisibility of subscription; (iii) it reduces capital stock without complying with the prescribed procedure; (iv) it is an improper remedy<sup>16</sup>
5. Issued but not outstanding shares. No right (i) to vote, (ii) to dividends.
6. Re-issuance – (i) may be disposed by corporation for a reasonable price fixed by board (business judgment rule), not subject to rule on watered stocks;<sup>17</sup> (ii) subject to pre-emptive right.

## 6. Incorporation and Organization

### a) Promoter

Person who brings about the formation and organization of a corporation, by (i) bringing together the incorporators, (2) procuring subscriptions, and (3) setting in motion the machinery which leads to the incorporation of the corporation itself.

### (1) Liability of Promoter

Prior to incorporation, no principal-agent relationship exists between the corporation-promoter since there can be no agency without a principal.

But the promoter's duty to the proposed corporation is fiduciary or quasi-trust in character. He must act in good faith in all dealings made in behalf of the corporation. E.g., promoter cannot acquire property needed by corporation, and sell it to latter for profit.

<sup>16</sup> The corporation should resort to delinquency sale, only if there is no bidder may the corporation acquire the delinquent shares, subject to the availability of URE.

<sup>17</sup> Applies only to original issuance of shares.

## (2) Liability of Corporation for Promoter's Contracts

After incorporation, the promoter may be a corporate agent, if corporate assents. The corporation becomes liable for the promoter's contracts entered in its behalf, if it ratified the same.

### b) Subscription Contract

Contract for the acquisition of **unissued** shares of (i) an existing corporation, or (ii) a corporation still to be formed.

1. Subscribed shares may be voted (i) even if not yet fully paid; (ii) provided they are not delinquent.

#### Unpaid subscriptions

1. Cannot be condoned by corporation and cannot be withdrawn by SH. Basis: TF doctrine. The condonation amounts to distribution of corporate assets prior to dissolution or liquidation.
2. Cannot be the subject of compensation. XPN: if the subscription receivable is already due and demandable.
3. May be enforced by corporate creditor. The creditor may, in the same action, implead both the corporation and the SH with unpaid subscription. Creditor must allege and prove: (i) the SH has not in good faith paid the par value of the stocks subscribed, (ii) the corporation either: (a) condoned the unpaid subscription, (b) is insolvent,<sup>18</sup> or (c) is dissolved. The judgment may be enforced against the SH only if writ of execution against the corporation was returned unsatisfied.

#### Purchase/Transfer of shares

1. Pertains to shares already issued but reacquired, i.e., TS.
2. Right to vote may be exercised only if fully paid, unless otherwise provided in the contract.
3. Payment of unpaid balance may not be enforced by corporate creditor due to lack of privity.

### c) Pre-Incorporation Subscription Agreements

Subscription Contract for the acquisition of unissued shares of a corporation still to be formed.

1. GR: irrevocable for 6m-period from subscription;
2. XPNs: (i) if all subscribers consent to the revocation; (ii) if corporation fails to incorporate in 6m, or the shorter period agreed upon; (iii) longer period is stipulated in the contract of subscription.
3. If there is failure to incorporate, including disapproval by SEC – (i) agreement may be rescinded; (ii) pre-incorporation subscriptions must be returned.
4. Once AOI is submitted to SEC, the agreement becomes irrevocable.

### d) Consideration for Stocks

#### Allowable consideration

##### CPL DTE SO

1. Actual cash paid to corporation (includes check or other acceptable forms of payment)
2. Property actually received by corporation (includes bonds)
3. Services actually rendered to corporation
4. Pre-existing debt of corporation (shares issued in payment of debt)
5. Amounts transferred from URE (stock dividends)
6. OCS exchanged for stocks (share swap)
7. Shares of stock in another corporation
8. Other generally accepted form of consideration (requires SEC approval)

#### Not allowable consideration

1. Future services;

2. Future debt (share may only be used as security)
3. PN, PDC, crypto-currency.

#### Property as consideration [2]

1. Must be necessary and convenient for corporate use and lawful purposes.
2. Must be fairly valued, at least equal to par or issued value.
3. Must be valued initially by SH or BOD.
4. Must have valuation approved by SEC.
5. \*\*

N.B.: issuance of shares in exchange for asset necessary for corporate business is one of the instances when pre-emptive right may be denied to SH. Dissenting SH cannot exercise their appraisal right.

#### Pre-existing debt as consideration [4]

1. Debt must be bona fide and pre-existing
2. If acquisition by bank of own shares in payment of debt. (i) approval by BSP; (ii) shares to be disposed within 6 months from acquisition.
3. \*\*

#### Amounts transferred from URE [5]

1. \*\*

N.B.: The dividend declaration will be consummated only upon actual distribution of the shares to the SH. Prior to this, the declaration is still revocable.

**\*\*If shares will be issued to non-existing SH, must be approved by majority BOD, and ratified by 2/3s OCS (to prevent violation of pre-emptive rights). If not, approval by majority BOD quorum is sufficient.**

**\*\*If ACS must be increased to accommodate the additional share issuance, the AOI must be amended. – (i) majority BOD + 2/3s OCS; (ii) Treasurer's certificate reflecting 25-25 rule.**

### e) Articles of Incorporation

1. Ultimate evidence of the nature and purpose of a corporation.
2. Sets forth limitation of corporate powers.
3. Defines the contractual relationships between: State-Corporation; State-SH; Corporation-SH.

### (1) Contents

1. Corporate name
2. Purpose/s – (i) must indicate primary, secondary; (ii) multiple purposes must be capable of lawful combination;<sup>19</sup> (iii) NSC cannot have a purpose contrary to its nature; (iv) limits corporation's powers.
3. Principal office – (i) must be in Ph; (ii) relevant for venue purposes.
4. Corporate term – if silent, perpetual
5. Incorporators – names, nationalities, residences NNR
6. Directors – NNR
7. Acting directors – NNR
8. Capital for stock corporations – (i) ACS, number of shares into which it is divided, par value; (ii) Statement that some or all shares are without par value, if applicable; (iii) NNR of original subscribers, amount subscribed and paid by each; (iv) 25-25 rule no longer applies, hence treasurer's certificate/affidavit was also removed.
9. Capital for NSC – (i) Amount of capital; (ii) NNR of contributors, and amount contributed by each.
10. Other matters – (i) not contrary to law; (ii) necessary and convenient; (iii) e.g., classification

<sup>18</sup> Used in a general sense, i.e., Assets < Liabilities, even if insolvency proceedings not commenced.

<sup>19</sup> Bank and insurance business cannot be lawfully combined.

of shares, restrictions on share transfer, lien on shares for membership dues	
11. Arbitration agreement (optional)	
Nature of SEC's duty	
1. The SEC must take the representations at face value.	
2. If the corporation complied with the legal formalities and requirements, mandamus will lie to compel the SEC to approve the AOI and issue certificate of incorporation (ministerial duty).	
3. In case of misrepresentation – (i) corporate franchise may be revoked; (ii) without prejudice to CML.	
Amendment	
1. Approval requirement – (i) majority BOD/T; (ii) 2/3s OCS/M.	
2. Board approval – (i) for SC, must be in a meeting called for the purpose; (ii) for NSC, <b>may be made by written vote or written assent (amendment to RCC).</b> **	
3. SH ratification – may be made by written vote or written assent for both SC and NSC.**	
4. If the amendment pertains to increase in ACS, must be accompanied by Treasurer's certificate/affidavit showing compliance with 25-25 rule.	
5. Appraisal right applies to a stock corporation given that there is no express mention of the same in the provision pertaining to NSC, and it will amount to distribution of assets during the lifetime of a NSC which is prohibited.	
6. Appraisal right is available for amendments which – (i) changes or restricts the rights of any stockholder or class of shares; <sup>20</sup> (ii) authorizes preferences in any respect superior to those of outstanding shares of any class; (iii) extends or shortens corporate term; (iv) provides for merger/consolidation.	
7. Amendments take effect (i) upon approval of the SEC or (ii) within 6m from the date of filing, if not acted upon by SEC for a cause not attributable to the corporation.	
<b>**Except when the RCC or bylaws require that a meeting be called for the purpose.</b>	
1. Extension or shortening of corporate term.	
2. Increase or decrease of capital stock.	
3. Merger or consolidation.	
4. Voluntary dissolution – w/n creditors are affected.	
5. Amendment to the articles of incorporation (i) to delete a required provision; or (ii) to reduce a quorum or voting requirement.	

## (2) Non-Amendable Items

Matters of accomplished fact
1. NNR of incorporators – e.g., an incorporator who was annulled may no longer change her name as incorporator in the AOI to drop her husband's surname.
2. Date and place of incorporation.
3. Name of notary public.

## f) Corporate Name and Limitations on its Use

Limitations on use under RCC:
1. No other corporation, partnership or person must have acquired <b>prior right</b> to use the name (protected name, e.g., TM/TN)
2. Must be <b>distinguishable</b> from a name already registered or reserved for use of another corporation. Addition of the ff. does not make the name distinguishable: (i) the word corporation,

<sup>20</sup> E.g., denial of preemptive right. N.B.: under the RCC, this is not one of the instances when a SH meeting for the purpose must be called.

company, incorporated, limited, limited liability, or their abbreviation; (ii) punctuations, articles, conjunctions, contractions, prepositions, abbreviations, different tenses, spacing, etc.

3. Must not be contrary to law, public morals, good customs, public policy.

The AOI must contain a corporate name, and an undertaking to change the same (i) immediately, (ii) upon receipt of notice from SEC of the existence of above limitations.

1. SEC may: (i) summarily order the corporation to cease and desist from using a corporate name that did not observe the guidelines set forth in the RCC; (ii) cause removal of all signs, marks, labels, prints bearing such corporate name; (iii) hold responsible directors, officers in contempt or hold them liable; (iv) revoke registration of the name.
2. Non-compliance with the limitations above is ground for denial of approval of AOI.

Remedies against unauthorized use:

1. Administrative action – (i) by filing a petition with the SEC to compel the other corporation to change its name (see above); (ii) estoppel will not lie against the SEC even if it previously approved the corporate name sought to be enjoined; (iii) SEC may not award damages.
2. Judicial action. By filing – (i) a complaint against the unauthorized use of the corporate name under §159 RCC; (ii) a complaint for infringement if the name is used as a trade name (even without registration with IPO); (iii) an action for damages with application for preliminary injunction.

Other limitations:

1. Use of name of dissolved corporation – (i) GR: not allowed within 5y from approval of dissolution or date of revocation; (ii) XPN: if SH/M of the dissolved corporation authorized its use.
2. “National” cannot be used as corporate name as this is reserved for the government.
3. “Corporation” or “Incorporated” must form part of the corporate name. N.B.: other forms of business organization cannot use Corp./Inc.

***\*\*Change of name does not affect the personality of the corporation. It can sue and be sued whether in its old or new corporate name.***

## g) Registration, Incorporation, and Commencement of Corporate Existence

Registration
1. Reservation and verification of corporate name (see above)
2. Submission of documentary requirements, including AOI, bylaws, <sup>21</sup> treasurer's certificate, registration form, favorable recommendation, or indorsement of concerned government agency, if applicable.
3. Payment of filing fees (1/10 of 1%)
4. Issuance of COI – if the SEC finds that the submitted documents and information are fully compliant with the requirements of the RCC, relevant laws, rules, and regulations.
Incorporation – SEC will issue:
1. COI/R, to commence the corporate existence;
2. Certificate of filing of AOI;
3. Certificate of filing of bylaws.
Commencement of Corporate Existence

<sup>21</sup> May be submitted before or after incorporation. Under RCC, there is no more period for the submission.

1. Corporations organized under RCC – (i) upon issuance by SEC of the COI under its official seal; (ii) this is also a requirement to constitute DFC.
2. Corporations organized under special laws – (i) upon effectivity of the special law creating the corporation, or (ii) upon compliance with the conditions imposed by law for the commencement of corporate existence (e.g., accreditation by the proper concerned government agency).
3. With respect to obligations incurred prior to the commencement of corporate existence, the agents are considered corporation by estoppel liable as general partners. E.g., if property was given to a farce corporation, an action for reconveyance against the non-existing corporation will not lie. The remedy is against the Treasurer who received the property in trust for the proposed corporation. Once the corporation was duly incorporated, the complaint would have to be amended to implead the corporation.

#### h) Election of Directors or Trustees

##### Election of D/T

1. Every SH/M has the right nominate the D/T to be elected, subject to (i) the rights of Founder's shares, (ii) the requirement of independent directors.
2. NOM must be sent to SH/M in accordance with the form and mode prescribed by the bylaws.
3. There must be a quorum (see below).
4. The meeting must be presided by the officer indicated under the bylaws – Chairman of the Board, or in his absence, the President.
5. Election must be by ballot if requested by any voting stockholder or member.
6. Subject to rules on the number of votes that may be cast, and methods of voting for stock and NSC (see below). The election of independent directors must be made together with the election for regular directors.
7. Nominees receiving the highest number of votes shall be elected as D/T (plurality). XPN: holders of Founder's shares who have the right to be elected regardless of share ownership or votes obtained.
8. Elected D/T must possess all of the qualifications and none of the disqualifications under the RCC and the bylaws. N.B.: A SH who has enough votes to be assured of a board seat does not have any vested right to be elected as a director since he may not have all the qualifications and none of the disqualifications to be elected as director.

##### Nominees less than Board seats

1. Nominees are not automatically elected. The election must be conducted to determine if they will all get votes.
2. They must possess all of the qualifications and none of the disqualifications.

##### Independent directors

1. At least 30% of the total number of directors but not less than 2;
2. When required: (i) Companies listed in stock exchange; (ii) Public companies or those not listed but have more than 250M assets with 200 SH, each SH holding 100 shares each; (iii) Bank, insurance companies, holders of secondary franchise; (iv) Companies impressed with public interest.
3. Qualifications – (i) independent director must be a SH, (ii) but independent trustee need not be a member; (iii) other qualifications as may be prescribed by SEC.

##### Quorum requirement

1. Owners of the majority OCS/M entitled to vote must be present (i) in person, (ii) by proxy, or (iii) in absentia;
2. Excluding (i) non-voting shares,<sup>22</sup> (ii) TS, (iii) delinquent. Partially paid shares that are not delinquent shall be included.
3. Those voting via remote communication or in absentia are deemed present for purposes of quorum;
4. (i) For SH meetings, quorum may be reduced to less than majority; (ii) for Board meetings, quorum cannot be reduced to less than majority of members of the Board as fixed in AOI, except in case of emergency quorum.
5. The presence of director is not required to be elected.

##### Emergency quorum

1. If no election was held or quorum was not met, the SH meeting may be adjourned, and the outgoing D/T shall serve in holdover capacity.
2. Within 30 days from scheduled election, report must be submitted to SEC: (i) stating the fact of non-holding of scheduled election, and reason/s, and (ii) specifying the new date for election, not later than 60 days from scheduled date.
3. If no date for new election was specified, or the same was not held, SEC may summarily order the holding of an election upon the application of a SH/M, D/T.
4. **OCS represented at the meeting shall constitute quorum for purposes of conducting an election notwithstanding contrary provision in the RCC (emergency quorum).**
5. N.B.: the concept of emergency quorum applies only to election of directors and not to other corporate acts.

##### Manner of attendance: in person, by proxy, by VTA, in absentia

1. Voting in absentia or through remote communication is allowed if: (i) authorized in the bylaws, (ii) approved by the majority BOD/T, or (iii) for corporations vested with public interest, notwithstanding absence of provision in the bylaws or authority from BOD.
2. Those voting or in absentia are counted for purposes quorum.

##### Number of votes that may be cast

1. For stock corporations, [# of recorded shares in the name of SH as of the date fixed in the bylaws or on election date<sup>23</sup>] x [# of directors to be elected].
2. For NSC, # of trustees to be elected

##### Methods of voting

1. For stock corporations – (i) straight or cumulative; (ii) cumulative voting may be for (a) one candidate, or (b) by distribution; (iii) cumulative voting in stock corporations cannot be denied by the bylaws being a statutory right. It is a mechanism for minority SH to improve their chance of getting representation on the Board.
2. For NSC – (i) a member may not cast more than 1 vote form more than 1 candidate; (ii) cumulative voting generally not allowed. XPN: if provided in AOI or bylaws.
3. With independent directors – The votes for regular directors should be segregated from the votes for independent directors. The top candidates for each class of directors for the number of seats to be filled shall be considered elected, even if the tops candidates for independent directors

<sup>22</sup> Preferred and redeemable may be denied the right to vote.

<sup>23</sup> If no date was fixed.



obtained less votes than the nominees for regular directors.

#### *Election for less than the number of seats*

1. The election of directors for a number less than that specified in AOI is valid.
2. Such a situation merely gives rise to a vacancy in the board, which may be later filled up by the SH (ground for vacancy is expiration of term).
3. The power of the board is not suspended by vacancies in the board unless the number is reduced below a quorum.

#### Election of officers

1. In SC, the directors elect the corporate officers.
2. In NSC, the trustees elect the corporate officers but the members can also directly appoint them.
3. Secretary: (i) need not be a SH, (ii) may be concurrent treasurer.
4. Treasurer: (i) need not be a SH; (ii) may be concurrent secretary; (iii) cannot be concurrent president XPN: in OPC, subject to posting of bond.
5. President: (i) must be SH; (ii) may be concurrent chairman of board XPN: in public/listed company.

#### *j) Adoption of By-Laws*

Rules adopted by the owners of the corporation (SH/M) for the internal government of the corporation, to regulate the conduct of corporate affairs, and to prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.

1. Not a pre-incorporation requirement.
2. Power to adopt bylaws is both inherent and expressed. The power is lodged with the owners of the corporation. Hence, BOD/T does not participate in its adoption, except to certify that the by-laws of the corporation are the same filed with the SEC.
3. Under RCC, there is no more one-month deadline for submission of bylaws.

#### Modes of adoption

1. Prior to incorporation: (i) approved and signed by all of the incorporators/SH; (ii) submitted to SEC; (iii) issuance of certification that bylaws are in accordance with laws.
2. After incorporation: (i) approved and signed by at least majority OCS/M; (ii) certified by majority of D/T, countersigned by Corporate Secretary; (iii) filed with SEC, attached to AOI; (iv) issuance of certification that bylaws are in accordance with laws.
3. Favorable recommendation of concerned government agency is required in case of bank, banking institution, building and loan association, trust company, insurance company, public utility, educational institution, or other special corporations governed by special laws.
4. May be submitted any time since the one-month period for the submission was already removed under the RCC.

#### Characteristics of valid bylaws

1. Must not be contrary to the RCC and existing laws – e.g., provision reserving a seat in BOT for a non-member of NSC,<sup>24</sup> or provision for permanent representation.<sup>25</sup> Estoppel will not lie to compel a corporation to enforce an illegal provision.
2. Must not impair obligations of contracts – e.g., right to security of tenure of EEs. The bylaws cannot provide that all non-corporate officers must be reappointed by the Directors as a condition for

continuing employment (this is valid only for corporate officers).

3. Must be general and uniform in their operation and not directed against particular individuals – e.g., disqualification of a director or SH of a competing corporation, but not directed to a specific person.

#### Effect of failure to file

1. Will not result in automatic dissolution of the corporation.
2. May constitute ground for the suspension or revocation of COI/R in case of non-compliance with SEC order to file the bylaws, after proper notice and hearing.
3. Corporation may be considered de facto.

#### (1) Contents of By-Laws

##### (a) Meeting details

1. Of BOD/T: time, place,<sup>26</sup> and manner of calling and conducting regular or special meetings;
2. Of SH/M: time and manner of calling and conducting regular or special meetings, mode of notice;
3. Place of meeting of SH/M shall be at the principal office, or if impracticable, in the city where the office is located;
4. If the by-laws indicate the time and place for the annual SH meeting, the meeting should not be nullified on that ground of lack of notice.
5. Failure to comply with the manner of calling the meeting and with the notice requirement is ground for nullification of the meeting, and resolutions taken therein.

##### (b) Quorum

1. For SH meetings, quorum may be reduced to less than majority;
2. For Board meetings, quorum cannot be reduced to less than majority of members of the Board as fixed in AOI, except in case of emergency quorum.

##### (c) Manner of attendance and voting

1. in person,
2. by proxy,
3. by VTA,
4. in absencia.

##### (d) Proxies

1. Form – must be in writing but need not be notarized, although bylaws may provide otherwise
2. Manner of voting;
3. Period of submission.

##### (e) Qualifications, duties D/T

1. Qualifications – only the by-laws can provide for qualifications or disqualifications of BOD/T e.g., on ground of conflict of interest, not by a mere Board resolution
2. Duties and responsibilities
3. Guidelines for setting the compensation
4. Maximum no. of independent directors

##### (f) Election of BOD/T

1. Time for holding the annual election of D/T
2. Mode or manner of giving notice

##### (g) Election/ appointment of officers

1. Manner of election or appointment – (i) requires majority vote of entire BOD
2. Term of office – (i) corporate officers serve at the pleasure of the Board; (ii) they may be removed on

<sup>24</sup> Violates the provision on qualification of Trustees, who must be members of the NSC.

<sup>25</sup> Violates the provision on election of trustees every 3 years (term limit).

<sup>26</sup> May be conducted anywhere, even abroad, in the absence of contrary provision in bylaws.

ground of loss of confidence, which will constitute expiration of the term.

(h) Penalties for violation of the bylaws

1. But the bylaws cannot provide that directors be removed by fellow directors, even for cause; the power to remove a director is reserved to the SH.

(i) Issuance of stock certificates

1. Manner of issuing stock certificates

(j) Other matters

1. Necessary for the proper or convenient transaction of corporate affairs;
2. Promotion of good governance and anti-graft and corruption measures;
3. Arbitration agreement.

**(2) Binding Effects**

1. Bylaws become effective upon issuance by SEC of a certification that the bylaws are in accordance with the RCC.
2. It is binding only among the SH/M of the corporation.
3. To bind 3p, they must have acquired knowledge of the pertinent bylaws at the time the transaction or agreement was entered into.
4. E.g., (i) bylaws provision granting the country club preferred lien over the share of stock of a member for unpaid dues is not binding on the pledgee of the said shares;<sup>27</sup> (ii) bylaws provision on the signatory of employment contracts is not binding on the EE and cannot be invoked as ground to nullify such contract.
5. N.B.: under the Condominium Law, the Condominium Corporation may sell a condominium unit and apply the proceeds to the unpaid dues and assessments if allowed under the Master Deed of Restrictions.

**(3) Amendments**

1. Requires approval of majority Board and majority OCS/M (double majority)
2. 2/3s OCS/M may delegate the power to adopt, amend, repeal by laws to the BOD/T. The delegated power may be revoked by majority OCS/M.
3. The delegation must be made in a SH/M resolution, and not in the bylaws. The delegated authority is temporary. It may be revoked anytime by a majority vote of the shareholders or members by adopting another resolution.
4. Amended bylaws shall be filed with SEC, with SH/M resolution delegating authority, if applicable.
5. Amended bylaws shall take effect from the issuance by SEC of certificate that it is in accordance with RCC and relevant laws.

**j) Effects of Non-Use of Corporate Charter**

Two instances; (a) Failure to organize and commence business; (b) Suspension of operations.

(a) Failure to organize and commence business

1. A corporation should formally organize and commence its business within 5y from the date of its incorporation. Otherwise, its certificate of incorporation shall be deemed revoked as of the day following the end of the 5y period.
2. "Deemed revoked" does not mean automatic dissolution. The dissolution must be operationalized by the act of the SEC in dissolving the corporation (although it may be done *motu proprio* without notice and hearing c.f.: suspension

of operation where notice and hearing is required to place the corporation under delinquent status)

3. Corporations organized under the OCC can benefit from the 5y extended period (formerly 2y) to organize and commence business.
4. If the corporation transacted business on the day following the end of the 5y period, the act is not invalid since the COI is not yet revoked without positive act of the SEC effecting the revocation.
5. Organization and commencement of business – (i) adoption and filing of bylaws; (ii) election of officers; (iii) registration of corporate name with DTI; (iv) registration with BIR, SSS, LGUs; (v) establishment of office and commencement of business operations.

(b) Suspension of operations

1. A corporation has organized and commenced business but subsequently becomes inoperative for at least 5 consecutive years.
2. The SEC may, after due notice and hearing, place the corporation in delinquent status.
3. A delinquent corporation shall have 2y to resume operations and comply with all requirements that the SEC shall prescribe.
4. If complied, SEC will order the lifting the delinquent status.
5. If not complied, SEC shall cause the revocation of the corporation's COI with notice to appropriate regulatory agency with respect to companies under their special regulatory jurisdiction (e.g., BSP for banks, IC for insurance companies).

**7. Corporate Powers**

**a) General Powers; Theory of General Capacity**

A corporation holds such powers which are not prohibited or withheld from it by general laws.

1. These are powers whose exercise is lodged exclusively with the BOD through a majority vote in a meeting where quorum is present.
2. The general powers of a corporation are provided for under §35 RCC.

(a) To sue and be sued in its corporate name.

1. Exercised by the BOD/T by adopting a Board resolution authorizing (i) the filing of the action; (ii) the signing of complaint/petition; (iii) the signing of verification CNFS; (iv) the representation by counsel of the corporation, including entering compromise and performance all acts necessary for the prosecution of the case. N.B.: the authority may also be stated in the bylaws.
2. An action instituted without proper authority is dismissible on the ground of failure to state a cause of action.
3. Exceptions – a corporation may sue without authority from BOD/T in case of (i) derivative suit; (ii) specific corporate officers as provided under jurisprudence.

**Derivative suit**

1. Equitable remedy available to minority SH to file an action in the name and on behalf of the corporation to enforce a corporate right or cause of action, as against directors and officers who caused harm, injury or wrongful acts committed to the corporation;
2. Remedy of last recourse. Board-sanctioned is preferred over derivative suit.
3. Available only to minority, but not to majority SH. The remedy of the majority SH is to obtain resolution from BOD to pursue the desired action.

<sup>27</sup> If 3p has knowledge of bylaws provision, the same is still not self-executing and must be accompanied by a security agreement on the shares.

4. All derivative suits are not cognizable by the RTC where the corporation holds principal office. There is no more distinction between intra corporate and non-intracorporate derivative suits.

*Specific officers*

1. Chairman of the Board, President, GM, acting GM, HR officer, employment specialist in labor case, may sue on behalf of the corporation even without Board authority. Rationale: owing to their position, they are supposed to be familiar with the affairs of the corporation such that they should know the truthfulness of the allegations in the complaint (XPN).<sup>28</sup>
2. Under the RROC, the authority of the signing officer must now be appended to the pleading, complaint, or petition; failure to do so is ground for outright dismissal of the case (GR).
3. Based on recent pronouncement of SC, the lack of authority may be cured by ratification or subsequent submission of such authority.

(b) To have perpetual existence unless the COI provides otherwise.

(c) To adopt and use a corporate seal.

(d) To amend its AOI.

(e) To adopt, amend or repeal bylaws.

(f) In case of stock corporations, to issue stocks to subscribers and to sell TS; in case of NSC, to admit members.

1. Includes the authority to (i) fix the terms and conditions of the issuance, as well as the terms and dates of payment; (ii) declare stock split, reverse stock splits; (iii) exercise other options regarding the issuance of shares.
2. 25-25 rule does not apply to subscription to unissued shares.

(g) To deal with properties

1. To purchase, receive, take, or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
2. Requisites: (i) Property must be necessary or convenient for the purpose of the corporation, or in furtherance of its purpose/s; (ii) Subject to Constitutional limitations; (iii) Subject to the provisions of special laws, e.g., Bulk Saks Law in case of sale of all or substantially all of corporate properties; Philippine Competition Act; etc.

(h) To enter into commercial agreements with natural and juridical persons.

1. Includes **partnership**, joint venture, merger, consolidation
2. Express provision which abandoning previous rulings prohibiting the corporation from entering in partnership contracts.

(i) To make reasonable donations.

1. Requisites: (i) must be reasonable; (ii) must be for a valid purpose including public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes; (iii) must bear a reasonable relation to the corporation's interest and must not be so remote and fanciful.
2. For foreign corporations are prohibited from making donations to: (i) political party; (ii) political candidate; (iii) partisan political activities.

3. For domestic corporations, (i) there is no prohibition from donating to political parties, (ii) there is also no limit on the amount of donation that can be made, (iii) the limit is only on tax deductibility.

(j) To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers, and employees.

(k) To exercise such other powers as may be essential or necessary to carry out its purpose/s as stated in AOI.

*b) Specific Powers; Theory of Specific Capacity*

A corporation cannot exercise powers except those expressly or impliedly given to it.

1. Provided for under Sections 36 to 43 RCC.
2. Generally, requires concurrence of SH.

*c) Power to Extend or Shorten Corporate Term*

Requirements:

1. Requires AOI amendment, subject to approval by majority BOD/T, and ratification of 2/3s OCS/M;
2. Written notice to SH/M;
3. Favorable endorsement of the appropriate government agency in case of special corporations (banks, banking and quasi-banking institutions, pre-need, insurance and trust companies, NSSLAs, pawnshops, and other financial intermediaries);
4. Extension must be done during the corporation's lifetime, but not earlier than 3y prior to the original expiration of fixed term, unless there are justifiable grounds for earlier extension as determined by SEC.
5. Shortening of corporate term may be done at any time prior to the dissolution of the corporation.
6. The 3y limit applies only to extension but not to the shortening of corporate term.

Expiration of term

1. Of original term – Corporation is not automatically dissolved. It may apply for a revival of corporate existence.
2. Of shortened term – results to ipso facto dissolution of the corporation, without the need of further act on part of SEC, and without the need for issuance of certificate of dissolution.

**\*\*Appraisal right is available in case of amendment of AOI to extend or shorter corporate term.**

*d) Power to Increase or Decrease Capital Stock or Incur, Create, Increase Bonded Indebtedness*

Acts covered: (a) In/Decrease CS; (b) Incur, Create, increase Bonded Indebtedness

Requirements:

1. Approval by majority BOD/T, and ratification of 2/3s OCS/M.
2. Written notice to SH/M.
3. Certification signed by majority BOD, countersigned by Chairman and Secretary as to – (i) Compliance with voting and notice requirements; (ii) Amount of in/decrease in capital stock; (iii) Subscription and subscribers' details; (iv) Bonded indebtedness to be incurred, created or increased; (v) Amount of stock represented at the meeting; (vi) Vote authorizing the increase or decrease of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.
4. Sworn treasurer's certificate for increase in CS – (i) 25-25 rule; (ii) applied on the basis of totality of subscription and not on a per subscriber basis.

<sup>28</sup> Geogenetic Swine case. Case rendered after the amendment of the Rules on Civil Procedure.

5. Prior approval by SEC or PCC.
6. Once approved, the corporation has 6m from date of approval to file the application to increase capital stock with the SEC.

#### *Increase in capital stock*

1. Before approval, amounts received for future subscription constitutes DFFS (not part of capital; not entitled to vote; but considered securities). In/decrease in CS takes effect only upon approval by the SEC and its issuance of a certificate of filing of increase or decrease of capital stock.
2. A corporation may increase its ACS even if its original ACS is not yet fully subscribed – this is done to (i) secure reserve should the corporation decide to raise additional capital; (ii) infuse fresh capital.
3. Practical reasons for increasing capital stock – (i) To obtain additional funds (25-25 rule); (ii) To acquire corporate assets; (iii) To support stock dividend declaration.
4. Treasurer's affidavit is required only for increase in CS, but not for decrease, or for ICI bonded indebtedness.
5. Issuance of shares from the unissued shares does not require SH approval as the power is lodged with the BOD (approval by majority quorum), which may prescribe T&C therefor. XPN: if the issuance is in favor of a non-existing SH, the same must be ratified by 2/3s OCS to prevent violation of their pre-emptive right.

#### *Decrease in capital stock*

1. Nature of SEC's duty: Purely administrative – if the legal formalities and requirements have been complied with, SEC's duty is merely administrative. This is part of the exercise of business judgment rule.
2. SEC's determination of the legality of the decrease in authorized capital stock is confined only to the determination of whether the corporation submitted the requisite authentic documents to support the diminution.
3. Creditors' rights should not be prejudiced, but without regard to its effect on SH relations (not a consideration for increase in CS).
4. If the subscriptions to ACS were fully paid, the corporation may reduce its capital by complying with the legal formalities and requirements. If the subscriptions to ACS were not yet fully paid, the corporation may not reduce the ACS corresponding to the unpaid subscription. The latter amounts to condonation in violation of the TF doctrine.

#### *Bonded indebtedness*

1. Characteristics – (i) LT borrowing from the general public; (ii) entire issuance is divided into aliquot portions represented by separate negotiable or assignable instruments. (iii) secured by charge or encumbrance on corporate assets; (iv) administered by trustee for the benefit of lenders or bondholders; (v) registered with SEC.
2. Issuance of ordinary corporate bonds or against general corporate credit may be carried out by BOD alone. XPN: if secured by mortgage on all or substantially all of corporate assets.

#### *e) Power to Deny Pre-Emptive Rights*

Pre-emptive right is the right of stockholders to subscribe to all issues or disposition of shares of any class by the corporation, in proportion to their respective shareholdings.

1. Designed to protect both the proprietary and voting rights of the SH against dilution.

2. Statutory right. Unless restricted, the right is available to SH.
3. Applies regardless of the kind of share issuance by the corporation – (i) Issuance from unsubscribed shares; (ii) Increase in capital stock; (iii) Disposition or sale of TS.
4. If the shares issued are preferred, both common and preferred SH may subscribe in proportion to their shareholding.
5. Even holders of non-voting shares may exercise pre-emptive right.

#### *When may be denied MAW PD*

1. If the right is denied in the **AOI** or an amendment thereto.
2. **Waiver** by SH – (i) express or implied; (i) failure to exercise the right within the period prescribed amounts to implied waiver.
3. If the issuance is needed to comply with a legal requirement of **minimum** stock ownership by the public<sup>29</sup>
4. If the issuance is in exchange for **property** needed for corporate purposes; provided: (i) issued in good faith, and (ii) with approval of the 2/3s OCS
5. If the issuance is in exchange of previously contracted **debt**; provided: (i) issued in good faith, and (ii) with approval of the 2/3s OCS.

#### *f) Power to Sell or Dispose Corporate Assets*

Two kinds: (a) In the ordinary course of business; (b) Sale of all or substantially all (A/SA)

##### *(a) In the ordinary course of business*

1. Requires only Board approval.
2. Part of general powers of the corporation to deal with property that is necessary and convenient for its purpose/s.

##### *(b) Sale of A/SA*

1. Covers sale mortgage, or assignment of the right to redeem the corporation's only asset. (i) For public corporations, at least 51% of assets; (ii) For non-public, if the corporation will no longer be able to operate or continue to the business for which it was organized
2. Requires approval by majority BOD, and ratification by 2/3s OCS/M.
3. Dissenting SH may exercise appraisal right.
4. Subject to Bulk Sales Law.
5. The buyer may rely on recitals of the secretary's certificate that sale was duly authorized, absent circumstances that will arouse suspicion.

#### *Bulk Sales Law*

1. Bulk Sales – (i) Sale, transfer, mortgage, assignment **STMA** (a) of properties not in the ordinary course of business, or (b) of A/SA assets used in the vendor's business, or (c) of A/SA business/trade conducted by vendor.
2. Requirements – (i) Seller to provide buyer with verified list of creditors (names, address, amount owed to each, maturity dates); (ii) Full detailed inventory of properties/assets to be sold; (iii) Inventory in filed with DTI.
3. There is violation in case of: (i) Non-compliance with the requirements of law; (ii) Non-application of the purchase price pro rata to the creditor's claims (seller acts as trustee for creditors).

#### *Effects:*

1. Sale of A/SA corporate assets will not result in the automatic dissolution of the vendor corporation.

<sup>29</sup> Minimum public ownership in public companies is at least 10% OCS.



2. Vendee corporation is not automatically liable for the debts of the vendor corporation (Nell doctrine).
3. XPNs (vendee becomes liable if): (i) it expressly assumed the vendor's debts; (ii) Sale amounts to a (de facto) merger or consolidation; (iii) Sale is entered fraudulently or in bad faith; (iv) Business-enterprise transfer BET rule, where the buyer is deemed a mere continuation of the seller's personality. Happens if the vendor does not merely transfer the assets to another corporation, but also the business and goodwill.
4. De facto m/c – the buyer corporation acquires the assets and liabilities of the vendor corporation for shares of stock making the seller corporation a stockholder of the buyer corporation. If the assets vendor corporation was acquired, merely in exchange for the assumption of its liabilities, there is no de facto merger.

#### g) Power to Acquire Own Shares

Generally, stock corporation does not have power to acquire its own shares, except as provided for in RCC.

When a corporation may acquire its own shares

1. To remove fractional shares
2. To collect or compromise indebtedness out of unpaid subscription, and to purchase delinquent shares at auction sale
3. To pay off dissenting SH exercising his appraisal right
4. To acquire redeemable shares
5. To acquire treasury shares

Requirements:

1. For legitimate and proper purpose.
2. Availability of URE, and capital must not be impaired.
3. Corporation acts in good faith and creditors are not prejudiced.
4. Conditions of corporate affairs warrant the acquisition.
5. In case of banks: (i) prior approval from BSP MB; (ii) disposition of shares acquired within 6m.

#### h) Power to Invest Corporate Funds in Another Corporation or Business

Investment of corporate funds may be for: (a) Primary purpose in AOI, or activities reasonably necessary to accomplish the primary purpose; (b) Secondary purpose in AOI; (c) Other business not in AOI.

(a) Primary purpose in AOI

1. Board approval sufficient.
2. Appraisal right is not available as a remedy.
3. E.g., A soft drinks manufacturer to engage in the business of manufacturing soft drink bottles; a cement manufacturing company to engage in quarry operations

(b) Secondary purpose in AOI

1. Requires approval by majority BOD/T, and ratification of 2/3s OCS/M.
2. Notice of proposed investment must be sent to SH/M.
3. Appraisal right is available to dissenting SH.

(c) Other business not in AOI

1. Requires amendment of AOI to reflect either as primary or secondary purpose.

#### i) Power to Declare Dividends

Dividends may be in the form of: (a) Cash, including property, or (b) Stock

Common requirements:

1. Availability of URE – (i) Retained earnings from bona fide income, not from other sources, e.g., revaluation surplus, APIC and gain from sale of TS (SEC opinion); (ii) XPNs: (a) Wasting assets corporations; (b) Liquidating dividends
2. Proportionate to OCS held by SH as of record date, or if none, as of declaration date.
3. Duly approved – (i) For cash, approval by majority BOD; (ii) for stock, approval by majority BOD, ratified by 2/3s OCS (to prevent violation of pre-emptive right); (iii) SEC approval is not required unless ACS must be increased to support the declaration of stock dividends.

Nature of power to declare dividends

1. Generally discretionary. Part of business judgment rule. XPN: becomes mandatory if the RE is already in excess of 100% of paid-in capital. XPN to XPN: when retention RE is allowed.
2. Retention of RE is allowed: (i) when justified by a definite expansion project or program approved by the Board; (ii) where the corporation is prohibited by any loan agreement to declare dividends without consent of the creditor, and such consent was not yet secured; (iii) when justified by the special circumstances of the corporation such as when there is need for special reserve for probable contingencies

(a) Cash

1. Once declared, a debtor-creditor relationship is created between the corporation-SH. Can no longer be revoked.
2. May be subject to legal compensation if the SH also has debt to the corporation.
3. In case of delinquent shares, applied to balance.

(b) Stock

1. Involves a two-step process: (i) cash dividend; (ii) forced use of the dividend to acquire stocks to be distributed to the SH on the basis of shares held.
2. May be revoked even after declaration but before distribution. What consummates a stock dividend is its actual issuance.
3. In case of delinquent shares, withheld until full payment.

#### j) Power to Enter into Management Contract

Management contract is an agreement whereby a corporation entrusts or delegates to another the management of its all or substantially all its business or affairs for a certain period of time.

Requirements:

1. Approval by majority Board of both managing and managed corporations.
2. Ratification by majority OCS of both corporations, or 2/3s OCS in case of interlocking SH/D.
3. Interlocking SH – if SH representing interest in both corporations own and control more than 1/3s OCS in managing corporation.
4. Interlocking director – if the majority directors of both corporation were the same.
5. GR: Must not exceed 5 years for 1 term. XPNs: Service contracts involving EDU of natural resources (a) Under the mining act, may be for 25 years; (b) Technical/ Financial Service Agreement or Production Agreement, may be for 25 years.
6. The 5y limit applies only to two corporations, but not when the manager is a natural person. The latter is governed by the law on contracts and may be longer than 5y.

#### k) Doctrine of Individuality of Subscription

Subscription contract is one entire, whole and indivisible.

1. Absolute rule since Sec. 63 did not provide any exception.
2. Purpose: to prevent the partial disposition of subscription and allow the corporation to sell as much shares as may be necessary to cover the entire unpaid subscription, interests, and costs, in case the shares become delinquent.

#### j) Doctrine of Equality of Shares

Unless provided for in the AOI, all shares issued by the corporation are presumed equal, in privileges and liabilities.

1. Common and preferred shares have the same voting rights unless the latter are denied such in the AOI.
2. Restrictions on the shares shall be indicated in the AOI to be binding.

#### m) Ultra Vires Doctrine

Corporate acts done outside the corporations express, implied or incidental powers are ultra vires.

1. See definition of corporation for discussion on corporate powers.
2. Three kinds: (i) Corporate acts outside the express, implied or incidental powers; (ii) Acts of agents acting without or in excess of authority; (iii) Acts that are illegal per se.
3. An illegal act is necessarily ultra vires, but not all ultra vires acts are illegal – (i) UV acts are merely voidable and may be enforced by performance, ratification, estoppel (acceptance of benefits); (ii) illegal acts are void ab initio and cannot be ratified, enforced, or validated.

Doctrine of apparent authority [2][ii]

1. Agent's authority to bind the corporation is derived from (i) law; (ii) bylaws; or (iii) board resolution.
2. Authority may be express or implied – (i) expressed by above; (ii) implied by (a) habit, custom, acquiescence; (b) **doctrine of apparent authority** [before the act]; (c) ratification, acceptance of benefits [after the act].
3. Doctrine of apparent authority – A corporation will be bound by the acts of the agent, as it will be estopped from denying the latter's authority if: (i) it knowingly permits the agent to act within the scope of apparent authority, and (ii) it holds the agent out to the public as possessing the power to do said acts. The corporation may be legally compelled to issue a board resolution to confirm the transaction.
4. Requirements: (i) Agent acted with apparent authority, i.e., are within the general objectives of the corporation, in the normal course of business, or within the agent's usual functions as corporate officer; (ii) Corporation clothed the agent with apparent authority, i.e., it held the agent out to the public as authorized to perform an act, or failed to dispute such acts despite having actual or constructive knowledge; (iii) The third person dealing with the agent: (a) acted in good faith [without notice of the actual limits of the authority]; and (b) he relied on the agent's apparent authority.

#### n) Trust Fund Doctrine

Subscriptions to the capital stock, property and other assets of the corporation constitute TF which the creditors have the right to look upon for the satisfaction of their claims.

1. For par value shares, the amount of par value constitutes capital of the corporation. There is SEC also opinion holding that APIC cannot be declared as dividends. For NPV shares, the entire consideration received constitutes capital of the corporation.
2. The total amount of subscriptions to the corporation's capital shall not be impaired for the protection of the creditors. Covers (i) Subscriptions to shares of the corporation; (ii)

APIC or share premium which cannot be declared as stock dividends or used to offset deficiency, except pursuant to an organizational restructuring; (iii) Property, assets of the corporation which cannot be distributed except upon dissolution, liquidation, reduction of capital stock, redemption of shares.

3. The assignee in insolvency can maintain an action upon any unpaid stock subscription to realize assets for the payment of its debts. Provided it alleges that: (i) subscription was not, in good faith, been paid; (ii) that the corporation condoned that same, or that it was insolvent or undergoing dissolution.

Violations of TFD include:

1. Distribution of capital to SH without first paying off creditors
2. Condonation of unpaid subscriptions
3. Transfer of corporate property in fraud of creditors
4. Distribution of assets to SH, except in cases of dissolution, liquidation, reduction of CS, redemption of redeemable shares
5. Declaration of dividends without URE
6. Acquisition of shares without URE
7. Recission of subscription agreement (requires mutual restitution).

### 8. Stockholders and Members

#### a) Fundamental Rights of a Stockholder

(a) Management rights; (b) Proprietary rights; (c) Remedial rights

(a) Management rights

1. To participate in the conduct of corporate business.
2. Includes the right to: (i) vote on corporate acts requiring SH approval; (ii) elect BOD.

(b) Proprietary rights

1. Economic rights accruing to shares.
2. Includes the right to: (i) receive dividends; (ii) participate in asset distribution upon corporate dissolution and liquidation; (iii) appraisal right; (iv) preemptive right; (v) inspect and copy corporate books and records.

(c) Remedial rights

1. Modalities available to vindicate violation of its rights as SH or that of the corporation.
2. Includes: (a) individual suit; (b) representative suit; (c) derivative suit

#### b) Participation in Management

##### (1) Proxy

1. Pertains to the instrument or the person. – (i) the written instrument signed by the SH authorizing another person to exercise his voting rights; (ii) the person authorized by the SH to act on his behalf.
2. Creates a principal-agent relationship between the SH-proxy.
3. The proxy does not have right of inspection, unless authorized. He also does not acquire proprietary rights.
4. The presence of SH revokes the authority of the proxy.

Limitations:

1. Form – (i) must be in writing signed by SH; (ii) may be in the form of SPA or Board resolution, for individual or corporate SH, respectively.
2. Filed with corporate secretary on date fixed in bylaws, or within a reasonable time before scheduled meeting.
3. Generally valid for the specific meeting intended only. XPN: in case of a continuing proxy for a maximum period is 5y, subject to renewal.

- Disputes in proxy validation is subject to jurisdiction of: (i) RTC, if involving election contest, or (ii) SEC, if involving other corporate matters.

## (2) Voting Trust

- VTA confers to the trustee/s the SH's right to vote and other rights pertaining to the shares for a period generally not exceeding 5 years at a time.
- Creates dichotomy between the voting rights and other SH rights.
- The presence of SH does not revoke the authority of the voting trustee.

SH	Voting Trustee
Parts with legal right but retains beneficial ownership of shares	Obtains legal title over the shares and becomes the SH of record
Retains right to dividends, to participate in asset distribution upon dissolution or liquidation	Obtains right (i) to be elected as director; (ii) to vote in election of directors
No management rights	No right to receive dividends but he may create security interest over the dividends as loan security
May exercise right to inspect	May exercise right to inspect
Voting trust certificates in name of SH	Share certificates in name of trustee

### Limitations:

- Must be for lawful purpose.
- Must not exceed 5y at time, subject to renewal.  
XPN: if executed as condition for loan agreement, may be for a period exceeding 5y, but must automatically expire upon full payment of loan.  
N.B.: VTA automatically expires on the end of the agreed period.
- VTA must be in writing, **notarized**, specifying its terms and conditions.
- VTA must be filed with corporation, and certified copy must be filed with SEC as condition for effectivity and enforceability.
- VTA subject to right of inspection.
- Cancellation of certificate – (i) share certificates covered by the VTA shall be cancelled and new one shall be issued in the name of the trustee, with notation; (ii) Shares shall be transferred in STB in the name of trustee, with notation.
- The trustee shall execute in favor of the SH voting trust certificates.
- Voting trustee may vote by proxy or as authorized by bylaws, unless otherwise agreed upon.

## (3) Cases When Stockholders' Action is Required

### (a) By majority vote, with Board concurrence

- To enter in management contracts without interlocking SH/D.
- To amend or repeal bylaws.
- To voluntarily dissolve corporation where creditors are not affected.

### (b) By 2/3s vote, with Board concurrence

- AOI amendment – (i) Extension or shortening of corporate term; (ii) Denial of pre-emptive right; (iii) Increase or decrease capital stock.
- To incur, create, increase bonded indebtedness.
- To sell or dispose all or substantially all of corporate assets.
- To invest in another corporation or business, or for any other purpose.
- To declare stock dividends.
- To enter in management contracts with interlocking SH/D.
- Merger or consolidation.
- To voluntarily dissolve corporation where creditors are affected.

### (b) Without Board concurrence

### Majority vote

- To adopt bylaws.
- To revoke delegated power of BOD to adopt, amend, repeal bylaws.
- Grant of reasonable compensation to directors.
- To elect directors.
- To fill vacancies in the board due to: (i) expiration of term (including resignation of hold-over director); (ii) removal; (iii) increase in board seats; (iv) for any other reason where (a) the BOD no longer constitutes quorum or (b) the BOD delegated the power to SHs.
- Fixing issue price of no-par value shares.

### 2/3s vote

- To delegate power to adopt, amend, repeal bylaws to BOD.
- To ratify self-dealing contracts by corporation with one of its DTO, spouse, 4<sup>th</sup> degree relative.
- To ratify director's contract in conflict with the corporation's business.
- To remove directors.
- Amendment of AOI of close corporations seeking to remove any provision required to be contained in the AOI of a close corporation.

## (4) Manner of Voting

Management rights of SH may be exercised: (a) personally by SH; (b) by proxy; (c) by voting trustee; (d) in absentia or via remote communication.

Voting in absentia is allowed if:

- Authorized in bylaws or by resolution of the Board;
- In corporations vested with public interest, even without such authority.

## c) Proprietary Rights

### (1) Rights to Dividends

Right to the share proportionately in the distribution of surplus profits of the corporation.

- SHs do not have direct right to demand the declaration of dividend. But once declared, its payment becomes enforceable (in case of cash/property, but not stock dividend).
- No discrimination. All SH shall be given dividends in case declared.
- Must be paid out of URE, otherwise TFD will be violated. E.g., payment of dividends 5y in advance is not proper.

### (2) Appraisal Right

The right of SH to dissent and to demand the payment of the FV of their shares after dissenting to a proposed corporate act, in cases specified by law.

#### Requirements:

- May be exercised only in cases provided for by law.
- Dissenting SH must have voted against (not merely abstained) the proposed corporate act where appraisal right is available – (i) if meeting called for the purpose is required, the SH must have attended and voted against the proposed corporate act; (ii) otherwise, written dissent filed with corsec is sufficient.
- DSH must demand in writing the payment of the FV of his shares within 30 days from the date when the vote was taken.
- DSH must surrender the share certificates within 10 days from written demand for notation that they are dissenting shares.
- Implementation of the corporate action entitles the SH to the payment demanded.
- Shares must be appraised.
- Availability of URE.
- Dissenting shares must be transferred to the corporation upon payment of the award (TS).

Instances when available:

*In regular corporations AAMI*

1. Amendment of AOI with the effect of: (i) Changing or restricting SH rights, or of any class of shares; (ii) Authorizing preference of any kind superior to those of outstanding shares of any class; (iii) Extending or shortening corporate term (including automatic conversion to perpetual existence). N.B.: In case of amendment of AOI to increase ACS, appraisal right is not available. XPNs: (a) if the increase in the capital stock is in the form of introduction of preferred shares since this will authorize preference of any kind superior to the outstanding shares; or (b) in case of a close corporation where the appraisal right may be exercised for any purpose whatsoever.
2. Sale, mortgage, exchange, lease, transfer, pledge, other disposition of all or substantially of corporate assets;
3. Merger or consolidation;
4. Investment of corporate funds for any purpose other than the primary purpose of the corporation.

*In close corporations*

1. Any SH may demand at any the payment of the FV of his shares, which shall not be less than the par or issue value, when the corporation has sufficient assets to cover its debts, excluding capital.

*\*\*Where appraisal right is available, derivative suit will not lie. Hence, derivative suit is not available in close corporations.*

*In non-stock corporations*

1. Appraisal right is not available. (i) while appraisal right is expressly mentioned in case of stock corporations, the same is not so provided for NSC; (ii) it will amount to distribution of assets during lifetime of the NSC which is not allowed.<sup>30</sup>

Written demand for payment of FV of shares

1. Must be made within 30 days from the date when the vote was taken. XPN: If the corporation has no URE.
2. Demand is premised on the availability of URE. If none, the demand is premature. This effectively extends the 30d period.
3. Failure to make the demand within said period is deemed waiver of the appraisal right.
4. Effect of demand: (i) Suspension of all rights accruing to the dissenting shares, except the right to receive the FV of the shares; (ii) right is restored if: (a) the proposed corporate act was abandoned; (b) the dissenting shares were purchased by the corporation; (c) the SH is not paid within 30 days after award. N.B.: the instances when rights are restored are also instances when the appraisal right terminates.
5. Demand cannot be withdrawn unless the corporation consents.

Appraisal

1. FV of shares shall be determined as of the day before the vote was taken, excluding any appreciation or depreciation in value in anticipation of the corporate act.
2. FV shall determined by agreement of DSH and corporation. In case of disagreement, shall be determined by three disinterested persons: (i) named by DSH, (ii) named by corporation, (iii) chosen by both. Their decision shall be final.

Payment

1. Must be made within 30d after award was made. Otherwise, rights of dissenting shares shall be restored automatically.
2. Demand made without URE is premature. The subsequent posting of surplus profit will not retroact to the date of demand for payment; the SH must make a new demand.

*\*\*Appraisal right cannot be denied in the AOI. In case of improper denial, SH's remedy is to file a collection suit.*

Termination of right

1. Withdrawal by SH, with consent of corporation
2. Abandonment or rescission of the proposed corporation action, or disapproval by SEC
3. Determination by SEC that the SH is not entitled to the right
4. Supervening sale of dissenting shares
5. Non-payment of the dissenting SH within 30 days from award

### (3) Right to Inspect

Available to all SH based on their ownership of corporate assets and property, regardless of the amount of interest even if minimal or negligible.

1. Subscribers with unpaid subscription, provided not delinquent, has right of inspection.
2. Covers all corporate books and records, regardless of the form in which they are stored, including: (i) STB; (ii) records of wholly-owned subsidiary in corporation's possession and control.
3. Dissolution Does not automatically extinguish the SH's right of inspection. It subsists during the period of liquidation. No rights or remedies, liabilities or obligations of parties shall not be removed or impaired by dissolution.

Limitations:

1. Purpose must be germane to SH interest.
2. Exercise must be in good faith, for a legitimate purpose.
3. During reasonable hours on business day.
4. Copies of records and excerpts must be at the expense of the requesting party and upon written demand.
5. Subject to other applicable laws.

Remedies in case of denial:

1. (i) Administrative action via report to the SEC; (ii) Criminal complaint for violation of right to inspection; (iii) Petition for inspection of corporate records (intra-corporate dispute); (iv) Action for damages.
2. Persons liable: (i) officer or agent who refuse to allow inspection and/or reproduction [usu. corsec]; (ii) D/T voting for the refusal, if made pursuant to a Board resolution. But not a non-corporate officer, e.g., former corsec in custody of records.
3. The remedies are cumulative. Exhaustion of administrative remedies is not required.

Defenses available to corporation:

1. Purpose not germane to SH interest.
2. Exercise is not in good faith, or for a legitimate purpose.
3. Not exercised during reasonable hours on business day.
4. Improper use by requesting party of any information secured through any prior examination of records or minutes of concerned corporation, or of other corporation.
5. Requesting party is a competitor or represents competitor's interest.

<sup>30</sup> In NSC members have no right to distribution of assets, except in case of dissolution, and the rights are defined in the

AOI or a plan of distribution approved by majority Board and by 2/3s of the members.



6. Subject matter is confidential or covered by a non-disclosure agreement.
7. Subject matter is protected information under applicable laws, e.g., Intellectual Property Code, Data Privacy Act, Bank Secrecy Act.

*\*\*The defenses are in the nature of justifying circumstance which the corporation has the burden to prove.*

#### (4) Preemptive Right

The right of the existing SH to subscribe to any and all issuance or disposition of shares of the corporation.

1. It extends to all issuance of shares, including the sale of TS, unless denied by AOI.
2. Purpose is to maintain their proportionate ownership in the corporation and prevent dilution of their interest.

The right can be denied if:

1. The issuance is in compliance with law requiring minimum share ownership by the public.
2. The issuance is (i) made in good faith (ii) approved by at least 2/3s of the OCS (iii) in exchange for property needed for corporate purposes or in payment of previously contracted debt.

#### (5) Right to Vote

Includes the right to: (a) vote on corporate acts requiring SH approval; (b) elect BOD.

(a) Vote on corporate acts requiring SH approval

*\*\*See Cases When Stockholders' Action is Required*

(b) Elect BOD

*\*\*See Election of Directors*

#### (6) Right to Dividends

*\*\*See Right to Dividends*

#### d) Remedial Rights

Remedies available to the SH to enforce its rights as such.

#### (1) Individual Suit

1. Cause of action belongs personally to the **individual** SH.
2. E.g., Denial of right to inspection; denial of right to dividends; violation of pre-emptive right.

#### (2) Representative Suit

1. Cause of action belongs SH as a **group**.
2. E.g., Violation of right of preferred SH; violation of pre-emptive right of class of shares.

#### (3) Derivative Suit

1. Cause of action belongs to the **corporation**.
2. Action filed by minority SH/s in the name and on behalf of the corporation to enforce a corporate right or cause of action. This is an exception to the rule that corporate powers are exercised by the Board of Directors.
3. May be against BOD, officers, outsiders.
4. Not expressly recognized in the statutes but implied when the directors/officers are made liable for the damages suffered by the corporation/SH for violation of their fiduciary duties.
5. Venue pertains to the RTC having jurisdiction over the place where the corporation maintains principal office; whether intracorporate dispute or not.
6. Election contest not proper subject of DS.

Elements: **CSENA**

1. Person bringing the action is a minority SH of the corporation (i) at the time that the transaction complained of transpired; and (ii) at the time of **filing** of the action;

2. He has exhausted all remedies available to vindicate the corporate right under the AOI, bylaws, laws, rules, and regulations. N.B.: the efforts made are alleged with sufficient particularity in the complaint.
3. No appraisal right is available.
4. Not a nuisance or harassment suit.
5. Must be brought in the name and on behalf of the corporation to enforce a corporate right or cause of action. The corporation must be impleaded.

#### e) Obligations of a Stockholder

Liability for corporate debts

1. GR: SH are not solidarily liable with the corporation for corporate debts. A corporate creditor cannot file an action against the SH for corporate debts.
2. XPN: (i) if the SH has unpaid subscription, to such extent only, if there is allegation of condonation, insolvency, dissolution; (ii) if the SH is also a director under circumstances that would render him personally liable. N.B.: the liability of a SH who has fully paid his shares, and does not participate in corporate management is limited to his subscription.

#### f) Meetings

Requisites for validity: (a) Proper date and time; (b) Previous notice; (c) Called by proper person; (d) Proper place; (e) Quorum and voting.

(a) Date and time of meetings

1. Regular or annual SH meeting – (i) Date stated in the by-laws; (ii) if none, at anytime after Apr. 15.
2. Special meeting – At any time deemed necessary as provided in the bylaws.
3. SH holding at least 5% of OCS (along or with other SH) of **publicly-listed** company may demand the inclusion of items in agenda.
4. Postponement of meetings are not valid if: (i) intended to extend the term of office of the incumbent directors; (ii) due to cost given the uncertainty that quorum can be secured. Attendance through other means can be secured.

(b) Notice

1. In writing, stating the time, place, purpose.
2. Sent to all SH/M of record: (i) at least 21d (3w) before a regular meeting, or (ii) at least 1w before a special meeting. XPN: if bylaws/law/regulation prescribe a different period.
3. STB shall be closed at least 20d for regular, and 7d for special meetings, unless bylaws provide for a longer period.
4. Notice may be waived by SH, express or implied. (i) attendance in the meeting is implied waiver, unless intended solely to question the validity of holding the meeting; (ii) the waiver must be specific, i.e., pertaining to particular meeting; (iii) General waiver of notice in the AOI or bylaws is not allowed.
5. May be served by (i) personal delivery; (ii) mail; (iii) publication; (iv) e-mail; (v) other modes as may be allowed by SEC.
6. Lack of written notice renders the meeting and proceedings therein null and void. XPN: (i) if bylaws specify date and time of the **annual SH meeting**; (ii) there is valid waiver; (iii) all the SH are present or duly represented.

(c) Called by proper person

1. May be by: (i) Person specified in the bylaws; (ii) petitioning SH.
2. SH may petition SEC to call the meeting if: (i) there is no person authorized in the bylaws, or the person authorized unjustly refuses to call the meeting; (ii) upon good cause shown.

3. Presiding officer shall be: (i) the person designated in the bylaws, (ii) if none, the Chairman of the Board, or (iii) in case of petition, the petitioning SH, until at least a majority of SH/M present have chosen among themselves.

(d) *Proper place*

1. Must be held in the principal office of corporation as indicated in AOI, whether regular or special.
2. XPN: if not practicable. In which case, the meeting shall be held in the city or municipality where the principal office of the corporation is located.

(e) *Quorum and voting*

1. In stock corporations, quorum consists of SH representing a majority of **outstanding voting** capital stock (subscribed and issued), unless otherwise provided in RCC or bylaws. In NSC, majority of the members entitled to vote, unless bylaws provided for a different basis.
2. Bylaws may provide for a quorum less than majority or more than that required in the RCC. XPN: with respect to corporate acts requiring specific no. of votes under RCC.
3. SH abstaining to vote is counted for purposes of quorum. However, he cannot exercise his appraisal right with respect to the corporate act subject of the meeting.

*Emergency quorum*

1. Applies in case of non-holding of elections in the ASHM, or quorum not present – (i) meeting may be adjourned, (ii) incumbent D/T to serve in hold-over capacity.
2. Report to SEC within 30d from the date of scheduled election, of (i) the **non-holding of elections**, (ii) reasons, and (iii) new date for the election, not later than 60d from the scheduled date.
3. SEC shall summarily order for holding of election: (i) if no new date for holding elections was designated, or if the rescheduled election was not held; (ii) upon application by D/T, SH/M for the holding of the election; (iii) upon verification of unjustified non-holding of election.
4. **SH/M represented at the meeting and entitled to vote shall constitute quorum for purposes of conducting elections, notwithstanding any provision in AOI, bylaws to the contrary.**

Meeting improperly held or called is valid if:

1. The proceedings and business transacted in the meeting are within the power or authority of the corporation.
2. All SH/M are present/duly represented.
3. Not one of the SH/M expressly states at the beginning of the meeting that the purpose of their attendance is to object to the transaction of any business because the meeting is not lawfully called or convened.

## 9. Board or Directors and Trustees

### a) *Repository of Corporate Powers*

BOD: (i) **Exercises** all corporate powers; (ii) **Conduct** all business; (iii) **Control** all properties of the corporation.

1. All corporate acts must be approved by the BOD/T. Otherwise, they are not binding on the corporation.
2. There must be a Board Resolution (i) authorizing the performance of the act, and (ii) designating the person who will carry out the same on behalf of the corporation.
3. Doctrine of centralized management: the board solely exercises corporate powers, save in cases where SH/M approval is required, or where the power is reserved to the SH/M under RCC or the bylaws.

4. SH generally cannot interfere in the management of corporate business, except in close corporations. They cannot invalidate contracts entered by the corporation, but they may replace directors, or bring derivative suit.

### Executive Committee

1. Adjunct or extension of the Board, consisting of less than all its members which can act on matters falling within the board's competence.
2. Its creation must be provided for by the bylaws. Once created, the Board may fill the composition of the committee.
3. Only directors, minimum of 3 may be appointed as Execom members. Foreigner may be allowed in the Execom but limited to their proportionate ownership.
4. It cannot act on matters: (i) requiring SH approval, (ii) filling vacancies in board; (iii) amendment/repeal of bylaws, or adoption of new bylaws; (iv) amendment of Board resolution, that are not amendable or repealable by its express terms; (v) distribution of cash dividends to SH; (vi) approval of stock dividends.

### b) *Tenure, Qualifications, and Disqualifications of Directors*

#### (a) Directors have a term of 1y; trustees, 3y

1. They shall hold office until their successor is elected and qualified (hold over), unless earlier separated.
2. Hold-over period: period from the time of expiration of the director's term until his successor is elected and qualified.
3. The hold-over board has all the powers of the regular Board, subject to the power of the regular Board, upon election, to overrule their acts.
4. If a director acting in hold-over capacity resigns, the reason for vacancy is expiration of term. Only SH may fill the same.

(b) Qualifications – (i) under RCC; (ii) under the bylaws; (iii) none of the disqualifications; (iv) additional qualifications as may be prescribed by SEC or PCC in promotion of good corporate governance or as sanction in administrative proceedings.

#### *Qualifications under RCC*

1. Natural/juridical person. Juridical persons must be represented by nominees.
2. If natural person – (i) of legal age; (ii) must be a SH/M. XPN: independent trustee in a NSC need not be a member.
3. What is material is legal title over the share, as reflected in the STB to qualify as director. A trustee is VTA may be elected as director.
4. Share ownership or membership is a continuing qualification for a director. If he transfers all his shares, he ceases to be a director. Meanwhile, the transferee cannot claim right to the Board seat since he was not elected.

#### *Qualifications under the bylaws*

1. Bylaws may not reduce the qualifications under RCC, but it may enlarge the same, provided: (i) not intended to deprive the minority of their representation; (ii) general in application and not directed against specific persons or group.
2. In case of conflict, bylaws provision cannot prevail over RCC. E.g., a provision perpetually reserving a board seat in favor of an entity who is non-SH/M cannot be countenanced given the positive requirement under RCC that a D/T must be a SH/M.
3. That a director must not be at the same time a director of a competing corporation is a valid qualification.

4. The additional qualification must be embodied in the bylaws or an amendment thereto, not a mere Board resolution.

#### Disqualifications under RCC CAF

1. **Convicted** by final judgment of – (i) Offense punishable by imprisonment exceeding 6 years; (ii) Violation of RCC, even if punishable by less than 6y; (iii) Violation of SRC, even if punishable by less than 6y.
2. Found **administratively** liable of any offense involving fraudulent acts (not necessarily by SEC).
3. Found guilty by **foreign** court or regulatory body for acts, violations, misconduct similar to above.

**\*\* The disqualification remains for 5 years from conviction.**

#### Number

1. Directors  $\leq 15$ . XPN: merged/consolidated banks may have  $\leq 21$  directors as fixed in the AOI of the consolidated or surviving bank.
2. Trustees may be  $> 15$ .
3. NS Educational Corporation  $\geq 5$ ,  $\leq 15$
4. NS Religious Societies  $\geq 5$ ,  $\leq 15$

#### c) Requirement of Independent Directors

Those independent of management, free from any business or other relationship which could or could reasonably be perceived to materially interfere with the exercise of independent judgment, save with respect to his shareholding, and the fees he receives from corporation.

1. At least 20% of the Board seats must be ID.
2. They cannot serve for more than 9y in the same corporation as the familiarity may impair their independence (SEC Opinion).
3. An independent director who represents the corporation in a labor case and receives fees for it ceases to be independent.
4. Also elected by SH entitled to vote, subject to segregated voting.
5. Dis/qualifications, voting requirements, term and limit, maximum board membership are prescribed by SEC.

#### Corporation required to have ID

1. Corporations vested with public interest
2. Public companies under SRC – (i) Has registered securities, listed in the stock exchange, or has 50M in assets AND (ii) Has 200 or more SH holding at least 100 shares each.
3. Banks, quasi-banks, pre-need, insurance, trust companies, pawnshops, NSSLA, other providers of money services and other financial intermediaries
4. Other corporations vested with public interest as may be determined by the SEC

#### d) Elections

1. Every SH/M may nominate D/T, subject to right of Founder's shareholders.
2. NOM in the form and mode prescribed by bylaws.
3. Quorum: Meeting must be attended by at least majority of the voting OCS/M entitled to vote. Excluded are: (i) non-voting shares, (ii) TS, (iii) delinquent shares. Those participating via remote communication shall be counted.
4. Must be presided by the person indicated in the bylaws. Chairman of the Board, or in his absence, the President.
5. Election shall be by ballot if requested by any SH/M.
6. SH may cast votes based on the no. of shares registered in their name in the STB multiplied by the no. of directors to be elected, which they may cumulate as they deem fit. Members may cast votes as there are trustees to be elected, but they

may not cast more than 1 vote for a trustee, unless cumulative voting is allowed in the AOI or bylaws.

7. Voting in absencia is allowed if: (i) authorized by bylaws, (ii) authorized by the Board; (iii) in corporations imbued with public interest.
8. The nominee receiving the highest no. of votes shall be duly elected as D/T
9. The elected D/T must possess all the qualifications and none of the disqualifications under the RCC, bylaws, relevant rules, and regulations.

**\*\*See Emergency Quorum.**

#### Election of less than board seats

1. Election remains valid as to those actually elected.
2. It merely creates a vacancy which may later be filled up.
3. The power of the BOD/T is not suspended in case there are vacancies. XPN: if their no. is reduced below quorum to transact business.

#### Election of officers

1. Immediately after their election, the directors must formally organized by electing corporate officers.
2. President – (i) Must be a director; (ii) he cannot be concurrent treasurer. XPN: in OPC. Subject to filing of bond; (iii) he cannot be concurrent secretary.
3. Treasurer – Must be resident.
4. Secretary – Must be citizen and resident.
5. Other officers provided in bylaws
6. Compliance officer – For corporations vested with public interest

#### e) Removal

The power to remove directors may be exercised **by:** (i) SH/M, (ii) by the SEC.

1. Co-directors/trustees do not have the power to remove another D/T. They may only remove corporate officers.
2. However, the RCC provides that the BOD must remove the director found to be disqualified, otherwise, the remaining directors shall be liable for the non-removal.

#### Removal by SH

1. Done either regular or special meeting called for the purpose.
2. Previous notice must be given to SH/M where removal of director is included in the agenda.
3. The removal must be approved by at least 2/3 OCS/M entitled to vote, with or without cause. XPN: If the director to be removed represents minority interest, the removal must be with just cause. Just cause for removal includes failure to attend meetings or to pay dues.

#### Removal by SEC

1. Grounds: (i) A director was elected despite disqualification, (ii) his DQ arose or was discovered after election.
2. Requires due notice and hearing.
3. May be exercised by SEC (i) motu proprio, or (ii) upon verified complaint.
4. Without prejudice to the sanctions which the SEC may impose to responsible D/T who failed to remove such disqualified D/T despite knowledge of DQ.

#### f) Filling of Vacancies

May be in the same or separate meeting where director/s is removed, so long as indicated in the agenda.

1. SH must fill up the vacancy by majority vote if: (i) due to (a) expiration of term, (b) removal, or (c) increase in no. of board seats **ERI**; (ii) delegated by Board; or (iii) the remaining Board no longer constitutes quorum.

2. Directors may fill up the vacancy by majority vote if: (i) not due to ERI, and (ii) they still constitute a quorum.

**\*\*The replacement D/T shall serve only for the unexpired term of the predecessor.**

Emergency board – May be created when the vacancy in the Board prevents it from constituting a quorum but they need to act on a matter of extreme urgency, by temporarily appointing corporate officers.

1. The vacancy in the board seat prevents the remaining directors from constituting a quorum.
2. **Emergency action** is required to be taken to prevent a grave, substantial, irreparable damage or injury to the corporation, as determined by the board.
3. Vacancy in the board may be temporarily filled up by a corporate officer.
4. The vote of the remaining D/T must be **unanimous**.
5. The authority of the officer appointed shall be **limited to the emergency** act and shall cease within a reasonable time after the termination of the emergency, or upon election of the replacement D/T, whichever comes earlier.
6. Notice to SEC within 3d from creation of the emergency board, stating the reason for its creation.

Period to fill vacancy

1. Expiration – no later than the day of expiration (annual SH meeting).
2. Removal – may be made on the same meeting where removal was voted on, or on separate, provided included in the agenda in either case.
3. Increase in board seats – may be made on the same meeting where the increase was approved, or on separate, provided included in the agenda in either case.
4. Others – must be filled not later than 45d from time when vacancy arose.

#### g) Compensation

GR: D/T are not entitled to compensation in their capacity as **such** directors or trustees.

1. Compensation covers all forms, whether cash, kind, profit share, stock payment, etc.

XPNS:

1. Reasonable per diems. – (i) may be fixed by Board; (ii) must be reasonable; (iii) directors must not participate in the determination of the amount. If Board resolution was passed fixing per diems, it shall take effect in the succeeding term.
2. As may be granted to them by majority OCS/M, approved in a regular or special meeting called for the purpose (not by mere referendum).
3. As authorized by Bylaws.
4. If the director serves in another capacity as officer of the corporation, concurrently with being a director. Compensation for executive services (e.g., as President, VP) may be approved by mere Board resolution.

**\*\*If properly authorized/granted, the payment of compensation must be further implemented through a Board resolution.**

Conditions/Limitations:

1. Amount must be reasonable.
2. Directors must not participate in the fixing of per diem allowance or compensation (delayed effectivity).
3. Annual compensation (all forms) of directors must not be more than 10% of income before taxes in the PY.

#### h) Disloyalty

Doctrine of corporate opportunity: If a director acquires a business opportunity that should belong to the corporation, he is required to: (i) account for the profits earned to the corporation; and (ii) refund the same to corporate funds. XPN: if the act was ratified by the 2/3 vote of OCS (sole defense).

1. The disloyal director is considered as trustee of the funds received. However, it does not result in any criminal liability.
2. The doctrine applies even if the director risked his own corporate funds.
3. Line of business test: if the transaction pursued is that one pertaining to the purpose of the corporation, the director is guilty of disloyalty.
4. That corporation is incapable of pursuing the opportunity or shows lack of interest thereon will not exonerate the disloyal director. However, these may be considered in the determination of his liability.

Requisites:

1. The business opportunity was acquired by the director by virtue of his office (§33) or pertains to any matter reposed upon him in confidence, and which equity imposes a disability upon him not to deal on his own behalf (§30).
2. There must be damage or prejudice caused to the corporation in the form of lost profits (§33).

#### i) Business Judgment Rule

Questions of policy and management of the corporation are left on the sound discretion and honest decision of its officers and directors.

1. Such decision may not be the subject of review by courts or SEC, provided done in good faith. Courts/ SEC cannot substitute their judgment with that of the Board's.
2. SH cannot interfere in the conduct of the corporate business affairs, nor revoke BOD resolutions. Their remedy is to: (i) elect new Board upon expiration of their term; (ii) exercise right to remove directors; (iii) bring derivative suit, if belonging to the minority block.
3. It also shields the director from liability arising from errors of judgment or ordinary negligence.
4. Limitations: (i) must be done in good faith, (ii) not contrary to law, (iii) not be arbitrary or malicious.
5. Creation of committees/offices is part of business judgment rule, except that they cannot create an Executive Office as defined in S34.
6. Reduction of capital stock is an exercise of the business judgment rule. The SEC cannot disapprove the same on ground that it will prejudice a group of SH. One the legal formalities and requirements are complied with, the SEC's duty to approve the decrease becomes merely administrative.

#### j) Solidary Liabilities for Damages

GR: Directors, officers, agents acting on behalf of the corporation are not personally liable for obligations arising from such acts, which is a liability of the corporation. Provided: (i) they acted within their actual or apparent authority, (ii) the act was authorized by the Board, (iii) their acts, even though unauthorized, are ratified by the corporation.

XPNS (6): **WAGAS C**

1. They **willfully** and knowingly vote for or assent to **patently** unlawful acts of the corporation. – (i) an act is patently unlawful if expressly declared by law as such.; (ii) particular allegation + clear and convincing proof are required.
2. They are **guilty** of gross negligence or bad faith in directing the affairs of the corporation. – (i)



ordinary negligence or mere error in judgment is not covered BJR; (ii) particular allegation + clear and convincing proof are required; (iii) mere resistance in payment of claim does not automatically establish bad faith.

3. They **acquire** personal or pecuniary interest in conflict of their duties as director/trustee. – (i) must result in damage to the corporation.
4. They **consented** to issuance of watered stock, failure to file written objection with corporate secretary despite knowledge of the issuance. (See I.10.b)
5. Officer/director **agreed** to hold himself personally liable.
6. **Specific** provision of law holds them personally liable.

*\*\*Liability under [1] to [4] is solidary. The nature of obligation in [5] depends on the contract terms; in [6] in the provisions of law. Except [6], the liability imposed is purely civil, without prejudice to administrative sanctions that may be imposed.*

#### k) Personal Liabilities

**\*\*See above: Solidary Liabilities for Damages**

#### l) Responsibility for Crimes

Officers/EEs of the corporation may be held criminally liable for the acts of the corporation if: (i) the law expressly holds them liable; (ii) absent express provision, if they participated in the commission of the illegal act, or (iii) they failed to prevent the commission of the same when they had the power to do so.

1. If the law holds them liable, the doctrine of separate legal personality is not a defense.
2. Under Trust Receipts Law – (i) If the offender is a corporation, the criminal liability is imposed on the directors, officers, agents responsible for the violation or offense. – those who signed the trust receipt on behalf of the corporation; (ii) However, they are not automatically civilly liable absent conditions to hold them liable.
3. Under the Overseas Workers Welfare Act – President, officers, director of the recruitment agency may be held personally liable for OFW claims against the recruitment corporation.

#### m) Special Fact Doctrine

A corporate officer having superior knowledge gained by virtue of being an insider (of his office) owes fiduciary duty to a SH in transactions involving transfer of stocks. He cannot take advantage of such information to the disadvantage of the corporation.

E.g., A corporate secretary who is also the head of legal department may be held liable for non-disclosure of information regarding a pending tax case involving the corporation to the person who inquired on the same prior to investing in the corporation.

#### n) Inside Information

Information not known to public, obtained by virtue of one's position, duties or functions in the corporation.

When the director trades securities on the basis of the insider information, it amounts to unfair manipulation of the free market, and for which he is liable.

#### o) Contracts

##### (1) By Self-Dealing Directors With the Corporation

Contract between the corporation and (i) its directors, trustees, officers, (ii) spouse, (ii) relatives up to the 4th degree (con/aff). Self-dealing contracts are generally voidable at option of corporation.

XPNs (arm's length rule). The contract is validated, and the corporation loses the right to rescind the same if:

1. The presence of the DTO in the meeting where the transaction is approved is not necessary to constitute quorum.
2. His vote is not necessary to approve the transaction.
3. The contract is fair and reasonable under the circumstances.
4. In corporations vested with public interest, the txn is approved by at least 2/3s of the entire Board, provided that at least a majority of the independent directors voted in its favor.
5. Prior board approval is secured if the transaction is with an officer.

If [1], [2] are not complied, the contract may still be ratified:

1. By 2/3s vote of OCS/M in meeting called for the purpose.
2. Where there is full disclosure of adverse interest of DTO in the meeting
3. The contract is fair and reasonable under the circumstances.

Not fair and reasonable under the circumstances FRC:

1. If the contract with a director involves a commodity with fluctuating price (e.g., cement) if made for a fixed price over a period of time.
2. Hiring of a director as legal counsel of corporation.

#### (2) Between Corporations With Interlocking Directors

When the two corporations share common directors. These contracts are valid.

1. E.g., A bank created another corporation to manage its foreclosed properties. The assignment by the bank to the latter corporation of foreclosed properties for purposes of disposition is not invalid on the sole ground that the two corporations have interlocking directors.
2. In case of banks, BSP approval is required.

XPN: If interest of interlocking director is substantial (>20%) in one corporation and nominal (≤20%) in another, the conditions for validity of for self-dealing DTO shall apply (see above).

**\*\*A stranger to the contract may not assail the same for being not FRC. Only the corporations may assail the same, which may be through a derivative suit.**

#### Management Contracts

1. Must be approved by majority SH of both managing and managed corporations.
2. In case of interlocking SH/D, must be approved by 2/3s SH of both managing and managed corporations.
3. Interlocking SH – if the corporations have the same SH owns or controls at least 1/3s OCS in the managing corporation.
4. Interlocking D – if majority directors of the two corporations are the same.

### 10. Capital Affairs

#### a) Certificate of Stock

##### (1) Nature of the Certificate

A written instrument which evidences share ownership in a corporation of the person named in the instrument of the number and the kind/class of shares designated in the same certificate.

1. Must name a SH. "Bearer" stock certificates are not recognized or allowed under RCC.
2. Prima facie evidence of share ownership. The ownership its transfer to another may be established other evidence as: (i) contract/deed of sale between the corporation and the SH (in case of TS), (ii) subscription contract, (iii) deed of assignment between the SH and the transferee.
3. Possession of the certificate is not a condition for the exercise of rights of a SH provided (i) the SH

status may be proven otherwise and/or (ii) the SH is not delinquent.

## (2) Uncertificated Shares

May be required by SEC (i) of listed/traded companies (i.e., shares actively traded in the stock exchange) (ii) which can demonstrate their capacity to do so, and (iii) in accordance with SEC rules.

## (3) Negotiability: Requirements for Valid Transfer of Stocks

Modes for valid transfer

1. Indorsement + Delivery – (i) execution of separate deed of conveyance is not required; (ii) the SH, his attorney-in-fact, or legal representative may make the indorsement.
2. Other means recognized by law – (i) May include deed of assignment in a separate instrument in lieu of indorsement; (ii) if the subscriber was not issued the share certificates yet because the subscription was not yet fully paid, the transfer may be made by assignment of the subscription contract, subject to corporation's consent.

**\*\*The transfer does not bind the corporation until registered in STB.**

A share certificate is not negotiable instrument, only, quasi-negotiable in the sense that the negotiation of stock certificate mirrors the negotiation of a negotiable instrument, i.e., indorsement + delivery. The elements of negotiability are also not present.

1. It may be indorsed in blank but the same does not convert it to a bearer instrument. The transferee or holder is not a HDC and he takes the instrument subject to all the defenses available to prior parties.
2. If the person does not hold a share certificate, he may still sell the shares. The requirements of indorsement + delivery does not apply if the owner does not hold the stock certificate.

## (4) Issuance

Certificate of shares is issued only to registered owners in STB upon full payment of subscription. Shares cannot be issued pro rata to the amount paid and cancel the rest of the subscription. – (i) it violates the doctrine of indivisibility of subscription, (ii) it amounts to condonation of subscription in violation of TF doctrine.

## (5) Stock and Transfer Book

Indorsement + delivery is a requirement for the transfer to be valid between the parties. To bind the corporation, the transfer must be **recorded in the STB**.

1. Only SH reflected on STB may exercise the rights attaching to the shares.
2. GR: the corporation may not refuse to register the transfer of share. XPN: (i) If there are "unpaid claim" on the shares. SC clarified that "unpaid claims" pertain only to unpaid subscriptions; (ii) if legal formalities are not complied with [indorsement + delivery]; (iii) non-payment of transfer taxes.
3. Register share transfers in STB is generally ministerial compellable by mandamus (i) for as long as the legal formalities are observed, or (ii) the refusal is without good cause. Issues on ownership cannot be passed upon in requests for registration of transfer. The transferee (or transferor) may file a mandamus petition to compel registration in his favor. The cause of action arises from the time a demand for registration was refused.
4. The surrender of the old certificate is not a requirement for registering the transfer in the STB. It is a requirement only for the issuance of new share certificates.

5. If shares of the corporation were garnished, the SH has no standing to file 3p claim (terceria) if the transfer in his favor was not registered in STB. Assuming registered, he still does not have standing since as SH, he only has inchoate right over corporate assets.

## STB Entries

1. Record of all stocks in the names of SH.
2. Installments paid + date of payment.
3. Installments unpaid.
4. Statement of every alienation, sale, transfer + date + parties. – Only transactions affecting share ownership are required to be recorded in STB (e.g., sale, donation, succession) but not encumbrances or constitution of security interests need not be registered. To bind 3p the security agreement must be registered in the property registry (PPSA).
5. Other entries required by law or bylaws.

## Notes:

1. STB is the best evidence of a person's status as stockholder, but not conclusive proof of his shareholding.
2. It is not exclusive evidence of all the matter recorded as it is not a public record.
3. Only the corporate secretary, as the custodian of the corporate records may make entries in the STB.
- 4.

## (6) Situs of the Shares of Stock

Domicile of the issuing corporation. Meanwhile, the situs of a share certificate is the domicile of the owner.

## b) Watered Stocks

### (1) Definition

**Original** issuance of stock: (i) at less than par or stated value, or (ii) for consideration other than cash valued at more than its fair value.

The rule is not applicable to disposition of TS which may be for less than par or stated value under terms and conditions deemed reasonable by the Board BJR. TS are assets of the corporation.

### (2) Liability of Directors for Watered Stocks

The concerned SH/subscriber and the corporate director or officer are solidarily liable for the difference between the par or stated value, and the fair value of the consideration received at the time of issuance.

Conditions for liability of officer/director

1. He consented to the issuance of watered stocks.
2. He did not file a written objection with the corporate secretary despite having knowledge thereof.

### (3) Trust Fund Doctrine for Liability for Watered Stocks

1. Issuance of watered stock violate the TF doctrine as the aggregate of the par value of shares subscribed is considered as equity held in trust for the corporate creditors for the satisfaction of corporate debts.
2. The corporation and corporate creditors may enforce the liability.

## c) Payment of Balance of Subscription

### (1) Call by Board of Directors

Subscription balance becomes due and payable: (i) On date specified in subscription contract, without need of demand, or (ii) If no stipulation, on any date declared by the BOD (call for payment)

Consequence of non-payment on due date:

1. Entire subscription balance is rendered due and payable.
2. Interest at legal rate shall accrue, unless a different rate is provided in subscription contract, until full payment.
3. Unpaid SH has all rights of SH until the shares become delinquent.
4. If not paid within **30d**, the shares become delinquent, without need of Board declaration.

## (2) Notice Requirement

1. If the subscription becomes due and payable, the SH remains to enjoy all rights of the SH until the shares become delinquent. Hence, he is entitled to notice of meetings.
2. Once the shares become delinquent, the SH's right to vote and be voted is suspended. Hence, he is no longer entitled to notices of meetings.
3. If the Board adopts a resolution ordering the sale of delinquent shares, he shall be entitled to notice served via personal delivery, registered mail or other means authorized by bylaws.

## d) Sale of Delinquent Shares

### (1) Effect of Delinquency

#### Effects of delinquency

1. Delinquent shares may be sold at public auction.
2. SH rights are suspended, including the right to vote and be voted, except right to dividends – (i) cash dividends shall be applied to unpaid subscription, interests, costs, (ii) stock dividends shall be withheld until full payment of subscription.

#### Remedies against delinquent shares

1. Resolution authorizing the sale at public auction.
2. Ordinary action for collection.

#### Sale of delinquent shares

1. Call by Resolution of the Board of Directors declaring that unpaid subscriptions are due and payable if no period is fixed in the subscription contract.
2. In case failure to pay on due date – (i) entire subscription becomes due, and (ii) legal interest accrues.
3. Shares shall become delinquent if payment is not made within 30d from due date, without the need of declaration from the Board.
4. Board may adopt a resolution ordering the sale of delinquent shares. – (i) it may be averted by delinquent SH by paying the unpaid subscription, interest, costs, or (ii) by contrary board order.
5. Notice and publication. (i) Notice to delinquent SH via personal delivery, registered mail or other means authorized by bylaws; (ii) Publication for 2 successive weeks in NPGC in province or city where the principal office of corporation is located.
6. Conduct of delinquency sale. Highest bidder is one who offers to pay the full amount of unpaid subscription + interests + costs for the least number of shares.
7. Shares shall be transferred in the STB in favor of the highest bidder, and the remaining, if any, shall be issued to the delinquent SH. – (i) sale cannot be made on a piecemeal basis; (ii) the highest bidder must pay in full, not on installment since share certificates will be issued to him.
8. If there is no highest bidder, the corporation may bid. (i) the entire amount due shall be credited as fully paid; (ii) title over the shares shall be vested to the corporation as TS. The corporation may bid

if it has available URE. Otherwise, it should file an action for collection.

9. The delinquent SH may recover the shares sold at auction: (i) upon tender to the purchaser the amount paid for the shares + legal interest from date of sale; (ii) within 6 months from date of sale. The action cannot be premised on any defect or irregularity on notice or the sale itself.

## (2) Call by Resolution of the Board of Directors

\*\*See above

## e) Alienation of Shares

### (1) Allowable Restrictions on the Sale of Shares

1. GR: No condition or restriction may be imposed on the power of the SH to transfer his shares.
2. XPNs: (i) prior consent of the corporation may be required for the assignment of subscription contract which is not yet fully paid;<sup>31</sup> (ii) a restriction not more onerous than a right of first refusal in favor of the corporation or existing SH, provided the same is indicated in the AOI, bylaws, stock certificate.<sup>32</sup> But involuntary transfers are not subject to RFR, e.g., a secured creditor may enforce his security interest without first having to offer the shares to the corporation.
3. If the restriction is imposed merely through a Board Resolution, the same is not binding.

## (2) Requisites of a Valid Transfer

\*\*See I.10.a.3

## f) Corporate Books and Records

### (1) Right to Inspect Corporate Records

1. The right available to all SH based on their ownership of corporate assets, regardless of the amount of interest even if minimal or negligible.
2. Possession of stock certificate is not a requirement for the exercise of the right. It is mere evidence of ownership, and ownership may be established through other means. An unpaid subscriber may exercise the right, so long as he is not yet delinquent.
3. The right is not extinguished by the dissolution of the corporation. It subsists during the period of liquidation. Rights or remedies, liabilities or obligations of parties shall not be removed or impaired by dissolution.

#### Scope:

1. All corporate books and records, regardless of the form in which they are stored.
2. Records of wholly owned subsidiary in corporation's possession and control.
3. Obtaining copies may be allowed upon demand in writing, and at the expense of requesting party.

#### Limitations:

1. Purpose must be germane to SH interest – e.g., (i) Ascertainment of corporation's financial condition to determine propriety of dividends; (ii) Determination of share value for sale or investment; (iii) Determination of whether mismanagement transpired; (iv) Proxy solicitation in anticipation of SH meeting; (v) To obtain information in aid of litigation with the corporation or its officers as to corporate transactions.
2. Exercise must be in good faith, for a legitimate purpose.
3. During reasonable hours on business day.

<sup>31</sup> Without such consent, the corporation may refuse to register the transfer in the STB.

<sup>32</sup> Restriction found in the title on Close Corporations, but its applicability was extended to stock corporations by

jurisprudence. With a uniform restriction in the three documents, there is no duty to offer shares first to the corporation or existing SH before offering the same for sale to strangers.

4. Copies of records and excerpts must be at the expense of the requesting party and upon written demand.
5. Subject to other applicable laws.

## (2) Effect of Refusal to Inspect Corporate Records

1. To validly deny the right, the corporation must prove that the SH's purpose is improper, or motivated by unlawful design, or ill-will, by way of defense.
2. Petition for injunction to prevent inspection by corporation is not allowed as it would impede SH's right.

### Remedies of SH

1. Administrative action to the SEC by reporting the denial or inaction of corporation. SEC may direct the inspection and reproduction of records if proper after summary hearing.
2. Criminal complaint for violation of right to inspection
3. Petition for inspection of corporate records (intra-corporate dispute)
4. Liability for damages in favor of aggrieved party.

### \*\*Cumulative.

### Persons liable:

1. Any officer or agent of the corporation who refuse to allow inspection and/or reproduction of records (usually corporate secretary).
2. D/T voting for the refusal, if made pursuant to the resolution/order of Board.
3. The liabilities/action cannot be enforced against a former corporate officer in possession of corporate books and records.

### Defenses available to corporation (in the nature of justifying circumstance)

1. Improper use by requesting party of any information secured through any prior examination of records or minutes of concerned corporation, or of other corporation.
2. SH not acting in good faith or for legitimate purpose in making the demand.
3. Requesting party is a competitor or represents competitor's interest.
4. Purpose of inspection is not germane to SH's interest.
5. Right not exercised during reasonable hours on business day.
6. Subject matter is covered by a non-disclosure agreement.
7. Subject matter of inspection is protected information under applicable laws, e.g., Intellectual Property Code, Data Privacy Act, Bank Secrecy Act.

## 11. Dissolution and Liquidation

### Dissolution

1. Cessation of corporate personality for the purpose of conducting business, or the purpose for which it was organized.
2. The corporation continues to exist for the limited purpose of winding up and liquidating its affairs, generally for a period of 3y.
3. Rights and remedies in favor or against the corporation, SH/M, D/T, officers, as well as liabilities against them is not removed or impaired by the dissolution of the corporation. Dissolution does not extinguish or alter the nature of the cause of action.
4. The following actions are not extinguished by the dissolution of corporation – (i) action to compel his recognition of SH; (ii) action to allow inspection of corporate books.

Liquidation is the process of winding up or settling the affairs of the corporation after dissolution.

## a) Modes of Dissolution

### (1) Voluntary Dissolution

Initiated by the corporation.

#### Creditors are not affected

1. Available if no **creditors** are affected – (i) no creditors, or (ii) no conflicting claims and corporation has sufficient assets to satisfy them.
2. Must be **approved** by majority BOD/T, ratified by majority OCS/M w/n entitled to vote, *in a meeting called by BOD/T*.
3. **Notice** of meeting must be: (i) served to SH, and (ii) published at least once prior to the meeting in NPGC.
4. Corporation shall file a **Verified Request** stating – (i) Reason for dissolution, (ii) Form, manner, time of giving notice, (iii) Names of SH/M, D/T who approved the dissolution; (iv) Date, place, time of meeting in which vote was made, (v) Details of publication.
5. Attachments to Verified Request – (i) Copy of resolution authorizing the dissolution, certified by majority of BOD/T and countersigned by corporate secretary; (ii) Proof of publication, (iii) Favorable recommendation from appropriate government agency, if necessary.
6. Dissolution takes effect only upon approval of Request by SEC and issuance of the **certificate of dissolution**.

**\*\* Essentially non-adversaria, ex-parte.**

#### Withdrawal

1. Request for withdrawal must be verified by any incorporator, D/T, SH/M and signed by majority of BOD/T and majority of OCS/M.
2. Must be submitted no later than 15d from receipt by SEC of Verified Request for dissolution.

#### Creditors are affected

Initiated by an aggrieved party or the SEC against the will of the corporation.

1. Available if **creditors** are affected – (i) there are conflicting claims, or (ii) assets of the corporation are not sufficient to cover its liabilities.
2. Must be **approved** by majority BOD/T, ratified by 2/3s OCS/M w/n entitled to vote, *in a meeting called for the purpose*.
3. Corporation shall file a **Verified Petition** stating – (i) All claims and demands against the corporation, (ii) That the dissolution was resolved upon the affirmative vote of at least 2/3 OCS/M, (iii) Reason for the dissolution, (iv) Form, manner, time when notices were given, (v) Date, place, time of meeting when vote was made; (v) Signed by majority of the BOD/T and verified by the President, secretary, one of its D/T.
4. Attachments to Verified Petition – (i) Copy of resolution authorizing the dissolution of corp. certified by majority of BOD/T and countersigned by corporate secretary, (ii) List of all creditors.
5. If the SEC finds the petition sufficient in form and substance, it shall fix the deadline for filing **objections** (30-60d from entry of order).
6. **Publication** of SEC Order for 3 successive weeks in NPGC and posting for the same period in public places.
7. **Hearing** shall be conducted on the petition.
8. If proper, SEC shall render judgment dissolving the corporation, but the dissolution takes effect only upon issuance of the **certificate of dissolution**.

**\*\* Essentially adversarial.**



#### Withdrawal

1. In the form of motion, similar in substance with a withdrawal of request for dissolution, verified and filed.
2. Order setting deadline for filing objections shall be issued and published.
3. Hearing shall be conducted.
4. Judgment shall be rendered.

#### (2) Involuntary Dissolution

##### Modes of initiation

1. By SEC motu proprio, with notice and upon coordination with concerned government agency.
2. Upon verified complaint filed by interested party

##### Grounds

1. Non-use of corporate charter §21 – (i) Failure to formally organize and commence business within 5y from date of incorporation; (ii) COI shall be deemed revoked as of the day following the end of the 5-year period. “Deemed revoked” does not mean automatic dissolution; SEC must cause the dissolution of the corporation.
2. Continuous inoperation §21 – (i) Corporation commenced business but subsequently became inoperative for at least 5 consecutive years; (ii) corporation may be placed under delinquent status, after notice and hearing; (iii) if declared delinquent, it has 2y to resume operations and comply with SEC requirements.
3. Lawful order dissolving corporation – e.g., (i) quo warranto proceeding against de facto corporation, (ii) liquidation proceeding involving insolvent debtor under FRIA.
4. Finding of fraud by final judgment – e.g., (i) corporation misrepresent/s its purpose/s, (ii) the incorporator/s used fictitious names.
5. Finding by final judgment that the corporation – (i) Was created to commit/conceal/aid securities violation, smuggling, tax evasion, money laundering, graft and corrupt practices; (ii) Committed/aided in commission of securities violation, smuggling, tax evasion, money laundering, graft and corrupt practices, and SH knew; (iii) Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its D/T, officers, employees.

If under [5], remaining assets of the corporation shall be forfeited in favor of the national government (i) after payment of liabilities, and (ii) upon petition of SEC with the proper court.

##### Other grounds

###### Under PD 902-A

1. Fraud in procuring COI.
2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of the public.
3. Refusal to comply or defiance of lawful order of SEC restraining the commission of acts amounting to grave violation of franchise.
4. Failure to file bylaws.
5. Failure to file required reports in the appropriate forms within the prescribed period.

###### Under RCC (close corporations)

1. Deadlock in the management of close corporations
2. Upon petition for SH in close corporations whenever any acts of the directors, officers, or those in control of the corporation is illegal, fraudulent, dishonest, oppressive, or unfairly prejudicial to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted

#### b) Methods of Liquidation

##### (1) By the Corporation Itself

1. The liquidation must be completed within 3y from dissolution.
2. In case of failure to complete liquidation within 3y period, the corporation shall appoint a trustee. Otherwise, BOD shall be deemed trustees for the corporation and may continue carrying out the liquidation (trustees by legal implication).
3. If the BOD acts as trustee – (i) they are not strictly bound by the regulations governing the conduct of the corporation's business – e.g., quorum requirements; (ii) trustees may consist of only one or some BOD members; (iii) acting in the benefit of the SH/M, creditors give them the authority to act as trustee.

##### (2) Conveyance to a Trustee Within a Three-Year Period

1. The liquidation may be carried out even beyond 3y from dissolution upon appointment of trustee within said 3y period.
2. Upon appointment, the corporation conveys all corporate assets to the trustee (legal title) for the benefit and protection of the SH/M, creditors, other interested parties (beneficial interest).

##### (3) By Management Committee or Rehabilitation Receiver

1. The liquidation may be carried out by the receiver even beyond 3y from dissolution.
2. Upon appointment, the authority of the corporation and its BOD/T over its properties and effects is suspended and the same is reposed in the receiver.

Either the SEC or regular courts may appoint a receiver.

1. The SEC may appoint a receiver after rendering a judgment dissolving the corporation, upon Verified Petition (voluntary).
2. Regular courts having jurisdiction over liquidation proceedings may also appoint receiver.

##### Rehabilitation under FRIA

1. RTC acting as rehabilitation court may also appoint a rehabilitation receiver.
2. 3 situations contemplated – (i) Petition for rehabilitation, (ii) Petition for voluntary liquidation by corporation, (iii) Petition for involuntary liquidation by corporate creditors.
3. The court may convert a petition for rehabilitation to liquidation if there is no showing that the debtor may be rehabilitated. The rehabilitation receiver shall perform all functions of the liquidator.
4. The order of liquidation issued by the court: (i) dissolves the corporation, and (ii) vests title over corporate assets to the Liquidator to carry out the liquidation.

##### (4) Liquidation after Three Years

GR: upon expiration of the 3y period, all pending actions by or against the corporation are abated, absent contrary provision of law.

XPN: corporation is allowed to perform acts to complete final liquidation – (i) By appointment of trustee, (ii) By BOD/T acting as trustees by legal implication, or (iii) By interested parties, e.g., SH, creditors, upon proper representation with SEC.

1. However, no action may be commenced by or against the corporation beyond the 3y period (no personality to sue or be sued).
2. Actions filed during the corporation's lifetime or within the 3y liquidation period may be prosecuted or defended until judgment, even beyond the 3y period.

Trustee

1. Understood in the general sense.
2. Includes the counsel upon whom the prosecution of a suit filed by the corporation was entrusted who shall act as trustee for the particular property or transaction involved.

## 12. Other Corporations

### a) Close Corporations

#### (1) Characteristics

A corporation whose **AOI** provides that:

1. All issued stocks of all classes, exclusive of TS shall be held of record by a specified number of SH, not more than 20.
2. All issued stocks shall be subject to one or more specified restrictions on transfer as authorized by the Title.
3. It shall not list on any stock exchange or make any public offering of its shares.

*\*\* If at least 2/3s of its voting stocks or rights is owned or controlled by a corporation not classified as a close corporation, it shall not be considered a close corporation.*

Characteristics:

1. Identity of stock ownership. – However, mere narrow distribution of share ownership does not define a Close Corporation. An OPC is not a close corporation. A family corporation is also not necessarily a Close corporation.
2. Active management
3. Formal board resolution/meeting may be dispensed
4. Deadlocks may be settled by SEC, upon written petition of any SH.
5. Appraisal right may be exercised for any reason at any time, even if the corporation has not URE, provided it has sufficient assets to cover its debts, exclusive of capital stock.
6. Quorum may be greater than majority.
7. Transfer of shares which will increase the number of SH beyond the maximum specified in the AOI is **invalid**.

*Active management*

1. All or most of the SH are engaged in the active management of the business either as director, officer, or management personnel.
2. Such SH are subject to the same liabilities as a director.
3. They are personally liable for corporate torts except when adequate insurance is obtained.

*Formal board resolution/meeting may be dispensed if:*

#### POKRA

1. The corporate act is within the **powers** of the corporation.
2. Directors have **knowledge** of the same.
3. They **ratify** the informal act after its execution.
4. They did not file written **objection** to the corporate secretary within a reasonable time from notice.
5. Directors are **accustomed** to taking informal action with the express or implied acquiescence of all the SH.

*Deadlocks*

1. There is deadlock if: (i) SH/D are so divided, (ii) vote required for the corporate action cannot be obtained, and (iii) business and affairs of the corporation can no longer be conducted to the advantage of the SH.
2. SEC may order to: (i) Cancel/alter any provision of AOI, bylaws, SH agreement, (ii) Cancel/alter/enjoin any corporate act by directors/SH/officers, (iii) Direct/ prohibit any corporate act by D/SH/O or other persons, (iv) Require payment of FV of shares of any SH by corporation (regardless of availability of URE) or any SH, (v) Appoint

provisional director, (vi) Dissolve corporation, (vii) Grant other reliefs.

Businesses not allowed to organize as close corporation

1. Mining and oil companies
2. Stock exchanges
3. Banks
4. Insurance companies
5. Public utilities
6. Educational institutions
7. Corporations vested with public interest in accordance with the RCC

#### (2) Validity of Restrictions on Transfer of Shares

1. (i) Must be stated in the AOI, bylaws and stock certificate, (ii) Must not be more onerous than right of first refusal RFR.
2. The corporation may also require that its consent be secured for transfer of shares with unpaid subscription (novation).

*Right of first refusal*

1. The right granted to the existing SH or the corporation to purchase the shares of the transferring shareholder under reasonable terms, conditions and period so specified.
2. Only reasonable terms are required, the SH or corporation need not match the offer of a 3p offering to purchase the shares. The latter is bound if the restriction appears in the AOI, bylaws, stock certificate.
3. A creditor with security interest is not bound by the RFR. He may enforce his security interest by garnishing the shares without first offering them to existing SH or to the corporation. RFR applies only to voluntary, not involuntary sales.
4. If RFR was not exercised upon lapsed of the specified period, the SH may transfer his shares to any third person.

Transferee is conclusively presumed to have notice (i) of his ineligibility to hold the share, (ii) that the acquisition will result in shares being held by shareholders in excess of the maximum specified in the AOI, (iii) that the acquisition was made in violation of the restriction.

1. If the qualification, condition, or restriction in the AOI was conspicuously indicated in the stock certificate.
2. The corporation may refuse to register the shares in favor of the transferee. XPN: (i) if the transfer is **consented** by all the SH, or (ii) the corporation **amends** its AOI in accordance with the Title.

#### (3) Preemptive Right

3. The right of the existing SH to subscribe to any and all issuance or disposition of shares of the corporation.
4. It extends to all issuance of shares, including the sale of TS, unless denied by AOI.

Unlike, ordinary stock corporation, the right cannot be denied even if the right may be denied if:

3. The issuance is in compliance with law requiring minimum share ownership by the public.
4. The issuance is (i) made in good faith (ii) approved by at least 2/3s of the OCS (iii) in exchange for property needed for corporate purposes or in payment of previously contracted debt.

The right is always available whether the issuance of stock or disposition of TS is in exchange for money, **property** or personal services, or in **payment of debts**, unless otherwise provided by AOI.

#### (4) Amendment of Articles of Incorporation

If the amendment seeks to delete or remove any required provision, it must be approved by 2/3s OCS w/n entitled to

vote, or such higher proportion as may be required by the AOI in meeting duly called for the purpose.

## b) Non-Stock Corporations

### (1) Definition

A corporation (i) without capital stock, or its capital stock are not divided into shares and/or (ii) no part of its income is distributable to its members, trustees, officers, subject to the provisions on dissolution, and established for one of the purposes set forth under the RCC.

1. Membership in MSC is personal and nontransferable.
2. Trustees – (i) no maximum no.; (ii) 3y term, subject to hold-over until their successors are elected and qualified; (iii) must be a member. XPN: independent trustee of NSC vested with public interest.
3. Officers may be directly elected by members.

Purposes of NSC: **CREP CuSS FraLiCi TIA**

1. charitable, religious, educational, professional
2. cultural, social, scientific
3. fraternal, literary, civic service
4. and other similar purposes as trade, industry and agriculture or related commerce

*\*\*or any combination, subject to the provisions of special laws governing special corporations.*

NSC cannot be organized for:

1. Profit
2. Political purposes (political party)
3. Maintaining military reservations or converting them to productive use – this is not one of the purposes for which a NSC may be established.

Conversion:

1. From NS to stock – requires dissolution of the NSC since the conversion amounts to distribution of assets of the NSC during its lifetime which is prohibited.
2. From stock to NSC – may be done by mere amendment of AOI.

Asset distribution:

1. During the lifetime, there can be no distribution of assets. Hence, there is no appraisal right in NSC.
2. Upon dissolution, corporate assets may be distributed to the members if their distributive shares are specified either: (i) in the AOI, or (ii) in a Plan of Distribution, approved by at least a majority of the Board, ratified by at least 2/3s of the members.

Preference

1. Creditors first.
2. Assets received conditioned on their return to the transferor in case of dissolution shall be distributed in accordance with the terms of the conditional deed of transfer.
3. Assets received conditioned on its use only for particular purpose/s shall be distributed in favor of organizations, societies or corporations in the Ph with substantially similar purpose/s under the plan of distribution.
4. The remaining shall be distributed: (i) according to the AOI/bylaws to the extent of distributive shares specified therein, or (ii) with the plan of distribution.

### (2) Treatment of Profits

NSC are not prohibited from earning profits. However, it may engage in economic activities which produce profit provided:

1. The activity was: (i) authorized by its AOI, (ii) merely incidental to the pursuit of its purpose/s, and (iii) not primarily intended to generate profit.

e.g., investment in shares of stock, bonds, other income-earning securities.

2. Profits are not distributed as dividends to the members or trustees.
3. Profits are used in furtherance of the purpose/s for which the corporation is created.

NSC cannot lawfully engage in business activities for profit as it runs counter to its very nature.

### c) Educational Corporations

Corporations organized for educational purposes, i.e., the establishment and maintenance of school, college, university.

1. Educational corporations may be organized either as stock or NSC.
2. Governed by R.A. No. 7798 or the "Education Act of 1982".
3. Trustees

Distinctions	Educational corp.	Ordinary NS corp.
Number	≥5, ≤15, in multiples of 5	No maximum
Term	5y. Trustees to be classified such that the term of 1/5 of them shall expire every year	3y

### d) Religious Corporations

Religious corporations are made for the administration of the affairs, properties, temporalities **APT** of a religious sect, denomination or church **RSDC** or of the religious society forming part thereof, for the exclusive benefit of the latter.

1. It can generally perform only acts of administration.
2. In case of acts of strict dominion, court approval is required unless dealings with APT in such manner is provided for the rules and regulations and discipline **RRD** of the SDC

### (1) Corporation Sole

Religious Corporation incorporated by one person.

1. **Formed** by the chief archbishop, bishop, priest, minister, rabbi, or other presiding elder of a sect, denomination or church **RSDC** by filing AOI with SEC, verified by him via an affidavit or affirmation. From the time of filing, the presiding elder shall become the corporation sole (RCC). However, in reality, the incorporation becomes effective only upon issuance of the COI.
2. The corporation sole may **acquire** and hold real property in the Philippines, even if the presiding elder is a foreigner, provided that (i) at least 60% of the members of the RDSC must be Filipinos, and (ii) the real property is necessary and convenient for the lawful use of the corporation.
3. GR: the corporation sole cannot **sell**, or mortgage real property held by it without order from the RTC of the province where the property is located upon verified petition of the corporation sole. XPN: if the RRD of the RSDC regulates the method of deal with properties (real or personal).
4. The **successor** of the presiding elder shall become the corporation sole upon his accession to office and shall be allowed to transact the business of the corporation upon filing of a duly notarized copy of his commission with the SEC. Before appointment of successor, the person designated by the RRD shall exercise all the powers and authority of the corporation sole.
5. The corporation sole may be **dissolved** by filing a Verified Declaration of Dissolution. Upon approval of the declaration, the corporation shall cease carrying out its operations except for winding up of its affairs.

## (2) Religious Societies

Religious Corporation incorporated by more than one person.

1. Formed by any religious society, religious order, diocese, synod, district organization of any RSDC, upon approval of at least 2/3s of its membership, by filing AOI with SEC verified by presiding elder via an affidavit or affirmation.
2. Religious society itself, without organizing into a corporation does not have separate legal personality.
3. Trustees must be  $\geq 5$ ,  $\leq 15$ , with a term of 1y or such other period prescribed by the RRD of the society

## e) One Person Corporations

### (1) Excepted Corporations

A single SH, who may be a natural person, estate, or trust, may form an OPC.

However, OPC the following businesses cannot be organized as OPC:

1. Banks and quasi-banks
2. Pre-need, **trust**, insurance companies
3. Public and publicly listed entities
4. Non-chartered GOCCs
5. Licensed professional for the purpose of exercising the profession, unless allowed by special law

#### Trust

1. Trust that is prohibited from organizing as OPC pertain to a trust company which manages the funds of investors.
2. A trust which may be a SSH pertains to the subject being managed by a trustee, and not the trust entity.

### (2) Capital Stock Requirement

An OPC generally has no minimum capital requirement, unless otherwise provided by special law.

If the SSH is a foreigner, he must comply with the requirements of FIA for the establishment of domestic enterprises.

1. Paid-in capital of  $\geq \$200k$ .
2. Paid-in capital of  $\geq \$100k$  IF: (i) involving **advance** technology as determined by DOST; (ii) endorsed as **start-up** by the lead host agency under the Innovative Start-up Act; (iii) **employs**  $\geq 15$  Filipino EEs.

### (3) Articles of Incorporation and By-Laws

An OPC is required to file AOI, but it is not required to submit or file bylaws.

#### AOI

1. Must have the same contents as and ordinary corporation.
2. In addition – (i) If single SH is estate or trust, the NNR of person exercising fiduciary duties\* with the proof of authority to act on behalf of the trust or estate; (ii) NNR, contact details of alternate/nominee; (iii) extent, coverage, limitation of authority of alternate/nominee. The written consent of alternate/nominee must be attached.

\* Trustee, administrator, executor, guardian, conservator, custodian, other.

### (4) Corporate Name

Must indicate "OPC" at the end or below its corporate name.

### (5) Corporate Structure and Officers

The SSH is also the (i) sole director and (ii) President of the OPC.

1. The President may also be the Chairman.

2. Treasurer, Corporate Secretary, Other officers deemed necessary must be appointed within 15d from issuance of COI, which appointment must be reported to SEC within 5d from appointment.

#### Corporate Secretary

1. SSH cannot be the Corporate Secretary.
2. He shall – (i) Maintain minutes book and corporate records; (ii) Notify of alternate/nominee of the death or incapacity of the SSH within 5d from occurrence; (iii) Notify of SEC of the death of the SSH within 5d from occurrence, indicating the names, residences, contact details of all known heirs; (iv) Call alternate/nominee and legal heirs in a meeting, and advise the heirs on matters as election of new director, amendment of AOI, etc.

#### Treasurer

1. SSH can be the Treasurer subject to giving of a bond and submission of undertaking to the SEC.
2. Bond shall be (i) in the amount that may be required by the latter, (ii) renewable every 2y, or as often required. It is a continuing requirement and may be cancelled only upon proof of appointment of another person.
3. Written undertaking (i) to faithfully administer the OPC's funds to be received as treasurer, and (ii) to distribute and invest the same according to the AOI as approved by the SEC/

### (6) Nominee

The SSH must designate an alternate/nominee who will (i) take the place of the single SH in case of death or incapacity, and (ii) manage the corporate affairs.

1. Required provision in AOI (see above).
2. The consent of the alternate/nominee may be withdrawn at any time before the death or incapacity of the SSH.
3. Alternate nominee shall serve in case of death, incapacity, inability, or refusal by the nominee to discharge his functions, subject to the same terms.
4. Alternate/nominee may be changed by the SSH at any time by submitting to the SEC the names of the alternate/nominee, together with their written consent, without need of amending the AOI.

#### Term

1. In case of temporary incapacity, from time of notice of occurrence of incapacity and acceptance of duty, until the SSH regains capacity (self-determined by SSH).
2. In case of permanent incapacity, from time of notice of occurrence of incapacity and acceptance of duty, until the legal heirs are determined, and the heirs designated one of them or agreed that the estate shall be the SSH.
3. In case of death: (i) alternate/nominee must transfer shares to the designated legal heir or estate within 7d upon receipt of legal document declaring legal heirship, e.g., affidavit of heirship, affidavit of self-adjudication executed by sole heir; (ii) Within 60d from transfer of shares, the heir must notify the SEC of its decision either to: (a) dissolve and wind up OPC, or (b) convert it to ordinary corporation.

### (7) Liability

Liability of the single SH is limited to his subscription, provided:

1. SSH shows that the corporation is adequately financed.
2. SSH proves that the property of the OPC is independent from his personal property.
3. There is no ground to pierce the veil of corporate fiction.



Otherwise, the SSH shall be solidarily liable with the OPC.

## (8) Conversion of Corporation to One Person Corporations and Vice-Versa

In general, conversion may be effected by mere amendment of AOI, without need of prior dissolution of the corporation or OPC, as the case may be.

### From Ordinary Corp. to OPC

1. If SSH acquires all the stocks of an ordinary stock corporation.
2. He must apply with the SEC for the conversion and file amended AOI, without need to first dissolve the corporation.
3. If proper, SEC shall issue a certificate of filing of amended AOI reflecting the conversion.
4. From the issuance of certificate, the OPC shall succeed the ordinary corporation, and be legally responsible for all of its outstanding liabilities.

### From OPC to Ordinary Corp.

1. There must be due notice to the SEC/Application stating: (i) the fact of conversion; (ii) circumstances leading to the conversion; (iii) compliance with all other requirements for stock corporations under RCC and applicable rules.
2. Such must be filed within 60d from the occurrence of the circumstance leading to the conversion. There is also no need to first dissolve the corporation.
3. If proper, SEC shall issue a certificate of filing of amended AOI reflecting the conversion.
4. From the issuance of certificate, the corporation shall succeed the OPC, and be legally responsible for all of its outstanding liabilities.

## f) Foreign Corporations

Corporations formed, organized and existing under the laws other than those of the Philippines, whose laws allow Filipinos and corporations to do business in its own country or state.

## (1) Bases of Authority Over Foreign Corporations

### (a) Consent

Manifested by the corporation transacting business in the Ph. A foreign corporation transacting business in the Ph without a license is deemed to have consented to be sued or proceeded against in respect of such transactions. However, it cannot be permitted to maintain or intervene in any action, suit or proceeding before any court or administrative body in the Ph. In other words, it may be sued but it cannot sue.

### (b) Doctrine of "Doing Business"

Under FIA, doing business includes: SOAP

1. Soliciting orders, service contracts.
2. Opening of offices.
3. Appointing representatives or distributors – (i) domiciled in Ph, or (ii) who stays in Ph for  $\geq 180$ d in any CY. Provided, (a) transacting for an on behalf of the foreign corporation, and (b) subject to the latter's control.
4. Participating in the management, supervision or control MSC of any domestic entity.
5. Any other act/s which implies a **continuity** of commercial dealings or arrangements, and contemplates to that extent, the **performance** of acts or the **exercise** of functions normally **incident** to, and in the **progressive** prosecution of commercial **gain** or of the **purpose** for which the corporation is organized (continuity test) CPe IP GaP

### Tests:

1. Twin Characterization Test: (i) Substance Test – a FC is doing business if it is a continuing body of the business for which it was organized; (ii) Continuity Test (see above)

2. Sliding scale Test: (i) specifically tailored to internet businesses; (ii) (a) passive websites: merely posts information, does not generate sufficient contacts for exercise of jurisdiction; (b) active websites: generates business, generates sufficient contacts for exercise of jurisdiction; (c) interactive websites: hybrid, case-by-case basis.

### Isolated transaction

1. Casual or incidental. TXN set apart from the common business of the corporation and shows no intent to engaged in the progressive prosecution of the object of its business.
2. A single transaction is not necessarily an isolated transaction if (i) related to corporate purpose; (ii) shows intent to do business.
3. E.g., Enforcement of the warranties of the Ph drawer or indorser of the draft by a foreign corporation indorsee.

### Examples of doing business

1. Granting credit-terms to domestic corporation
2. An airline carrier with no flights originating in Ph is considered doing business in Ph if it appointed an agent (i) domiciled in Ph; (ii) not transacting in its own account, but on the carrier's account; (iii) subject to its full control.
3. Operation of online platform where Ph residents can avail services (active website)
4. Setting-up of game servers.
5. Participation in a government bid for the construction of Ph ports by a foreign corporation engaged in ports operation.
6. Purchase in the Ph of thousands of soccer jersey by a foreign corporation engaged in the manufacture of uniforms.
7. Undertaking to perform other activities after the performance of the obligation under the contract.

### Not doing business

1. Mere investment as a SH in domestic corporations, and/or the exercise of related rights – (i) if not corporation, e.g., JV/partnership, doing business and must register; (ii) the investee corporation may sue on a cause of action arising from the investment, e.g., non-payment of dividends, right to inspection, etc.
2. Having a nominee director or officer to represent its interests, provided not in the executive management (MSC).
3. Appointing a representative or distributor – (i) transacting in its own name, (ii) for its own account
4. Publication of general advertisement
5. Maintenance of stock for processing
6. Consignment of equipment for processing goods for export
7. Collection of information
8. Performance of auxiliary services on isolated txn

### Other examples of not doing business

1. Hiring of attorney-in-fact to protect IPR.
2. Reinsurance of a domestic insurance company
3. Mere ownership of property, not actively used in the furtherance of the corporation's purpose.
4. Filing of collection suits.
5. Foreign company who merely imports from the Ph exporter.
6. Filing of a petition to enforce a foreign arbitral award.

## (2) Necessity of a License to Do Business

License to Do Business is required if the foreign corporation is doing business in Ph.

1. Upon issuance of license, the corporation shall have the right to transact business in the Ph, and may commence doing so only upon obtaining, (i) license for that purpose, and (ii) a certificate of

authority from the appropriate government agency. The authority is limited only to the purpose/s for which the license was issued.

2. Absence of license does not render the transaction or contract void but subjects the erring corporation and officers to criminal liability for engaging in business without license.
3. Generally, a corporation doing business without license may be sued but it cannot sue in Ph, unless it falls within any of the XPNs.

#### (a) Resident Agent

1. The name of resident agent must be stated in the Application for license.
2. Person appointed by the corporation upon whom summons, and other legal processes may be served in all action and proceedings against the corporation.
3. Corporation must consent that service to the resident agent will be admitted as valid and bind it as if such service was made to its duly authorized representative in its principal office of the corporation.
4. May be (i) an individual residing in the Ph, or (ii) a domestic corporation lawfully transacting business in the Ph.
5. The removal of a RA and failure to appoint a replacement is ground for revocation or suspension of corporation's license to do business.

#### Qualifications:

1. If individual: (i) of good moral character, and (ii) of sound financial standing.
2. If corporation: (i) in good standing as certified by SEC, and (ii) of sound financial standing.

#### (3) Personality to Sue

##### FC may sue if:

1. It is doing business in the Ph, and it has SEC license to do business.
2. It is not doing business in the Ph, and (i) it is suing on a casual or isolated transaction, (ii) to protect its IPR, (iii) pursuant to an exclusive venue stipulation in the contract, (iv) together with a domestic co-plaintiff.
3. It is doing business in the Ph without SEC license: (i) but it was subsequently issued a license which remains valid at the time of the filing of complaint (curative); (ii) the other party is estopped from questioning its personality to sue after having benefited from the contract (Magna).

FC may not sue if it is doing business in the Ph without SEC license to do business, but it may be sued.

#### (4) Suability of Foreign Corporations

FC may be sued if it is doing business in the Ph without SEC license to do business.

1. Proof of doing business is not necessary for purposes of acquiring jurisdiction over the FC.
2. The fact that the corporation was not doing business in Ph is a matter of defense that should be ventilated in the trial.

#### (5) Instances When Unlicensed Foreign Corporations May be Allowed to Sue (Isolated Transactions)

Unlicensed Foreign Corporations may sue in Ph if:

1. It is not doing business in the Ph is suing: (i) on a casual or isolated transaction; (ii) to protect its IPR; (iii) pursuant to an exclusive venue stipulation in the contract; (iv) together with a domestic co-plaintiff.
2. It is doing business in the Ph without SEC license: (i) but it was subsequently issued a license which remains valid at the time of the filing of complaint (curative); (ii) the other party is estopped from

questioning its personality to sue after having benefited from the contract (Magna).

**\*\*See above for examples of isolated transactions/not doing business.**

#### (6) Grounds for Revocation of License

##### Grounds under RCC

1. Failure to file annual report and pay required fees.
2. Failure to appoint and maintain RA in the Ph.
3. Failure to submit statement of change in address of RA.
4. Failure to submit authenticated copy of amendment in AOI or bylaws, or of certificate of m/c with the prescribed time.
5. Material misrepresentation in any application, report, affidavit, other document submitted.
6. Failure to pay taxes and other lawful dues to the Ph government.
7. Transacting business outside the purpose for which the license was granted.
8. Transacting business in Ph as agent of FC not licensed to do business in Ph.
9. Other grounds rendering FC unfit to transact business in Ph.

Other grounds as provided in special laws.

##### Upon revocation

1. SEC shall issue certificate of revocation, copy furnished the appropriate government agency, if proper.
2. Notice and copy of certificate to be mailed to the registered office of the FC in the Ph.

#### 13. Merger and Consolidation

##### a) Concept

Merger and Consolidation are forms of corporate combinations and acquisitions.

1. Merger is a mode of reorganization under the RCC whereby two or more corporations combine to become one corporation, which is one of the constituent corporations known as the surviving corporation.
2. Consolidation a form of corporate combination, whereby by agreement, two or more existing corporations are united to form one new corporation known as the consolidated corporation.
3. In both merger and consolidation, although there is dissolution, there is no winding up or liquidation of the dissolved corporations as the surviving or consolidated corporation automatically acquires all their assets and assumes all their liabilities.

##### b) Constituent Corporation vs. Consolidated Corporation

The corporate parties to merger or consolidation are called constituent corporations.

1. In merger, all but one constituent corporation are dissolved and cease to exist as they are absorbed by the surviving corporation.
2. In consolidation, all constituent corporations cease to exist as they are absorbed by the new consolidated corporation.

##### c) Plan of Merger or Consolidation

1. Must be drawn by the board of EACH constituent corporation.
2. Contents – **NATO** (i) **Names** of constituent corporations; (ii) **Terms** of M/C, and mode of execution, (iii) For merger: statement of change in **AOI** of surviving corporation, if any. For consolidation: all statements required to be indicated in AOI under RCC; (iv) **Other** necessary or desirable provisions.

3. Must be approved by a majority vote of the BOD/T of each constituent corporation, ratified by at least 2/3s vote of OCS/M in separate corporate meetings duly called for the purpose. The NOM must include copy or summary of the plan of M/C.
4. Right of appraisal is available to the dissenting SH.
5. Agreement of M/C consists of the plan of M/C and the amendments thereto duly approved by the Board and the SH/M.

#### d) Articles of Merger or Consolidation

1. Executed by each of the constituent corporations after approval of the plan of M/C.
2. Signed by President or VP, certified by Secretary or assistant secretary of each constituent corporations.
3. Contents – (i) Plan of M/C, (ii) No. of shares outstanding/members, (iii) No. of shares/member voting for or against plan of M/C, (iv) Carrying amount and fair value of assets and liabilities of constituent corporations as of agreed cut-off, (v) Method to be used in M/C of accounts, (vi) Provisional or proforma values as merged or consolidated corporation using the accounting method, (vii) Other SEC-prescribed information.
4. Favorable recommendation of the appropriate government agency (PCC included) for corporations governed by special law must be secured before submission of the AM/C to the SEC for approval.
5. If AM/C is consistent with RCC provisions and existing laws, SEC shall issue certificate of merger or consolidation.

**\*\* Issuance of Certificate of M/C is the operative act which renders the M/C effective, subject to stipulation of parties.**

1. If payment is made to the surviving corporation of a debt belonging to the other constituent corporation before issuance of certificate of M/C, the payment is not made to the proper party. Hence, ineffective.

#### e) Effects

##### SCPAL

1. The constituent corporations shall become a **single** corporation (surviving/consolidated).
2. The separate existence of each of the constituent corporations shall **cease** to exist, except the surviving or consolidated corporation.
3. The surviving or consolidate corporation shall **possess** all the rights, privileges, immunities and powers, and shall be subject to all the duties and liabilities of a corporation organized under the RCC.
4. The surviving or consolidate corporation shall possess all the rights, franchises, privileges, **assets**, and other interests of the constituent corporation from the time of issuance of the certificate of merger or consolidation without the need of further act or deed. – (i) extinguishment of debt on ground of novation cannot be invoked by the debtor of a constituent corporation as against demand for payment by the s/cc; (ii) deed of M/C is the deed of conveyance which transfers the asset to the s/cc; (iii) there is no further need to cancel title in the name of constituent corporations and issue an new one in favor of the s/cc; (iv) PN executed in favor of a constituent corporation after the issuance of certificate of M/C shall be deemed entered into for or on behalf of s/cc.
5. The surviving or consolidated corporation shall be subject to all the duties, responsibilities and **liabilities** of the constituent corporations as if it had incurred the said obligations itself. – (i) action by or against any of the constituent corporations may be prosecuted by or against s/cc, even if not party to the original case; (ii) rights/liens of

creditors on the property of the constituent corporation shall not be impaired by the M/C; (iii) sc/c has duty to absorb the workers of the constituent corporations; (iv) the BF of constituent corporation is imputable to the s/cc.

**\*\*The effects happen by operation of law upon issuance of certificate of M/C.**

## II. Banking Laws

### A. New Central Bank Act (R.A. No. 7653, as amended by R.A. No. 11211)

#### 1. State Policies

The State shall maintain a central monetary authority that shall function and operate as an **independent** and accountable body corporate IABC in the discharge of its mandated responsibilities concerning (i) money, (ii) banking and (ii) credit **MBC**

#### 2. Monetary Board and its Powers and Functions

BSP is a GOCC, established to be the central monetary authority of the country. It enjoys fiscal and administrative autonomy.

##### Responsibilities

1. Provision of policy direction in the areas of **MBC**
2. Supervision of banks
3. Regulatory and examination powers over quasi-banking operations of a non-bank financial institution **NBFI**
4. Regulatory and examination powers over (i) money service business, (ii) credit granting business, (iii) payment system operators, as determined by the MB.
5. Authorize engagement in the money service business

##### Primary objective

1. Maintenance of price stability.
2. Promotion and maintenance of monetary stability and convertibility of peso.
3. Promotion of financial stability.
4. Promotion of sound and prudent practices.
5. Promotion of broad and convenient access to high quality financial services.

##### Other BSP Powers/Function

1. Lender of last resort. It can lend to banks and similar institutions under financial distress when they have no other means to raise funds. But the general public cannot obtain loans from BSP.
2. Prior approval of share transfers – (i) Transfer, acquisition, series TAS thereof of at least 10% of the voting shares of banks and quasi-banks; (ii) to determine the fitness of the incoming SH as indicated by their integrity, reputation, financial capacity; (iii) if not complied – (a) the transfer or acquisition shall have no legal effect; (b) the same shall not be recognized in the books; (c) transferor-SH remains accountable and responsible; (d) transfer of actual control or management of the institution to new SH prior to BSP approval renders the transferor, transferee, and any person liable under the CBA.
3. BSP has no prosecutory powers. Its power of litigation under the general grant of power to sue and be sued is limited to civil cases only. N.B.: violations of banking laws are public offense which can be initiated by anyone.

BSP powers and functions are exercised through the Monetary Board MB

1. 7 members, appointed by Pres.
2. Term: 6 years, no member may be reappointed more than once.
3. Collegial body who decides by obtaining the required no. of votes.

4. MB's prior concurrence is required when the President contracts or guarantees foreign loans.

### 3. The Bangko Sentral ng Pilipinas and Banks in Distress

In case of clear and evident sign of mismanagement, the remedy of creditors is not to petition the RTC or SEC to put the bank under receivership, the remedy lies with the BSP. Based on the examination conducted by the supervision and examination department of the BSP, it may either order the bank to be placed under conservatorship, receivership, closure or liquidation.

1. Such orders are F&E and may not be restrained or set aside by court, reviewable only by CA via Petition for certiorari.

Petition for Certiorari with CA (common remedy)

1. Grounds: (i) GADALEJ, (ii) violation of due process or equal protection, (iii) fraudulent acts of conservator.
2. Must be filed by SH of record representing majority OCS (RPI)
3. Within 10d from receipt by board of order directing conservatorship.

Improper remedies:

1. Injunction since the order is F&E.
2. Appeal since the order is not judgment/FO.
3. Declaratory relief since the orders are issued in exercise of QJ functions.

#### a) Conservatorship

Proper when MB finds that a bank or QB is in a state of continuing inability or unwillingness to maintain **CIUM** a condition of **liquidity** adequate to protect its depositors and creditors.

1. Requirements – (i) report of the supervision and examining department; (ii) finding by MB of existence of above condition; (iii) notice in writing to the BOD of the bank of the order of MB directing conservatorship.
2. Conservatorship shall not exceed 1y.

Conservator

1. Merely steps into the shoes of the BOD for the purpose of restoring the viability of the bank.
2. Any person competent and knowledgeable in bank operations and management.
3. Effect of appointment – (i) does not result to the closure or liquidation of banks; (ii) the bank retains its juridical personality; (iii) it is not prohibited from doing business.

Powers and functions of conservator **Tre CEO**

1. Shall take charge of the asset, liabilities, management of the institution.
2. Reorganize management.
3. Collect all monies and debts due to the institution.
4. Exercise all powers necessary to restore the institution's viability.
5. Including the power to overrule or revoke the actions of previous management or BOD – (i) this power is limited only to the revocation of defective contracts; (ii) the conservator cannot revoke a perfectly valid contract entered into by the bank (violation of non-impairment clause).

#### b) Closure

“Close how hear later” doctrine – allows BSP to summarily order the closure of the bank, prevent it from doing further business, and place it under receivership, without prior notice and hearing upon finding by MB of the existence of any grounds for placing the bank under receivership.

1. Considered valid exercise of police power – (i) to protect depositors, creditors, SH, general public,

(ii) to maintain public faith in the banking system, (iii) to prevent unwarranted dissipation of bank's assets.

2. In ordering closure, BSP may rely on the report of the head of its supervising and examining department, or of the conservator. – (i) prior audit is not required; (ii) independent determination by BSP that bank may no longer be rehabilitated is also not required.
3. The bank is not entitled – (i) to the copy of report of examination; (ii) to **injunction** to prevent BSP from adopting said report.

#### c) Receivership

Proper when MB finds that a bank or QB:

1. (i) Has **notified** BSP or **publicly announced** a **unilateral** closure; (ii) has been **dormant** for at least 60d; (iii) has in any manner suspended payment of its deposit/ substitute liabilities; (iv) was **unable** to pay its liabilities as they fall due in the ordinary course of business. XPN: inability to pay due to extraordinary demands induced by financial panic in the banking community.
2. Has insufficient realizable assets to meet its liabilities, as determined by BSP, without need for consultation or approval of the concerned bank.
3. Cannot continue business without involving **probable** loss to its depositors and creditors.
4. Willfully violated a final cease and desist order<sup>33</sup>, involving acts and transactions amounting to fraud or dissipation of assets of the institution.
5. Persistence in conducting business in an unsafe and unsound manner.

Procedure

1. Based on the report of the supervision and examining department, and finding by MB of grounds justifying the placement of bank under receivership.
2. MB may **summarily** forbid the institution from doing business in Ph, without need for prior hearing.
3. **Designation** of PDIC as receiver.
4. Direct PDIC to proceed with the **liquidation** of the closed bank.
5. MB to **notify**, through PDIC, the BOD of the closed bank of its decision.

Receiver

1. For banks – PDIC is the statutory receiver.
2. For QB, NSSLA – any person of recognized competence in banking, credit, finance.

**\*\*The appointment of conservator is not a condition for the appointment of receiver. BSP has discretion as to the choice of remedy.**

Powers and functions of receiver (administrative only)

1. Gather and take charge of all the assets and liabilities of the institution GaT AE
2. Administer the same for the benefit of creditors
3. Exercise general powers of a receiver under ROC
4. The receiver cannot pay or commit any act that will involve the transfer or disposition of any asset of the institution. XPN: administrative expenditures.

Effects of appointment

1. Suspends the authority of the bank, its directors, officers over its property and effects, the same being vested in the receiver. – (i) unauthorized acts of the officers are unenforceable against the bank; (ii) the officers acting without authority are personally liable; (iii) the receiver cannot confirm

<sup>33</sup> Issued under Sec. 37 of Central Bank Act



conveyance of property since it cannot exercise acts of strict dominion.

2. The bank is forbidden to do business. – (i) it is not liable to pay interest on deposits, (ii) it is liable for obligations which accrued prior to the order forbidding it to do business; (iii) placement in receivership is not a fortuitous event unless it can be shown that the BSP acted arbitrarily or without jurisdiction in placing the institution under receivership; (iv) cannot grant new loans or accept new deposits.
3. PDIC must be joined as party in all suits by and against banks. – (i) PDIC shall act as representative party, being the bank's statutory receiver; (ii) the bank remains to be the RPI; (iii) criminal case for violation of BP 22 against the bank is dismissible as it becomes legally impossible for the officer who signed the check to comply with his obligation with the payee.
4. Receivership shall exercise powers and function stated above.
5. Banks under receivership **can no longer be rehabilitated**. The receiver must proceed with the bank's liquidation.

#### d) Liquidation

When a bank is placed under receivership, the receiver shall immediately proceed with liquidation.

##### Procedure:

1. PDIC (for banks) or the receiver shall file a petition with RTC for assistance in liquidation.
2. RTC as liquidation court shall have exclusive jurisdiction over disputed claims **against** the bank. **DCAB**
3. Claims **against** the bank determined by RTC shall be paid following concurrence and preference of credits.
4. Residual assets shall be distributed to SH.

##### RTC as liquidation court

1. Jurisdiction – (i) settlement of DCAB; (ii) enforcement of individual liabilities of DOS; (iii) deciding other issues to implement the liquidation plan.
2. The courts where such cases were pending loses jurisdiction. The vesting of jurisdiction to the RTC as liquidation court is curative in character to prevent multiplicity of suits against the bank.
3. Final judgments against the bank shall be stayed to prevent giving preference to any creditor.
4. DCAB includes issuance of cashier's check. This is not preferred credit but an ordinary obligation of the bank.
5. The liquidation court has exclusive jurisdiction only with respect to DCAB, but not suits filed **for** and on its behalf. As to latter, rules of jurisdiction and venue apply. E.g., petition for issuance of writ of possession in bank's favor.
6. RTC as liquidation court has no authority to overturn MB's findings, i.e., MB's action on appointing conservator, receiver, or ordering the closure and liquidation of a bank is F&E and can be assailed only by filing a petition for certiorari with the CA within 10d from notice of the resolution.

##### Notes:

1. Once petition is filed, the bank cannot file a separate action to enjoin the proceedings. If must file a comment/opposition on the petition and raise as affirmative defense BF on part of BSP.
2. PDIC (for banks) shall be joined in all suits for or against the bank as representative party.

## B. General Banking Law of 2000 (R.A. No. 8791)

### 1. Definition and Classification of Banks

#### Bank

1. An entity (i) engaged in the lending of money (ii) obtained from the public [ $\geq 20$ ] (iii) in the form of deposits [elements].
2. All banks are stock corporations and cannot be incorporated as close corporations. XPN: cooperative banks.
3. Discounting of receivables is not a lending activity.
4. Obtaining funds from the public but not by way of deposits, only deposit substitutes is not a banking function.

#### License requirement

1. If the entity qualifies as a bank, it must secure a license to engage in the banking business. Otherwise, it will be considered engaged in illegal banking, which is a ground to subject it to quo warranto proceedings.
2. Requirements – (i) it must be organized as a **stock** corporation; (ii) it must obtain its funds from the public; (iii) it must meet the minimum capital requirement prescribed by MB for each type of bank.

#### Equity restrictions (domestic bank)

1. Aggregate limit. – Foreigners (individuals and non-bank corporations) may not own and control >40% of the voting stock.
2. Individual limit. – Filipinos and domestic non-bank corporations may not own and control >40% of the voting stock.
3. XPNs: (i) Foreign banks allowed to operate under the foreign bank liberalization law can be wholly-owned by foreigners; (ii) Universal banks can own up to 100% equity in (a) a thrift bank; (b) rural bank; (c) financial allied enterprise TRF; (iii) A publicly-listed universal or commercial bank can own up to 100% of the voting stock of only one other universal or commercial bank.
4. Foreigners may be elected as **directors** of domestic bank to the extent of their actual equity, but they cannot be elected as **officers** as such will violate the Anti-Dummy law.<sup>34</sup>

#### Classification UCC TRIO FD

##### (a) Universal (expanded commercial bank)

1. Commercial bank which has (i) the **power** of an investment house, and (ii) the power to invest in the equity of allied and non-allied enterprises PIH PIAN
2. Investment house is a bank can **underwrite** (sell/distribute) securities to be issued by a corporation to the public.
3. Non-allied enterprise is a businesses not connected with banking.
4. It has a minimum capital requirement than a commercial bank.

##### (b) Commercial **AID BREAD**. Powers:

1. **Accept** drafts.
2. **Issue** LC
3. **Discount** and negotiate PN, bills of exchange, other evidence of indebtedness.
4. Accept or create **demand** deposit.
5. **Receive** other types of deposits and deposit substitutes
6. **Buy** and sell forex and gold or silver bullion.
7. **Acquire** marketable bonds and other debt securities.
8. **Extend** credit, subject to MB rules.

<sup>34</sup> Prohibits foreigners from intervening in the management, operation, administration, control MOAC of a corporation

enjoying franchise or privilege reserved to Filipinos by Constitution or laws.

**\*\*It also has the power to engage in quasi-banking functions.**

#### Corporate powers

1. General power of corporations under RCC
2. Power to invest in equities – (i) subject to prior approval of MB; (ii) a commercial bank can invest only in allied enterprises; (iii) a universal bank can invest only in non-/allied enterprises.
3. Power to acquire its own shares and/or accept its own shares as loan security – (i) subject to prior approval of MB; (ii) any such shares acquired shall be disposed within 6m from acquisition.

#### To acquire, hold, convey property

1. Only in the ordinary course of its business – (i) If necessary for its own use or in the conduct of its business, (ii) If mortgaged to it in gf as security for debt, (iii) If conveyed to it in satisfaction of debt previously contracted in the course of its dealings (dacion), (iv) If purchased at sales under judgment decrees, mortgages or trust deeds held by it, and if purchased to secure debts due to it.
2. A bank cannot acquire property for speculative purposes. It cannot accept property in settlement of civil liability arising from criminal offense against it.
3. If so acquired, the property must be disposed within 5y, or as required by MB.
4. A foreign bank may bid in the foreclosure sale of RP mortgaged to it, or avail proceedings to take possession of same, provided – (i) its possession shall not exceed 5y; (ii) title cannot be placed in its name; (iii) title must be transferred to qualified Filipino within the 5y period. Otherwise, it is liable to penalty of ½ of 1% p.a. of the price, until transfer is effected.

#### Insurance business

1. A bank shall not directly engage in insurance business as the insurer.
2. It may (i) issue standby LC to secure the performance of a primary obligation, or (ii) organize a subsidiary to engage in insurance business, and cross-sell insurance to its clients.

#### (c) Thrift

1. One established as S&M, SSLA, or PDB for specific purpose/s.
2. Governed by RA 7906 or the Thrift Banks Act.
3. Their purpose is to: (i) accumulate the savings of depositors and invest them; (ii) provide financing to businesses engaged in agriculture, services, industry, and housing; (iii) provide financial services to its chosen market, constituencies, especially SMEs and individuals.
4. Thrift banks are not subject to the Anti-Dummy Law, unlike commercial bank.
5. They cannot issue commercial or import LC, only standby and domestic LC.

#### (d) Rural

1. Established to provide credit facilities to farmers, merchants, their cooperatives, and people in the rural community.
2. Governed by RA 7353 or the Rural Banks Act.

#### (e) Cooperative

1. Bank organized under the Cooperative Code to provide financial and credit services to cooperatives.
2. Only bank that is not a corporation.

#### (f) Islamic

1. As defined in R.A. No. 6848.
2. Subject to Islamic Shari'ah. N.B.: interest (riba) is prohibited by Shari'ah principles. They earn through other investment activities.

#### (g) Digital bank

1. Offers financial products and services that are processed end-to-end through a digital platform and/or electronic channels with no physical branch or sub-branch offering financial products and services.

#### (h) Foreign bank

1. A branch of foreign bank in Ph with no separate legal personality and considered as mere extension of its head office. All branches of the same principal are treated as one unit.
2. A foreign bank can participate in the bidding for the foreclosure sale of land mortgaged to it subject to limitations: (i) possession shall be limited to 5y; (ii) property title shall not be transferred to it; (iii) it must transfer its rights to a qualified Ph national within the 5y period. Failure to comply renders it liable for penalty 1% p.a. of foreclosure price until it transfers the property.

## 2. Distinction of Banks from Quasi-Banks and Trust Entities

#### Quasi banks

1. Entities engaged in the (i) borrowing of funds from the public through the issuance, endorsement or assignment with recourse or acceptance IEA RA of **deposit substitutes** (ii) for purposes of relending or purchasing receivables and other obligations.
2. Transactions with quasi-banks are generally evidenced by debt instruments.
3. A bank license includes the authority to engage in quasi-banking functions. However, if a non-bank will engage in QB functions, it must obtain a separate license.
4. Quasi-banks are not insured by the PDIC.

#### Trust entities

1. Legal entity acting as fiduciary, agent, trustee FAT on behalf of a person or business for a trust.
2. Typically tasked with the administration, management, transfer of assets AMTA (shares, debt instruments) to beneficiaries for the depositor's benefit.
3. A bank may obtain a trust license to act as trustee. A bank cannot engage in trust functions without authority from BSP.

## 3. Nature of Bank Funds and Bank Deposits

Bank deposits are funds obtained by the bank from the public which are relented to the other bank borrowers.

1. Governed by the law on simple loan/mutuum. Debtor-creditor relationship is created.
2. The bank acquires ownership of the money deposited. – (i) it may apply it to its own purpose without depositor's consent, and the same does not constitute estafa; (ii) rules on legal compensation may be invoked with respect to depositor's debts.

Deposit substitutes are alternative forms of obtaining funds from the public, other than deposits, through the issuance, endorsement, acceptance, of debt instruments for the own account of the borrower, for the purpose of relending or purchasing of receivables and other obligations.

1. E.g., banker's acceptance, PN, participations, certificates of assignment, similar instruments.
2. Quasi-banks raise funds through deposit substitutes

## 4. Diligence Required of Banks

GBL which requires of banks the highest standards of integrity and performance HiSIP.

1. The same is synonymous with extraordinary or highest degree of diligence.

2. Bases: (i) banking is a business imbued with public interest; (ii) fiduciary relation with client created by the deposit; (iii) maintenance of public confidence in the banking system.
3. The standard applies to transactions involving the deposits of their clients which creates a fiduciary relation. However, it does not cover commercial transactions not involving their fiduciary relationship with depositors. N.B.: the fiduciary relation does not change the relationship between bank-client from debtor-creditor to trustee-trustor (estafa implications).
4. Two fundamental obligations – (i) to **treat** their clients' accounts with utmost fidelity and meticulous care UF MC; (ii) to **record** all transactions accurately and promptly TR.
5. In the selection and supervision of its EEs, the bank must also exercise EO diligence. It can be held liable for acts/omission of EEs acting within the scope of their duties.
6. In dealing with properties, the bank cannot rely on the four corners of TCT. At minimum, it must conduct ocular inspection of the property to verify its ownership or possession.
7. The diligence requirement is non-waivable.

Examples when banks are held liable:

1. Debiting account after acknowledgement of deposit
2. Premature foreclosure of mortgage
3. Failure to provide full record of transactions for reconciliation purposes (5y retention period under AMLA cannot be invoked)
4. Failure to detect wife's forged signature in REM.
5. Failure to call client's attention in filling up forms.
6. Dishonor of check despite being fully funded.
7. Failure to detect forged signature of its depositor.

## 5. Prohibited Transactions by Bank Directors and Officers

DOSRI rules and regulations – procedural and substantive requirements which the bank must comply with in granting loans to its directors, officers, SH, and their related interests.

No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, **borrow** from such bank nor shall he become a **guarantor, endorser or surety** GES for loans from such bank to others, or in any manner be an **obligor or incur any contractual liability** to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: Provided, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a **fringe benefit plan** approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral.

1. Unless the requirements\*\* are complied with, a bank director or officer is prohibited, *directly or indirectly*, for himself or as representative or agent of others from – (i) **borrowing** from the bank; (ii) being a **guarantor**, endorser, surety GES for loans from the bank to others; (iii) being an **obligor** or incur contractual liability to the bank.
2. The prohibition does not apply if the DOSRI is both the borrower and guarantor, i.e., he obtained and guaranteed the loan himself.
3. The prohibition is not limited to transactions of loan, credit accommodations, guarantees LCG but also other transactions wherein the DOSRI incurs contractual obligation in favor of the bank, e.g., acquisition of property from the bank.
4. XPN: LCG under a BSP-approved **fringe benefit plan**.

Requirements\*\* ARC

1. Approval requirement – at least majority of entire board, excluding director concerned, must approve in writing the DOSRI transaction.
2. Reportorial requirement – the transaction must be: (i) entered to bank records, and (ii) a copy of the entry must be transmitted to BSP supervision/examination department.
3. Ceiling requirement – the amount of LCG must not exceed unencumbered deposits and BV of paid-up capital of concerned DOSRI, except non-risk loans.

*\*\* (i) failure to comply with each requirement gives rise to three distinct offenses; (ii) even if the loan was paid, the failure to comply with the requirements still constitutes violation of the DOSRI rules.*

Effects of violation:

1. Office of the bank director or officer may be declared vacant after due notice to BOD (administrative).
2. Bank director or officer shall be subject to the penal provisions of the New Central Bank Act (criminal). In addition to prosecution for other crimes, e.g., estafa. The prosecution for violation of DOSRI rules is not incompatible with prosecution for estafa. Since bank funds are acquired in fraud, the DOSRI did not become its owner; instead, a constructive trust is created.
3. The LCG transactions will **remain valid**, without prejudice to administrative and criminal sanctions.

Other prohibited transactions:

1. Making false entries in bank report or statement
2. Participating in fraudulent transactions
3. Disclosure of information other than deposits (latter is covered by law on secrecy of bank deposits)
4. Accepting gifts and commissions
5. Overvaluation of security
6. Outsourcing inherent banking functions, e.g., loans, deposits, incidental and related transactions.

## 6. Stipulation on Interests

Kinds: (a) monetary/conventional, (b) compensatory

(a) Monetary interest

1. Interest for use or forbearance of money agreed upon by the parties.
2. Requirement: No interest shall be due unless it has been (i) expressly stipulated (ii) in writing.
3. If expressly stipulated but not in writing, there is natural obligation only.
4. If expressly stipulated but (i) rate not specified, or (ii) rate is unconscionable or excessive: legal rate applies.
5. If no stipulation of interest: (i) mutuum is gratuitous; (ii) if debtor paid, he may recover on account of solutio indebiti.
6. Rate: (i) parties may freely agree; (ii) courts may strike down unconscionable or excessive U/E interest. N.B.: That debtor agreed is not a defense.
7. Interest rate nullified U/E – (i) principal obligation and interest stipulation not invalid; (ii) as if parties failed to agree on interest rate; (iii) legal rate applies; foreclosure if any, is void, since debt is not yet demadable.

Interest on interest

1. GR: interest due and unpaid shall not earn interest (simple).
2. XPN: (i) contrary stipulation; (ii) interest due which was judicially demanded shall earn interest from date of finality of judgment awarding sum of money until payment (compound).

**\*\*Interest rate to be applied from the time of finality of judgment awarding sum of money up to payment is the rate agreed upon if any, not the legal rate. Basis: Art. 2209 (see below) – Lara’s Gifts and Decors v. Midtown.**

#### Escalation clause

1. Stipulation authorizing the increase in interest rate as agreed upon by the parties.
2. Requirement for validity and enforceability – (i) There must be a corresponding de-escalation clause based on rate adjustments by MB, or written assent of depositor; (ii) must provide that there can be increase in interest rates if allowed by law or MB, and that there must reduction in case of reduction of maximum rates by law or MB.

#### (b) Compensatory interest

1. Interest in the concept of damages.
2. Imposed by law (Arts. 1170, 2209) without need of express stipulation in writing.
3. Art. 1170 – those who are guilty of fraud, negligence, delay, or in any manner contravene the tenor of obligation are liable for damages.
4. Art. 2209 – in obligations to pay money and the debtor incurs in delay, the indemnity for damages shall be the payment of stipulated interest, or legal interest if there is no stipulation.
5. When due: from time of default/delay. GR: no demand, no delay, no interest.

#### In monetary obligations

1. With stipulated interest – indemnity for default is stipulated interest, or legal rate (if U/E). N.B.: stipulated rate applies even in the supervening period, i.e., from finality of judgment up to payment.
2. Without stipulation – indemnity for default is legal rate.

#### In non-monetary obligations

1. If liquidated – legal rate may be imposed from date of demand
2. If unliquidated – legal rate may be imposed from date of judgment

#### Legal rate:

1. 12% - up to June 30, 2013
2. 6% - starting July 1, 2013, prospective.

### **C. Secrecy of Bank Deposits (R.A. No. 1405, as amended, and R.A. No. 6426, as amended)**

#### **1. Purpose**

##### RA 1405 (Ph currency deposits)

1. To encourage people to deposit their money in banks.
2. To discourage personal hoarding.
3. To allow circulation of money.

##### RA 6426 (Foreign currency deposits)

1. To encourage the expansion of foreign currency deposits in the Ph.

#### **2. Prohibited Acts**

##### RA 1405

Bank deposits are absolutely confidential and may not be examined inquired or looked into by any person, including the government, save for exceptions provided by law.

1. It is prohibited for bank officials and employees disclose or allow the examination/inquiry of covered bank deposits\*\* in favor of any person, government official, bureau, office.
2. However, the following are not covered: (i) disclosures made by non-bank official or EE; (ii) disclosures of bank official or EE in favor of co-EE in the course of the performance of their duties.

##### RA 6426

1. Same prohibitions apply.
2. In addition, foreign currency deposits\*\* shall not be subject to attachment, garnishment, any other order or process of any court, legislative body, government agency, any other administrative body.

**\*\*Evidence obtained in violation of the confidentiality under RA 1405 and RA 6426 are not inadmissible evidence. The laws did not provide for such consequences.**

### **3. Deposits Covered\*\***

#### RA 1405 PIT

1. Any information concerning **Philippine currency deposits** of whatever nature and kind – applies even to mere disclosure of existence of the bank deposit even without indicating details.
2. Any information concerning **investments in government securities**, including bonds.
3. Any information on **trust funds** or any sum of money invested in the bank which the bank may use for loans and similar transactions. These are now included in the term “deposits of whatever nature”. The secrecy extends not only to deposits which give rise to debtor-creditor relationship.

#### RA 6426

1. All foreign currency deposits authorized under the law (Act Establishing foreign Currency Deposit System), as well as foreign currency deposits authorized under PD No. 1034 (Act Establishing Offshore Banking System in Ph)

#### RA 8791 GBL: Confidential funds/properties

1. Information relative to the **funds or properties** in the custody of the bank belonging to private individuals, corporations, or any other entity. – includes: (i) properties, including notes and coins deposited in a safety deposit box, (ii) shares of stock, other properties held by the bank as security for loans.
2. Their disclosure to any unauthorized person by a director, officer, employee, or agent of any bank is also prohibited.
3. XPN: if there is **order** of a court of competent jurisdiction.

### **4. Exceptions from Coverage**

#### RA 1405 PIO

1. Written **permission** of the depositor\*\* – (i) the account owner must be a party and signatory to the waiver; (ii) creditors cannot waive the confidentiality of the bank account of their insolvent debtor; (iii) mere allegation of beneficial ownership is not sufficient to waive bank secrecy, there must be proof of the same.
2. In cases of **impeachment**
3. Upon **order** of a competent court in cases of – (i) bribery or dereliction of duty of public officials, (ii) where the money deposited or invested is the subject matter of the litigation.

#### Order of competent court BriMIG Pua

1. **Bribery**, dereliction of duty of public officials.
2. **Money deposited** is SM of litigation – (i) determined based on allegations in complaint/INF stating that money subject of offense, e.g., theft, was deposited in a particular bank account; (ii) the money deposited must be the very subject matter of the litigation, e.g., recovery of money erroneously deposited in a particular bank account; (iii) inquiry is not proper if the deposit is not disputed, only the proper legal treatment of the amount paid.
3. **Prosecution** for unexplained wealth.
4. Prosecution for violation of Anti-graft and Corrupt Practices Act. The OMB may subpoena deposit



account information and inspect the same in chambers if: (i) there a pending case before a competent court; (ii) the account was clearly identified; (iii) the inspection is limited to the SM of the pending case; (iv) the bank personnel and account holder were notified to be present during the inspection.

5. Bank **inquiry** order\*\* issued by CA upon ex parte application of AMLC to examine bank deposits/ investments/related accounts **DIRa** based on probable cause that the DIRa are related to a predicate crime. XPNs:\*\* bank inquiry order is not required if the predicate crimes are KiD HITS – (i) Kidnapping for ransom; (ii) Violations of CDDA; (iii) Hijacking; destructive arson; murder; (iv) Terrorism and conspiracy to commit terrorism; (v) Similar offenses punishable in foreign laws.
6. **Garnishment** of Philippine currency bank deposits (see below)

*The following are not competent courts (cannot order inquiry)*

1. Congress committee re: inquiries in aid of legislation.
2. Prosecutor cannot subpoena bank records as part of clarificatory process.
3. Office of Special Investigation (OSI) BSP cannot demand disclosure of bank deposits in relation to its investigations which are administrative in nature.

*Other exceptions*

1. Under NIRC\*\* – BIR may inquire into the bank deposits of TP: (i) to determine gross estate of deceased for purposes of computing estate tax; (ii) to determine financial capacity of TP who offers compromise on ground of financial incapacity; (iii) exchange of information with foreign tax authority; (iv) distraint.
2. Under Unclaimed Balances Law – (i) banks must disclose to the National Treasurer information<sup>35</sup> on dormant accounts: (a) those whose account holders were known to be dead; (b) those non-moving for  $\geq 10$ y; (ii) the unclaimed balances shall be escheated in favor of the government upon proper action filed by the OSG.
3. PDIC/BSP may inquire if there is finding of unsafe and unsound banking practice.
4. BSP may inquire during regular or special examination to determine compliance with AMLA.
5. Under ATA, ATC may inquire into bank accounts related to terrorism or terrorism financing activities.
6. PCGG may inquire into bank deposits for purposes of recovering ill-gotten wealth.
7. Under FRIA, a rehabilitation receiver may inquire into bank deposits.
8. Under New Central Bank Act, DOSRI are required to execute a written waiver of secrecy of bank deposits in relation to prohibited transactions.
9. In case of amendment or repeal of law guaranteeing the confidentiality of bank deposits.
10. If account holder is **not the owner** of the foreign currency account, as when he holds the same in trust for another since only the owner may invoke the confidentiality of the bank accounts.\*\*
11. If the person seeking to inquire is a co-owner, which amounts to an express permission.

RA 6426

1. Written permission of the depositor

**\*\*Also applicable to foreign currency deposits.**

Exceptions not available against FCD

1. Upon order of a competent court in cases of – (i) bribery or dereliction of duty of public officials, (ii) where the money deposited or invested is the subject matter of the litigation.
2. Under Unclaimed Balances Law, FCD cannot be escheated since it is akin to garnishment.

## 5. Garnishment of Deposits, including Foreign Deposits

RA 1405 does not prohibit the garnishment of Ph currency bank deposits.

1. Garnishment is merely incidental to the execution process.
2. Bank accounts are not exempt assets as there is nothing in the deliberations of Congress indicating such exemption.
3. Presupposes the existence of a F&E judgment against the account holder.

RA 6426 expressly exempts foreign currency deposits from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body.

1. XPN: if the deposit was made by a transient tourist. His bank accounts may be garnished in satisfaction of civil liability arising from crime.
2. Deposits of transients is not the kind of deposit encouraged by the FCDU law, especially if the depositor committed wrongful act while in Ph.

## D. Anti-Money Laundering Act (R.A. No. 9160, as amended by R.A. No. 9194, 10167, 10365, 10927, and 11521)

### 1. Policy

1. To protect and preserve the integrity and confidentiality of bank accounts.
2. To ensure that the Ph will not be used as money laundering site for the proceeds of any unlawful activity.
3. To extend cooperation in transnational investigations and prosecutions of persons involving money laundering activities.
4. To extend cooperation in the implementation of targeted financial sanctions related to the financing and proliferation of weapons of mass destruction, terrorism, and financing terrorism.

### 2. Covered Institutions and Their Obligations

(a) Covered institutions **BIS JeSCRO**

1. Persons regulated by **BSP** – banks, etc. including subsidiaries and affiliates.
2. Persons regulated by **IC** – insurance companies, etc.
3. Persons regulated by **SEC** – securities dealers, mutual funds, forex corporations, fund managers, investment agents, consultants, etc.
4. Designated Non-Financial Business and Professions DNFBPs

**DNFBPs**

1. **Jewelry** dealers trading precious metals/stones for transactions >1M.
2. Company **service** providers of: (i) formation of juridical person, (ii) directors/corporate secretary; (iii) provider of office or business address; (iv) acting as nominee SH for another person.
3. Personal service providers of: (i) asset/securities management; (ii) organizing contributions for creation, operation, management of companies; (iii) creation, operation, management of juridical persons; (iv) buying/selling business entities.
4. **Casinos** re: cash transactions related to their gaming operations (including internet-based).

<sup>35</sup> (i) names, last known address of depositor; (ii) amount and kind of balance, date outstanding; (iii) date of death or last withdrawal of depositor; (iv) interest, if any.

5. **Real** estate developers/brokers (but not salespersons)
6. **Offshore** gaming operators, service providers supervised, accredited by PAGCOR or other government agencies.

#### AMLC

1. Not a covered institution.
2. It cannot invoke confidentiality of records to refuse a subpoena duces tecum and ad testificandum issued by SB in relation to investigation of graft and corrupt practices. Otherwise, it will defeat its very purpose of commencing civil and criminal actions related to money laundering.

#### (b) Obligations of covered institutions

##### Primary

1. Customer identification – (i) establishment of record of true identity of clients based on official documents; (ii) maintenance of system for verification of true identity of clients. Anonymous accounts, and accounts under fictitious names are absolutely prohibited. However, numbered accounts are allowed, subject to annual testing by BSP.
2. Record keeping – (i) maintenance and storage of records for 5y from date of transaction or account closure; or (ii) until termination of related case upon confirmation of AMLC. The 5y retention period is only for purposes of reporting under AMLA, but it should not defeat the bank's obligation to observe HiSIP. Hence, it cannot be invoked to defeat the account holder's demand for record for purposes of reconciling his outstanding loan balance.
3. Reporting of covered and suspicious transactions CST

##### Other obligations

1. Implementation of freeze order
2. Comply with bank inquiry order
3. Implementation of targeted financial sanctions – (i) applies to bank accounts identified as related to terrorist activities or proliferation of weapons of mass destruction; (ii) bank accounts are barred from receiving deposits.

### 3. Covered Transactions

#### OJ SCAr

1. Transactions in cash or equivalent <P500k in one banking day.
2. Jewelry transaction >1M.
3. Single casino **cash transaction** (not check) >P5M or equivalent in foreign currency.
4. Single real estate cash transaction >P7.5M or equivalent in foreign currency.

**\*\*Report on covered transactions must be filed within 5wd.**

### 4. Suspicious Transactions

Transactions with covered persons, regardless of amount, under certain circumstances:

1. **No** underlying legal/trade obligation, purpose, economic justification OPE.
2. **Client** not properly identified.
3. **Amount** involved not commensurate with business or financial capacity of client BFC.
4. **Perception** of the transaction as being structured to avoid being subject to reporting requirements under the Act TSAR. E.g., transacting for less than threshold amount successively
5. Circumstances observed to **deviate** from the client's profit or past transactions with the covered person PPT.
6. Transaction is in any way **related** to an unlawful activity or offense under the Act that is about to be, is being, or has been committed.

7. Similar or **analogous** transactions.

**\*\*Report on suspicious transactions must be filed within next working day where the transaction was determined suspicious.**

### 5. Safe Harbor Provision

Exempts from administrative, criminal, or civil proceedings any person for having made a covered or suspicious transaction report (i) in the **regular** performance of his duties, and (ii) in **good** faith, whether or not the reporting results in any criminal prosecution under AMLA or any other Ph law.

### 6. Money Laundering (How Committed; Unlawful Activities or Predicate Crimes)

In general, money launder is a crime whereby the **proceeds** of an unlawful activity or transaction are **deposited** in a bank, thereby making them **appear** to have originated from legitimate sources PDA OLS

#### How committed:

1. By any person who, knowing that monetary instrument or property **MIP** represents, involves, or relates to the proceeds any unlawful activity – (i) **transacts** the MIP; (ii) **converts**, transfers, disposes of, moves, acquires, possesses, uses the MIP **CoD TAMPU**; (iii) **conceals**, disguises CD true nature, source, location, disposition, movement, ownership **Lo NS DOM** of or rights with respect to said MIP; (iv) Attempts/conspires to commit money laundering offenses referred to above; (v) Aids, abets, assists, counsels the commission of money laundering referred above; (v) Performs/omits an act which facilitates the offense of money laundering referred above.
2. By a covered person who knowing that a covered or suspicious transaction is required to be reported to the AMLC, fails to do so.

#### Predicate crimes

##### High crimes/ex parte Bank Inquiry Order **HIT KIDS**

1. **kidnapping** for ransom
2. violation of **CDDA**
3. **hijacking**; destructive arson; murder
4. **terrorism**; conspiracy to commit terrorism
5. financing of terrorism
6. violation of Strategic Trade Management Act (re: proliferation of weapons of mass destruction)

#### Crimes committed by public officers

1. violation of AGCPA
2. plunder
3. bribery; corruption of public officers
4. frauds and illegal exactions and transactions
5. malversation of public funds

#### Crimes against property

1. robbery and extortion
2. qualified theft – if simple theft, there is no money laundering.
3. swindling
4. violation of Anti-Carnapping Act
5. violation of Anti-Fencing Law

#### Crimes against persons/chastity

1. violation of Anti-Trafficking of Persons Act
2. violation of Migrant Workers and Overseas Filipinos Act
3. violation of Anti-Photo and Video Voyeurism Act
4. violation of Anti-Child Pornography Act
5. violation of Special Protection of Children Against Abuse, Exploitation, and Discrimination

#### Violation of commercial laws

1. smuggling
2. violation of e-commerce act

3. fraudulent practices and other violations of Securities Regulation Code
4. violation of Intellectual Property Code
5. violations of certain NIRC provisions – (i) deficiency basic tax due <**25M** per taxable year; (ii) there is finding of **fraud, willful misrepresentation or malicious intent** on the part of taxpayer; (iii) AMLC shall no longer institute forfeiture proceedings if the BIR already recovered the same.

#### Violation of environmental laws

1. Revised Forestry Code
2. Philippine Fisheries Code
3. Philippine Mining Act
4. Wildlife Resource Management Protection Act
5. National Caves and Cave Resources Management Protection Act

#### Other crimes

1. jueteng and masiao
2. violation of law re: firearms, ammunition, explosives
3. piracy on the high seas
4. forgeries and counterfeiting

**\*\* The money launderer need not be the one who committed the unlawful activity.**

### 7. Anti-Money Laundering Council and its Functions

AMLC is the principal government agency tasked to carry out the implementation of the Anti-Money Laundering Law.

#### Functions:

1. Require and receive covered transactions report from covered persons. – AMLC is not a mere repository of these reports. It has the positive duty to prosecute money laundering offenses. Hence, it cannot refuse to furnish such reports to SB on grounds of confidentiality. It is not a covered entity under AMLA.
2. Order supervising authority or covered persons to determine the true identity of the owner of any MIP subject of covered transaction report; request assistance of foreign state in relation thereto.
3. Institute civil forfeiture proceedings through OSG. – if the respondent petitions for the release of forfeited funds, AMLC must submit a comment/opposition, without need for court to declare the petition sufficient in form and substance. Otherwise, the court has no option but to release the funds.
4. File complaints with DOJ or OMB for prosecution of money laundering offenses. – **AMLC has no prosecutory powers.**
5. Investigate covered transactions, money laundering activities, other violations of the Act.
6. Apply before CA for ex parte **freeze order**.
7. Implement measures to counteract money laundering.
8. Receive and act on requests from foreign states in their own money laundering operations.
9. Develop relevant educational programs.
10. Enlist assistance of other government offices in all anti-money laundering operations.
11. Impose administrative sanctions for the violation of laws, rules, regulations, orders, resolutions issued pursuant to the law.
12. Require LRA, RDs to submit reports on real estate transactions with amount >500k within 15 days from registration.
13. Apply for search and seizure order in the conduct of its investigations.
14. Apply for issuance of subpoena duces tecum and ad testificandum in the conduct of its investigations. – **AMLC has no subpoena powers.**

15. Implement targeted financial sanctions in relation to the proliferation of weapons of mass destruction, including ex parte freeze order.
16. Preserve, manage, dispose assets pursuant to freeze order, asset preservation order, judgment of forfeiture.

### 8. Authority to Inquire into Bank Deposits

BIO is an order authorizing the AMLC to examine particular deposits or investments in banking institutions and NBFIs.

1. AMLC cannot examine the bank accounts of accused/respondents without prior BIO. A BIO must be secured from CA, upon ex parte application by AMLC and finding of PC that the bank accounts relate to an unlawful activity.
2. XPNs: **HiT KiDS** if there is probable cause to believe that the MIP are related to – (i) hijacking, destructive arson, murder; (ii) terrorism, or conspiracy; (iii) kidnapping for ransom; (iv) violation of CDDA; (v) similar offenses.
3. Does not prevent deposits/withdrawals; a freeze order must be secured.

#### Safeguards

1. AMLC must establish a **probable cause** for its ex parte application for a bank inquiry order.
2. CA must also make an **independent** determination as to whether there is probable cause to believe that the deposit is related to any unlawful activity specified in the AMLA application.
3. A bank inquiry order for a **related** account shall be preceded by a bank inquiry order for a principal account, and based on a determination that probable cause exists that the related account is materially linked to the principal account.
4. The **authority** of the AMLC to inquire into the accounts subject of a bank inquiry order shall comply with Sections 2 and 3, Art. III of the Constitution.

#### Constitutionality of BIO

1. Does not violate due process since there is no seizure or deprivation of property.
2. Does not violate right to privacy since the confidentiality of bank accounts is mere statutory privilege. Congress may provide exceptions.
3. No violation of proscription against ex post facto law. Bank accounts opened after effectivity of AMLA may be inquired into. However, transactions prior to it shall not be covered.

### 9. Freezing of Monetary Instrument or Property

Freeze order is an extraordinary and interim relief issued by the **CA** to prevent the dissipation, removal or disposal of MIP suspected to be proceeds of or related to unlawful activities defined in the Act.

1. AMLC does not have the power, by itself, to freeze deposits. The power is lodged with the **CA through the issuance of a freeze order**, upon its application.
2. Freeze order does not carry with it the authority to inquire into the bank account; a separate bank inquiry order must be secured. However, a prior BIO is not required for issuance of Freeze Order and vice versa. BIO and FO may be applied for simultaneously, and proceedings for issuance of BIO and FO may be joined.
3. FO shall be limited to the amount of money or value of property for which PC was found.
4. Lifting is proper if: (i) the accounts were closed or had minimal deposits; (ii) the AMLC failed to show PC that the accounts were related to any predicate crime, or involved a covered or suspicious transaction; or (iii) the AMLC failed to comment on the petition by respondent for the release of forfeited funds.

- Only the **CA or SC may issue a TRO** or writ of injunction against a freeze order.

*Freeze Order involving terrorism or terrorism activities may be issued by AMLC, provided:*

- There is PC that funds or property sought to be frozen are related to terrorist or terrorist financing activities.
- The terrorist organization has been designated as such by the relevant international instruments or the ATC, or declared as such through a preliminary order of proscription by CA.

#### Effectivity

- 20d from effectivity
- May be extended up to a **maximum period of 6m** – beyond this, there is already violation of the account holder's right to due process.
- If not civil/criminal case was filed against the account holder after 6m, the FO shall be deemed ipso facto lifted.

#### Remedies of account holder:

- Oppose** the issuance of freeze order in summary hearing.
- MTQ/Motion** to set aside the order granting the freeze order.
- Petition for **certiorari** with the SC.

#### Asset preservation order

- Order issued by the court having jurisdiction over Civil Forfeiture Proceeding, or criminal action for money laundering.
- Ancillary proceeding and cannot be filed as an independent action.
- Within 6m from effectivity of freeze order, a civil or criminal action must already be filed in the proper court.

### III. Insurance Law

#### A. Basic Concepts

##### 1. Elements of an Insurance Contract

An agreement whereby the insurer undertakes for consideration to **assume** an identified risk arising from an unknown or contingent event and **indemnify** the insured against loss, damage or liability **LDL** arising from the same.

- Only a juridical person can be an insurer.
- Anyone, except a public enemy can be insured (war).
- Principal purpose test – if the primary purpose of a contract is assumption + indemnity, it is insurance. Otherwise, it is not.
- A contract of suretyship is not an insurance contract, unless made by surety doing an insurance business.
- HMOs are service providers, not insurers.

#### Elements **PARIS**

- Insurable interest – (i) Such interest over the SM of the insurance that: (a) the insured will derive pecuniary **benefit** or advantage from its preservation, or PBA, or (b) suffer pecuniary **loss** or damage upon its destruction, termination or injury **DTI** by the happening of the peril insured against PLD; (ii) lack of insurable interest when required renders the insurance contract void. The insured does not stand to suffer a loss.
- Risk – (i) Any contingent (future) or unknown (past) event which may either (a) damnify (loss or damage) a person having insurable interest; (b) create liability against him **LDL**; (ii) if the SM was already LD or liability already incurred at the time of perfection of insurance contract, the same is void.
- Assumption – promise of insurer to assume an identified risk arising from an unknown or contingent event and indemnify the insured against LDL arising from the same.

- Scheme – the assumption must be part of a general scheme to distribute actual losses among a large group of people sharing similar risks **DiGRI**
- Premium – (i) consideration paid by the insured in exchange of the insurer's promise of assumption + indemnification; (ii) contract of insurance is generally perfected upon payment of premium.

### 2. Characteristics/Nature of Insurance Contracts

#### **RUVIPACA**

(a) Risk distribution: insurance is a risk-distribution scheme whereby the risk of economic loss is distributed across a large group of people sharing similar risks

#### (b) **Uberrimae fidei**

- Insurance is a contract of perfect or utmost good faith.
- Concealment, misrepresentation, breach of warranty are grounds for its rescission based on this characteristic.

(c) Voluntary: parties may set for terms as are convenient provided not contrary to law, mgcpopp.

#### (d) **Indemnity**

- Actual loss is the measure of the amount that may be recovered by the insured. In property insurance, double insurance and overinsurance are prohibited as insurance is not an investment contract but a contract of indemnity.
- No contract or policy of insurance shall be enforceable except for the benefit of some person having insurable interest in the property insured. The insured must suffer a LDL to be entitled to the proceeds.

#### (e) **Personal**

- It binds only the insurer and the insured, although the latter may designate a beneficiary.
- In entering the contract, the character, qualification, and conduct of the parties were material.
- In case of happening of the risk insured against, the proceeds is payable only to the insured, notwithstanding contract agreement entered into by the latter to which the insurer is not privy.

#### (f) **Adhesion**

- Insurance contracts are generally prepared by the insurance company without participation from the insured. However, such fact does not render the contract void per se.
- If terms are clear, the plain and ordinary meaning of words use are controlling. But in case of doubt, the terms shall be construed liberally in favor of the insured, and strictly against the insurer, **especially to prevent forfeiture**.

(g) Conditional: the insured must strictly comply with the conditions of the contract. Otherwise, the insurer has the right to deny the claim.

(h) Aleatory: liability on part of the insurer depends on the happening of a contingent or unknown event.

### 3. Classes of Insurance

#### a) **Marine**

##### (a) Coverage

- Marine insurance is a type of insurance against: (i) loss or damage to vessels, all kinds of property and interests therein, and others incident to marine travel, as well as (ii) death, illness or injury to persons, relating to perils of navigation, transit, or transportation **PRiNTT** (perils of the sea).
- The shipowners have insurable interest over the ship, freightage and cargo. The cargo owners over



their cargo. The charterer to the ship and cargo to the extent that it may be damaged by its loss.

(b) Perils insured against

1. Only perils of the sea are insured against, but not perils of the ship, except in case of an all-risk marine insurance policy. **ARMIP**
2. ARMIP covers all losses from **accidental** causes connected with the voyage or transportation, whether POTSh or POTSe, unless excepted. XPNs: (i) excepted risks, (ii) losses due to willful or fraudulent acts of the insured.
3. In ordinary MIP, burden is on the insured to prove that the loss arose from covered peril. In ARMIP, burden is on the insurer that the loss arose from an excepted peril or the willful or fraudulent acts of the insured to resist payment. The insured only has the preliminary burden to prove that the cargoes were in good condition when loaded.

*Perils of the sea POTSe*

1. Perils of navigation.
2. Must be the proximate cause of the loss to allow recovery.
3. Includes: (i) Casualties arising from unusual violence or EO cases **UV EC** connected with navigation; (ii) Loss of EO nature which cannot be guarded against by ordinary human skill or prudence **OHSP**.
4. Rusting of steel pipe in the course of voyage is POTSe.

*Perils of the ship POTSh*

1. Ordinary, natural, inevitable ONI actions of the sea.
2. Ordinary wear and tear of the ship.
3. Negligent failure of the shipowner to provide the ship with sufficient crew complement, and proper equipment under ordinary conditions.
4. E.g., losses arising from: (i) improper/over loading of cargo; (ii) inexperienced/unlicensed captain; (iii) sabotage by crew; (iv) lack of weather monitoring device; (v) lack of life jackets; (vi) defective pipes; (vii) oil leak due to extensive mileage; (viii) strong winds which are usual in a particular area at a particular time, or which could have been reasonably anticipated.

(c) Implied warranties **SeCoND**

1. **Seaworthiness** of the vessel to make the voyage and/or take certain cargoes.
2. **Non-deviation** from voyage insured.
3. Carrying of necessary **documents** showing nationality or neutrality; not carrying documents that will cast reasonable suspicion thereon.
4. Not carrying of **contraband**, especially if making voyage through belligerent waters.

*Seaworthiness*

1. A vessel is seaworthy if it is reasonably fit to (i) perform the service and (ii) encounter ordinary perils of the voyage contemplated by the parties.
2. Covers – (i) condition and structure of ship; (ii) ship properly laden; (iii) provided with competent/adequate master and crew; (iv) provided with proper equipment, provisions (food, fuel), and other implements EPI of the voyage.
3. In case of supervening unseaworthiness during voyage, it must be brought to repair. An unreasonable delay is ground to exonerate the insurer.
4. Seaworthiness also includes cargoworthiness, i.e., the fitness of the ship to load certain kinds of cargo. E.g., a passenger ship used to load live cattle is not cargoworthy.
5. The cargo owner has duty to (i) to select a seaworthy ship, or (ii) procure an ARMIP to protect itself from loss. Lack of knowledge of the vessels

unseaworthiness cannot be invoked to recover from the policy. It is the owner's duty to select seaworthy vessel, not the insurer.

**\*\* The hypothecary principle limits the liability of the shipowner to his interest in the vessel. This does not apply if the shipowner is at fault for not making the vessel seaworthy and/or for any claims of crewmembers.**

*Non-deviation from voyage insured*

1. Voyage insured – (i) that which conforms to the course of sailing fixed by mercantile usage; (ii) if not fixed, that which to a master of ordinary skill and discretion, is the most natural, direct, and advantageous between the place of departure and destination **OSD NDA**.
2. There is deviation if there is – (i) departure from the voyage insured; (ii) unreasonable delay in commencing the voyage; or (iii) commencing an entirely different voyage.
3. Proper deviation – **BARS** (i) circumstances **beyond** the control of the master or shipowner; (ii) to **avoid** a peril, whether insured against or not, or to comply with a warranty; (iii) made in GF and upon **reasonable** grounds of belief of necessity to avoid a BNA peril; (iv) made in GF, and necessary to **save** human lives, or relieve another vessel in distress.
4. In case of improper deviation, the insurer is exonerated.

(d) Loss in marine insurance

1. Loss may either be total or partial. Total loss may either be actual or constructive.

*Actual total loss TIDO*

1. **Total** destruction of the thing.
2. **Irrecoverable** loss of the thing due to sinking or being broken up.
3. **Damage** to the thing which renders it valueless to the insured for the intended purpose.
4. **Other** causes which effectively deprive the insured of the possession, at the port of destination, of the thing insured.

*Constructive total loss*

1. There is CTL if the loss amounts to  $> \frac{3}{4}$  of the value of the thing insured, but not sufficient to qualify as no actual total loss. The insured is entitled to full recovery of the insurance proceed as if there had been actual total loss if he **abandons** the thing insured in favor of the insurer.
2. " $\frac{3}{4}$ " – (i)  $> \frac{3}{4}$  of the thing's value is actually lost, (ii)  $> \frac{3}{4}$  will must be expended to recover or restore it, or (iii)
3. If there is no CTL the insurer shall be liable only to the extent of the actual loss.

*Abandonment*

1. Insured's act of relinquishing his interest on the thing insured in favor of the insurer after the occurrence of a constructive total loss, which will allow him to recover as if there had been an actual total loss.
2. Requisites – (i) neither be **partial** nor conditional, (ii) must be made within **reasonable time** from receipt of reasonable information of loss, (iii) oral or written notice to insurer. Written notice must be given within 7d from oral notice; (iv) notice must be explicit and specify the ground for abandonment; (v) the abandonment can be sustained only upon the grounds stated in the notice; (vi) must be accepted by the insurer, express or implied; (vii) once accepted, the abandonment is irrevocable.
3. Effects – (i) insured is entitled to claim actual total loss; (ii) insurer is entitled to all interest of the

insured over the thing insured, with all the chances of recovery and indemnity.

#### b) Fire

##### (a) Coverage

1. Fire insurance generally covers hostile (not friendly) fire. Hostile fire is on that one that goes out of control beyond its intended limits.
2. It also covers allied risks as lightning, windstorms, tornados, earthquake WELT – (i) by extension, or (ii) in a separate policy.

##### (b) Kinds of policies and measure of indemnity MOI

1. Open – (i) value of the thing is not agreed upon; (ii) MOI is the actual loss (replacement cost) of the thing at the time of the fire; (iii) amount in the policy represents maximum liability.
2. Valued – (i) value of the thing is agreed upon; (ii) MOI is the valuation appearing on the face of the policy.
3. Running – contemplates successive insurance, which provides that the object of the policy may be defined from time to time by additional statements or indorsements.

##### (c) Grounds for rescission

1. Non-disclosure of other insurance – (i) when required under a policy, the failure to disclose other insurance taken on the same property nullifies the former and bars the insured from recovery; (ii) amounts to false declaration or misrepresentation of material fact.
2. Alteration in use or condition of thing insured if: **SACIW** (i) use or condition of the thing is **stated** in the policy; (ii) there is material **alteration** in the use or condition; (iii) alteration is without **consent** of the insurer; (iv) alteration **increased** the risk insured against; (v) alteration was **within** the control of insured. The insurer cannot rescind the policy even if there is alteration in the use of the thing, if the alteration did not result in the increase in the risk insured.
3. Increase in risk – (i) not per se a ground for rescission if particular act is not prohibited by the policy; (ii) but even if there is no increase in risk, if the insured's act is prohibited by the policy, the same shall be ground to rescind the policy.

**\*\*Subject to rules on double insurance or overinsurance (see below).**

#### c) Casualty

##### (a) Coverage

1. Loss or liability arising from **accident** or mishap AM. XPN: certain types of loss which by law or custom fall exclusively within the scope of other types of insurance like fire or marine.
2. Accident means that which happens by chance, fortuitously, without intent or design, **ChaFID** and which is unexpected, unusual or unforeseen **FUX** – it covers those (i) arising from ordinary negligence; (ii) intentional, voluntary acts of a third persons constituting a crime or offense.
3. Does not cover those: (i) arising from insured's voluntary act; or (ii) natural and probable result of such voluntary act **NP VA**

##### Notes:

1. In exception clauses in theft/burglary insurance exempting insurer from liability for acts of EEs or authorized representatives of insured, the term "EE" includes contracted security guards or drivers by the bank to transport money. In any case, they may also fall under "authorized representatives".

2. The relatives of the deceased may directly claim from the insurer in an insurance taken by the ER which provides that the insurer "shall indemnify his personal representatives and at the Company's option may make indemnity payable directly to the claimants or heirs of the claimants".

#### d) Suretyship

##### (a) Coverage

1. A contract to guarantee the performance by the obligor of the obligation in favor of the obligee.
2. Generally, not an insurance contract, except when done by a surety engaged in the insurance business.

##### (b) Surety's liability

1. Solidary; direct, immediate, primary, and absolute. – (i) surety is liable to the same extent as the obligor; (ii) he has no benefit of excussion; (iii) the obligee may sue the obligor, the surety, either or both.
2. Secondary or ancillary to the principal obligation. – (i) the existence of principal agreement must be proved; (ii) the liability of the principal obligor must be fixed. If the same is submitted to arbitration, the surety's liability cannot be determined until the obligor's liability is fixed; (iii) surety may set up compensation and raise defenses available to the obligor; (iv) the surety contract need not be supported by a consideration separate from that of the principal obligation.
3. Limited to the amount of the bond. – (i) does not cover costs that may be adjudicate to the prevailing party in case the action secured is found unmeritorious.
4. Interest. – If the surety agreement is silent, the maximum liability of the surety is exclusive of interest. XPN: contrary stipulation.
5. Strict construction against the surety and liberally in favor of the insured (contract of adhesion).

##### (c) Premium payment

1. GR: premium payment is necessary to make the surety contract valid and binding. XPN: if the obligee has accepted the bond, it becomes valid and enforceable, notwithstanding absence of premium payment.
2. The surety is entitled to payment of premium as soon as the contract of suretyship or bond is perfected and delivered to obligor.
3. If the bond is not accepted, the surety shall collect only a reasonable amount, not exceeding 50% of the premium as service fee + cost of stamps, taxes. XPN: if the non-acceptance was due to the surety's fault, it cannot collect service fees or costs.

#### e) Life

##### (a) Coverage

1. (i) Insurance on human lives, and those appertaining thereto or connected therewith; (ii) Contract for payment of annuities or endowments; (iii) Contract for payment of lump sums under a retirement program managed by an insurance company or where it acts as trustee.
2. Covers accidental deaths, and those arising from ordinary negligence of the insured. E.g., death in boxing competition, accidentally shooting oneself thinking the gun was unloaded.

##### (b) Kinds

1. Term – insurer is liable only if the insured dies within the policy term.
2. Whole life/permanent – insurer is liable whenever the insured dies.

3. Endowment – designed to pay a lump sum upon maturity: (i) if insured survives, it shall be payable to him; (ii) otherwise, to the beneficiary.
4. Industrial life – (i) premiums are payable weekly or monthly of oftener; (ii) face amount  $\leq 500 \times$  the daily minimum wage in Manila; (iii) the words “industrial policy” is printed in the policy.
5. Annuity – individuals agree to pay the insurance company in exchange of receiving annual payments until his death.

(c) Non-default/Forfeiture options

1. Extended term insurance – available cash value of the policy will be used to purchase a single term insurance.
2. Reduced paid up cash value – available cash value of the policy will be used to purchase a paid-up insurance with same term but lower amount.
3. CSV – CSV paid to the insured upon surrender of insurance, not subject to reinstatement.

**\*\* The insured is not entitled to a refund of the premium but he has non-default options.**

(d) Designation of beneficiary

1. Revocable or irrevocable.
2. If irrevocable – (i) the beneficiary acquires **vested right** over the insurance policy and its incidents, e.g. loan, CSV; (ii) acts of the insured impairing rights of irrevocable beneficiary are null and void. e.g., (a) changing the beneficiary; (b) designating additional beneficiary; (c) taking CSV. XPN: if the beneficiary consents.
3. If revocable – insured may (i) change beneficiary at any time before his death; (ii) designate additional beneficiaries; (iii) exclude one or some beneficiaries in case of joint designation.
4. Designation “coupled with interest” (reciprocal designation) is **not a recognized exception** to make the same irrevocable.

(e) Assignment

1. GR: LI policy is assignable either by assignment, or by will/succession to any person. XPNs: (i) if made to circumvent the law, being in favor of disqualified person; (ii) express provision in the policy requiring written notice of assignment to insurer. This will not nullify the policy, only the assignment. The proceeds are payable to the person designated in the policy.
2. The assignee need not have insurable interest in the life of insured since insurable interest in LI policy is required only at time of issuance.

(f) Proceeds

1. MOI is the sum fixed in the policy. XPN: if the interest of the person insured is susceptible of exact pecuniary measurement. E.g., a mortgagee who takes insurance on the life of the mortgagor which is limited to the amount of mortgage debt.
2. Proceeds is generally payable to the designated beneficiary. “The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy.” §53
3. If the insured predeceased – (i) proceeds is payable to the designated beneficiary. XPN: If the beneficiary is the principal, accessory, accomplice in bringing about the death if the insured, or otherwise DQ; (ii) in the latter, the proceeds shall accrue to (a) other beneficiaries; (b) according to terms of the policy; (c) estate of insured, in order.
4. If the designation is unlawful or there is no designation, proceeds is payable to the insured’s estate.

5. If the designation is joint – (i) division shall be based on terms of the policy, or equally if none was provided; (ii) if the designation of one/some is unlawful, the latter’s share shall accrue to the other qualified beneficiaries.
6. If the beneficiary predeceased – (i) if designation is revocable, proceeds shall accrue to the insured’s estate; (ii) if designation is irrevocable, proceeds shall accrue to the legal representative of the beneficiary. If policy is silent, the designation is revocable.
7. In an endowment policy – (i) beneficiary’s interest accrue only if the insured dies before the end of the endowment period; (ii) if insured survives, the proceeds are payable to him.
8. If the beneficiary kills the insured, the policy is not rendered ineffective, it is just a question of who shall be entitled to the proceeds of the policy. The insurer is still liable, only that the share of the guilty beneficiary is forfeited.
9. In mortgage redemption insurance, proceeds is payable to the heirs of deceased-mortgagor, if the debt was paid prior to the death of deceased.

(g) Period for payment of proceeds

1. GR: Immediately upon maturity of the policy.
2. XPNs: (i) installments or annuity shall be paid as they fall due; (ii) if maturing upon death, within 60d after (a) presentation of claim and (b) filing of the proof of death.
3. In case of delay, the beneficiary shall be entitled to collect interest at 2x the legal rate.

**f) Microinsurance**

Financial product/service which meets the needs of the poor.

1. The amount of premiums, contributions, fees  $\leq 7.5\%$  of the current daily minimum wage rate for nonagricultural workers in Metro Manila.
2. The maximum sum of guaranteed benefits  $\leq 1000 \times$  the current daily minimum wage rate for nonagricultural workers in Metro Manila.

**g) Compulsory Motor Vehicle Liability Insurance**

§387 (i) it shall be unlawful for any land transportation operator or owner of a motor vehicle (ii) to operate the same in **public highways** (iii) unless it is insured against death, bodily injury, or damage to property (iv) of a third party (not driver or passenger) or passenger (pertains to common carrier), arising from its use.

1. The insurer’s liability is **direct but not solidary**– (i) it is limited to the terms of the policy, and (ii) not co-extensive with the liability of the tortfeasor himself, unless the same is provided.
2. The injured parties may sue the insurer directly, or jointly with the tortfeasor. In such a case, the cause of action against them were distinct – (i) against the insurer, based on insurance policy; (ii) against the tortfeasor, based on tort. They are not solidarily liable.
3. Hence, the insured party may: (i) enforce the entire liability against the insurer, and the balance to the tortfeasor; (ii) enforce the entire liability against the tortfeasor, subject to reimbursement by the insurer as provided in the policy.
4. The insurer’s liability accrues **immediately upon the occurrence of the injury**, without needing to wait for the determination of the insured’s liability to the injured party.
5. Injuries not covered by the schedule of indemnities are chargeable against the excess cover insurance.

(a) No-Fault Indemnity Clause NFIC

1. Authorizes the immediate recovery against the insurer of the motor vehicle (i) for death or physical injury (ii) of a passenger or third party (iii)

- without the need of proving fault or negligence of any kind (iv) provided the conditions are present.
2. "No fault" means there can be recovery even if no negligence intervened as when a driver acts with due diligence but still bumped on a senile person.
  3. Damage to property is not covered as NFIC covers only death or injury to persons.
  4. Even if the accident was determined to be the fault of one party, the non-offending vehicle may still be held liable under the insurance policy, without prejudice to an action against the offending vehicle.

#### Conditions ToPO

1. Total indemnity shall be claimed ≤P15k per person.
2. Proof of loss – submission under oath of: **PDM** (i) **Police report** of the accident, (ii) **death** certificate and evidence sufficient to establish the proper payee, and (iii) **medical** report and evidence of medical or hospital disbursement.
3. One vehicle rule: claim may be made against one MV only – (i) if **occupant**, claim shall lie against the **insurer of the MV where he is riding**, mounting, or dismounting; (ii) if non-occupant (e.g., pedestrian), claim shall lie against the insurer of the directly offending MV, i.e., the MV who bumped the injured party. Without prejudice the right of the party paying the claim against the responsible vehicle.

#### Filing of claim

1. The claimant must file written notice of claim with the insurer within 6m from the date of accident. Otherwise, the claim is deemed waived. The filing of a written claim is condition precedent before filing an action in court.
2. In case of denial, the injured party has 1y from denial of the claim to file an action with the proper court.

#### (b) Authorized Driver Clause

1. If a MV is insured, and injury occurred while it is driven by someone other than the insured, claim will lie "authorized driver". Otherwise, the claim is barred.
2. "Authorized driver" – (i) One who is ordered or permitted to drive by the insured, (ii) permitted under law and regulations to drive a MV, and (iii) not disqualified to drive a MV under law or regulation OPD.
3. Non-citizen tourists in the Ph ≤90d having a driver's license issued by his country is authorized to drive MV. Otherwise he is not, i.e., stay >90d and has not Ph driver's license.
4. The driver's license must pertain to the vehicle being driven. An expired traffic violation receipt or temporary operator's permit is not a valid license.
5. The rule does not apply where the MV is driven by the insured himself.

#### (c) Theft Clause

1. Allows recovery from the policy whenever the possession of a MV is taken by a person without authority or permission from the owner-insured, or its use is diverted for an unauthorized purpose, with intent to gain.
2. There is theft even if the property was later returned. "Joyride" case.
3. Possession of driver's license is irrelevant in applying the theft clause. W/N the MV was driven by the owner, and W/N the driver had a valid license is, the insured will be entitled to recover

insurance proceeds if the MV is taken or used by another without his consent.

#### h) Compulsory Insurance Coverage for Agency-Hired Workers

Insurance mechanism made available by law to provide insurance coverage for OFWs.

It covers accidental death, natural death, permanent or total disablement, repatriation cost, subsistence allowance, money claim, compassionate visit, medical evacuation, medical repatriation.

#### 4. Insurable Interest

Such interest over the SM of the insurance that: (i) the insured will derive pecuniary **benefit** or advantage from its preservation, or PBA, or (ii) suffer pecuniary **loss** or damage upon its destruction, termination or injury **DTI** by the happening of the peril insured against PLD.

##### (a) In life and health

1. A person has insurable interest – (i) On his own life, his spouse [L], his children [L/I]; (ii) On any person upon whom he **depends** wholly or partially for education or support, or upon whom he has pecuniary interest; (iii) On any person under a legal **obligation** to him for the payment of sum or money, or respecting property or services, the death or illness of who may delay or prevent such performance; (iv) Any person upon whose life any **estate** or interest vested in him depends.
2. The beneficiary must have insurable interest over the life of insured at the time the insurance takes effect, but not necessarily thereafter.
3. If a person takes insurance on his own life, he may designate any beneficiary, w/n the latter has insurable interest in his life or not. XPNs: The ff. cannot be designated as beneficiaries – (i) Persons guilty of adultery or concubinage, without need for conviction; (ii) Person guilty of the same criminal offense, in consideration thereof; (iii) Public officials, his wife, descendants, or ascendants, by reason of his office [persons DQ to receive donations Art. 739 NCC]
4. Insurance proceeds **do not form part of the estate**.<sup>36</sup> The compulsory heirs cannot assail the assignment of beneficiary since they are **not parties** to the insurance contract.
5. A person has insurable interest on the life of his children, whether il/legitimate, even children of adulterous affairs.
6. A person has no insurable interest on the life of his parents unless he depends upon them for education or support.
7. A person may insure the life of a stranger (non-relative), provided he has insurable interest in the latter's life. – (i) he is dependent on insured for support; (ii) insured is obligor; (iii) estate or interest of person taking the insurance depends on the life of insured. Common law partners/same-sex partners does not have insurable interest over each other's life by mere virtue of their relationship. If one will take insurance in the other's life, insurable interest above must be shown.
8. A company or ER has insurable interest on the life of its EEs, executives, managers.

##### (b) In property

1. Every **interest** in property, whether real or personal, or any **relation** thereto, or **liability** in respect thereof, of such **nature** that a contemplated peril might directly damnify the insured is an insurable interest **IRL**. Insurable

<sup>36</sup> Unless the beneficiary predeceased, there are no other beneficiaries, and the designation is revocable.



interest is not dependent on **ownership** of property.

2. The beneficiary must have insurable interest over the property both at the insurance takes effect, and when the loss occurs, but need not exist in the meantime.
3. May be: (i) An existing interest, (ii) Inchoate interest founded on existing interest, or (iii) Expectancy, coupled with existing interest in that out of which the expectancy arises.
4. Inchoate interest founded on existing interest – (i) SH on corporate assets; (ii) purchaser at foreclosure sale before expiration of redemption period [the mortgagor also has insurable interest based on ownership]; (iii) buyer in contract to sell to the extent of amount paid; (iv) but a general creditor does not have insurable interest over the properties of his creditor unless prior to levy/garnishment. This is a mere inchoate right not coupled with existing interest.
5. Expectancy coupled with existing interest – (i) growing crops, (ii) expected freightage of common carrier; (iii) profits of partnership; (iv) but an heir's interest over the estate of predecessor is mere expectancy not coupled with existing interest.

#### *On mortgaged property*

1. Mortgagor – (i) has insurable interest as owner; (ii) if he is designated as beneficiary, the mortgagee is not entitled to proceeds, the latter only has lien over it; (iii) if mortgagee is designated as beneficiary, mortgagor does not cease to be a party. His acts may give cause for rescission of the policy.
2. Mortgagee – (i) has insurable interest as secured creditor to the extent of debt secured; (ii) acts of mortgagor are irrelevant to the policy.
3. In case of loss, the mortgagee may collect on the policy (taken by him or by mortgagor designating him as beneficiary) to the extent of the amount of debt or policy coverage. – (i) The debt is extinguished to extent collected from insurer; (ii) The insurer is subrogated to the rights of the mortgagee upon payment; (iii) The mortgagee may recover deficiency from the mortgagor.
4. There is no double insurance if both mortgagor and mortgagee insure the property.
5. If the mortgagor assigns the policy to the mortgagee within consent of the insurer, the mortgagor ceases to be a party to the policy.

#### *On foreclosed property*

1. Mortgagor – (i) has insurable interest after sale but before expiration of redemption period; (ii) upon expiration of said period without redemption, the insurable interest is lost.
2. Mortgagee – (i) has insurable interest after sale but before expiration of redemption period which is an inchoate right based on an existing interest; (ii) upon expiration of said period without redemption, the insurable interest is maintained as ownership is consolidated in his favor.

#### *(c) Change in insurable interest*

1. A change in the interest in the insured thing or part thereof, unaccompanied by change in interest over the insurance policy **suspends** the insurance to the extent of the change in interest, until the interest in the thing and the insurance are vested in the same person.
2. Change in interest contemplates absolute transfer of the insured's interest over the property, not when it is merely mortgaged, leased or sold at public auction before expiration of redemption period.
3. XPNs: (i) In **life**, health, or accident insurance; (ii) change in interest **after** occurrence of the injury

resulting to loss; insured is entitled to receive proceeds; (iii) Change in interest in of the **several** distinct things insured in the same policy; (iv) Change in interest by **will** or succession upon death of the insured [effective transfer to heirs]; (v) Transfer of interest in favor of co-partner, joint owner or co-owner in a **joint** insurance; (vi) If the **insurance** is framed in such a manner that it will inure to the benefit of whoever during the continuance of the risk may become the owner of the property.

### 5. Double Insurance and Overinsurance

#### *(a) Double insurance*

1. There is double insurance if two or more insurance is taken: (i) by the same person or insured; (ii) insured by several insurers separately; (iii) in respect to the same subject, interest, and peril **SIP**.
2. Double insurance or non-disclosure of other insurance is not per se a not ground to invalidate the policy, unless expressly prohibited. What is prohibited is over-recovery.
3. The rule on double insurance **applies only in property insurance**, not life insurance. There is no limit to the value of human life.
4. Other insurance clause – (i) provision in the policy requiring the disclosure by the insured of other insurance taken on the same property from another insurers; (ii) its violation avoids the policy; (iii) purpose is to prevent increase in moral hazard; (iv) disclosure to the agent is not sufficient, as the same must be made to the principal.

#### *(b) Recovery in case of double insurance*

1. The insured may recover from any of the insurer, in the order he may choose to the extent of their liabilities in their respective policies.
2. The insured may not recover more than the value of his actual loss. Excess recovery shall be held by insured in trust for the insurers.
3. Among themselves, the insurers are liable pro rata to their liability under the policy. This is binding only among the insurers but not the insured who may enforce the liability in a manner he deems convenient.

### 6. No Fault, Suicide, and Incontestability Clause

#### *(a) No Fault Indemnity Clause*

**\*\*See above**

#### *(b) Suicide*

1. The insurer is not liable if committed within 2 years from the time when the policy took effect.
2. The insurer is liable if committed: (i) after the policy has been in force for 2 years from the date of issuance or last reinstatement; (ii) while on the state of insanity.
3. Insanity includes recognized mental health conditions or disorder, e.g., Major Depressive Disorder.

#### *(c) Incontestability*

1. After a LI policy made payable on the death of the insured have been in force during the lifetime of the insured for 2y from the date of issuance or last reinstatement, the insurer cannot prove that the policy is void ab initio or is rescindable by reason of the fraudulent concealment or misrepresentation of the insured or his agent.
2. Upon lapse of 2y from issuance (appearing on the policy) or last reinstatement of the policy (approval of application for reinstatement), the insurer must make good on the same despite concealment or misrepresentation committed by insured.
3. In *Sun Life v. Sibya* 2016, the SC held that if the insured dies within the 2y period, the

incontestability clause also sets in and the insurer may no longer rescind the policy (division ruling overturning Tan<sup>37</sup>). However, in an earlier case of Tan v. CA, the SC held that the insurer has the full 2y to investigate w/n the insured dies within such 2y period.

4. Requisites – (i) the insurance is a LI payable upon death of the insured; (ii) the policy had been in force for 2y from issuance or last reinstatement during the lifetime of the insured.

## B. Perfection of the Insurance Contract

### (a) Consensual

1. An insurance contract is consensual, following the theory of cognition, and subject to premium payment.
2. The acceptance by the insurer of the application for insurance binds the insured only from the moment the acceptance came to his knowledge (theory of cognition).
3. To establish perfection of the policy, there must be proof of: (i) acceptance by insurer, (ii) communication to applicant-insured; (iii) payment of premium by the latter.

### (b) Premium payment

1. Cash and carry rule – an insurance policy is generally not binding until premium thereon is paid, subject to recognized XPNs. “no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid”
2. An agent authorized to deliver the insurance policy on the insured is deemed authorized to receive premium payments.
3. In case of check payment: (i) the premium is not deemed paid until the same is actually delivered to the agent and received by him. Mere notice of availability of check is not sufficient to constitute payment, even if it is the agent who delays picking-up of the check; (ii) however, the payment is completed once the check was delivered, even if its has not yet cleared as the insured has already complied with his obligation.
4. Non-payment of premium causes the insurance to lapse – (i) the thing is not deemed exposed to the risk insured against; (ii) the insurer is no longer entitled to recover the premium payment.

*XPNs to premium payment requirement GCAS IEC*

*The policy is valid and binding despite non-payment of premium*

1. **Grace** period granted in life or an industrial life policy.
2. **Credit** extension: (i)
3. **Acknowledgement** in policy §78.  
Acknowledgement in policy of receipt of premium is conclusive to make the contract binding, despite stipulation that contract shall not be binding until actual premium is paid. – (i) creates a **fiction of payment**, (ii) also a form of estoppel.
4. In **suretyship**, upon acceptance by obligee – even before the obligor pays the premium, or the check used to pay the same was dishonored.
5. **Installment** payments agreed – if: (i) agreement allowing installment payments was indicated in the policy; and (ii) partial payment was made at the time of loss. If the policy is silent, partial payments will not entitle the insured to recover on the policy.
6. **Estoppel** – (i) long-standing business practice allowing insured to pay after issuance of policy; (ii) reliance in good faith by insured of such practice.
7. **Cover** note – (i) issued to temporarily bind the insurer pending issuance of the policy; (ii) generally, for a period of 60d after which the policy

shall be issued; (iii) extension may be allowed only upon written approval of the Commissioner; (iii) c.f.: binding receipt is a conditional insurance coverage which is not binding, unless approved by the insurer (usually made by agent)

### Credit extension

1. For 90d (from issuance) given under the broker and agency agreements with duly licensed intermediaries §77.
2. Other instances of credit extension, express or implied – (i) delivery of policy without requiring the payment of premium presumes that a credit was extended; (ii) acceptance of PN under circumstance showing that it amounts to extension of credit. If terms of payment was not stated, acceptance by insurer of PN is deemed modification of the terms of the policy waiving the provision requiring premium payment before it can be held liable under it; (iii) acceptance of check, even PDC is tantamount to extension of credit; (iv) when the parties have agreed that the insurer's liability has attached.
3. To hold insurer liable: (i) a **credit extension** was granted, and (ii) the **loss** occurred during the credit period.

## C. Rights and Obligations of Parties

### 1. Insurer

To assume the risk of a designated peril and indemnify the insured of the LDL arising therefrom.

### 2. Insured

The insured has the obligation to pay the premium, in exchange of the insurer's undertaking.

### 3. Beneficiary

The beneficiary is entitled to receive the proceeds of the insurance provided: (i) he is not DQ to be a beneficiary; (ii) he did not willfully bring about the death of the insure in LI policy; (iii) he has insurable interest when required.

If his designation is irrevocable, he is entitled to the protection of his vested rights and the insured cannot do acts that will impairs the same such as its revocation or designation of additional beneficiaries.

## D. Rescission of Insurance Contracts

Upon rescission, the parties are brought back to their legal situation prior to perfection of the policy – (i) insurer is not exposed to risk; (ii) insured has with him, the premium payments. Thus, rescission creates obligation on the part of insurer to refund the premium payments received.

1. When the ground for rescission exists, the insured may rescind the contract, unless he is estopped from doing so on account of his acceptance of the application or the payment of premium despite knowledge of the existence of the ground.
2. Rescission must be made previous to the commencement of an action (to recover) on the policy.

### 1. Concealment

Concealment is the neglect to communicate (i) that which a party knows, and (ii) ought to communicate.

1. (i) All material facts within the insured's actual or presumed **knowledge**; (ii) for which he makes no warranty; (iii) for which the insurer no means of ascertaining; and (iv) existing prior to the effectivity of the policy, must be disclosed in GF.
2. Concealment is a ground to rescind the policy whether un/intentional. **Actual fraud need not be proven as it is already inferred from the fact of concealment.**

<sup>37</sup> To overturn a principle of law, the court must act en banc.

3. Lack of knowledge by the insured of the fact not declared is immaterial. However, if there is disclosure but the insured failed to distinguish on the nature of the illness (e.g., "peptic ulcer" and "tumor") due to lack of technical of expertise, there is no concealment that may be the ground of rescission.
4. Material information – (i) based on the probable and reasonable influence of the omitted facts on the insurer's estimation of risks or in making inquiries; (ii) whether the insured was induced to accept a risk, which it would not otherwise accept, or to accept a lower premium.
5. The concealment need not be the proximate cause of the loss. The illness not disclosed need not be related to the cause of insured's death.
6. Disclosures required in the policy must be made in GF, and in the manner provided for in the same. Disclosure to the agent is generally not sufficient as disclosure should be made to the insurer itself. Improper disclosure, e.g., to the corporate secretary, does not bind the insurer.
7. Theory of imputed knowledge. If the insured delegated the filling up of the application form to the insurance agent by giving him the required information, the latter becomes the insured's agent, and the contents of the form binds him. XPN: if there is deliberate misrepresentation made by the connivance of the agent and the insurer.

Facts need not be disclosed **KOWEN O**

1. Those which the other knows.
2. Those which the other **ought to know** by the exercise of ordinary diligence, and which the former has no reason to suppose him ignorant.
3. Those which the other **waives** communication, express or implied – there is implied waiver when the insurer fails to inquire as to a material fact which is implied from other facts communicated, e.g., failure to inquire of the name of other insurers where the insured declared their existence.
4. Those which prove or tend to prove a risk **excepted** by a warranty, or those that are otherwise immaterial.
5. Those which relate to excepted risk, and which are not otherwise material.
6. Information on the **nature** and amount of interest of one insured.
7. Information of his **own** judgment upon the matter in question, i.e., opinions.

## 2. Misrepresentation or Omissions

In insurance, representation pertains to statements of a **fact** or condition related to a **risk** which **induced** the insurer to enter into the contract FRI.

There is misrepresentation as ground for rescission of the policy if: (i) the actual facts fail to correspond to the stipulations or assertions; (ii) the falsity pertains to a material point; and (iii) made with intent to deceive.

1. Based on the characteristic of an insurance contract as uberrimae fidei.
2. Material information (same with concealment).
3. Representation may either be affirmative or promissory – (i) affirmative if it is a statement on the present status or condition of subject of insurance; (ii) promissory if the representation pertains to the future.
4. **Fraudulent intent must be proven.** – (i) fraudulent design demands consistency; (ii) single document showing a misrepresentation is not sufficient to establish fraud where there are numerous documents that could have been presented, at the minimum, the application form.

Distinctions	Misrepresentation	Concealment
--------------	-------------------	-------------

Act/omission	Making erroneous statement with intent to induce the insurer to enter an insurance contract	Withholding of information of material fact from insured
Nature of act	Positive act, i.e., the insured volunteers the false facts	Negative act, i.e., neglect to communicate material facts known to the insured
When transpires	At the time or prior to the issuance of the insurance policy	Prior to the effectivity of the policy
Proof of fraudulent intent	Required	Not required

## 3. Breach of Warranties

### Warranty

1. **Statement** of promise made by the insured – must be of promissory or obligatory, not merely a statement of plan or intentions.
2. **Indicated** in the policy itself or **incorporated** therein by proper reference.
3. **Non-fulfillment** or falsity thereof renders the policy voidable at the instance of the insurer.
4. Whether the insurer was in fact **prejudiced** by such non-fulfillment or falsity.

### Kinds

1. Express – those (i) stated in the policy itself; (ii) embodied in a document signed by the insured and incorporated into the policy by proper reference.
2. Implied – those deemed incorporated in the policy despite not being mentioned therein, e.g., seaworthiness of a vessel in marine insurance.
3. Affirmative – affirms the existence of fact or condition at the time made.
4. Promissory – warrants that certain conditions exist.
5. Future – those which require the performance of future act, non-performance of which within the prescribed period before the loss occurs will avoid the policy.

Policy may be rescinded:

1. In case of violation of **material warranty** – w/n the breach is the cause of the loss.
2. In case of violation of material provision on the policy.
3. In case of violation of any provision (even if immaterial), if so declared in the policy as ground for rescission.

### Notes:

1. Fraud is not an element for breach of warranty to be a ground for rescission.
2. If the warranty is breached at the inception of policy, the risk is prevented from attaching. This will entitle the insured to a refund of the premium paid.
3. If the policy is accepted despite knowledge of the breach, rescission on such ground is waived.

## IV. Transportation Law

### A. Common Carriers

#### (b) Definition

1. A person engaged in the business of transporting passengers or cargoes or both – by land, water, or air
2. For hire or compensation
3. Offering its services to the public as part of a general business scheme –not just casual occupation
4. Holding out himself to the public as engaged in such business.

#### Factors not affecting the business of common carriage

1. Principal or ancillary business
2. Schedule of transportation – regular/scheduled or occasional/episodic/unscheduled basis
3. Offered to the general public or a narrow segment.
4. Lack of CPC – licensed/registered or not.
5. Ownership of vehicle.

#### Examples of common carriers

1. Pipeline operators – (i) transportation need not be by means of a motor vehicle.
2. Motorboat services of an island resort – (i) even if limited to patrons; (ii) merely ancillary; (iii) no separate compensation was charged, since the same is already deemed integrated to the package.
3. Shipowner. XPN: in bareboat charter
4. Customs broker – (i) transportation of goods is an integral part of its business; (ii) ownership of vehicle is not an element of common carrier business.
5. Trucking company. XPN: if the services are exclusive to an entity.
6. Barge operator
7. Public utility vehicles, including taxis.
8. Inter-island shipping vessels
9. School bus operator – even if limited clientele
10. Back-hauling trucker – even though the hauling is (i) periodic or occasional, (ii) merely ancillary to main business.
11. **Transportation Network Vehicle Service TNVS** (e.g., Grab drivers) – (i) once they go online they make their services available to the public through the app; (ii) they offer to transport passengers/cargoes for hire/ compensation as part of general business scheme and holds themselves out to the public as such.

#### Examples of not common carriers

1. Freight forwarder – (i) it merely chooses the common carrier or arranges the transportation; (ii) XPN: if it undertakes to deliver the goods itself.
2. Arrastre operator – merely handles the discharge of goods from the vessel.
3. Stevedores – natural persons hired by arrastre operator to handle the goods.
4. **Travel agency**
5. Helicopter charter Helicopter charter
6. Exclusive contractor
7. **Transportation Network Companies** TNCs (e.g., Grab) – (i) they do not undertake to transport goods; (ii) they merely arrange transportation akin to freight forwarder/ travel agency; (iii) they can go “offline” and decide whether to accept or reject ride requests.

#### Notes

1. A common carrier may be converted to private carrier by mere contract – e.g., (i) bareboat charter renders the shipowner a private carriers; (ii) bus hired for a company trip with respect to such trip.
2. Consignee may enforce the contract against common carrier even if he is not a party to the contract between common carrier and consignor – (i) he may be considered agent of consignor; (ii) he may be considered beneficiary in a stipulation pour autrui

#### (b) Governing laws

Mode	Carrier	Primary Law	Suppletory Law
Land	Common	NCC	Code of Commerce
	Private (commerce)	Code of Commerce	NCC

	Private (non-commerce)	NCC; Law on deposits (goods); Law on contracts (passengers)	
Air	Domestic	NCC	Code of Commerce
	International	Treaties, International Agreement, MC99	NCC
Water	Coastwise (interisland)	NCC	Code of Commerce
	Foreign port to Ph	NCC	Code of Commerce/ COGSA
	Ph to foreign port	Law of the country of destination	

### 1. Diligence Required of Common Carriers

#### EO diligence

1. Both in vigilance over goods and for the safety of passengers.
2. Includes – (i) maintenance of proper equipment, seaworthiness of vessel; (ii) selection of drivers, captain/crew; (iii) the implementation of safety and security-related preventive measures; (iv) **reactive** measures, especially in case of passenger death/injury. Common carriers are bound to thoroughly investigate and assist to passengers, concerned parties to ensure that no further harm or injury is caused.

#### Consequences

1. Common carrier is presumed negligence in case of – (i) death/injury to passengers; (ii) LoDeD to cargoes. Express finding of negligence is not necessary to hold the carrier liable.
2. In case of death/injury to passengers proof of existence of contract and proof of death were sufficient.
3. In case of LoDeD to cargoes proof of existence of contract, proof that cargoes were in good condition when loaded, and proof that they were in bad condition when discharged were sufficient.
4. Carrier may be exonerated only by showing observance of EO diligence.
5. Exoneration of driver does not affect the carrier's liability for breach of contract.
6. In case of fortuitous event, the carrier must show that it did not contribute to the damage due its negligence or that of its agents to be exonerated from liability.

### 2. Liabilities of Common Carriers

Of common carrier	Of driver
Based on breach of contract of carriage	Based on tort/QD
<ol style="list-style-type: none"> <li>1. Since the cause of action is different, they cannot be held solidarily liable. However, in one case, the court held them solidarily liable.</li> <li>2. For cargoes – (i) if deposited, must exercise EO diligence; (ii) if not, liable as depositary.</li> </ol>	

### B. Vigilance Over Goods

Common carriers are liable for the loss, destruction, deterioration **LoDeD** of goods.

### 1. Exempting Causes

#### NASCOE

- (a) **Natural** disasters or calamity – flood, storm, earthquake, lightning (force majeure) **FELS**.
- (b) **Act** of public enemy – international or civil. Citizen of a country which the Ph is at war with.
- (c) Acts/omission of **shipper**/passenger
- (d) **Character** of goods/defects in packaging or container
- (e) **Order** or act of competent public authority
- (f) **Exercise** of EO diligence



*(a) Force majeure Requirements*

1. The natural disaster must be the **proximate and only** cause of the loss.
2. The carrier exercised due diligence to prevent, minimize loss, before, during, after the occurrence of the natural disaster.
3. Carrier has not incurred delay – if there is no express provision as to the period for delivery, the cargoes must be delivered within a reasonable time. The carrier is not an insurer against delay in the transportation of cargoes.
4. Carriers must be free from any participation in the aggravation of the resulting injury.

*Events not considered force majeure*

1. Fire
2. Strong winds usual in the area
3. Typhoon which is already anticipated, or where warnings had been issued
4. Hijacking/robbery/theft. XPN: if attended by grave, irresistible threat, violence, force. In airplanes, the same could have been prevented by exercise of diligence in frisking the passengers. Failure to vet the driver who absconded with the goods is also negligence.
5. Engine trouble or flat tire – part of normal wear and tear, preventable by proper maintenance
6. Weakness of crate
7. Levy of ship
8. LRT explosion due to carrying of flammables by a passenger – preventable by proper inspection.
9. Plane explosion

*Events considered force majeure*

1. Volcanic eruption
2. Hurling stones at the vehicle where there are no prior reports or indications.
3. Jeepney explosion – since passengers are not inspected before boarding.

*(c) Acts/omission of shipper/passenger – XPN*

1. If carrier accepts the cargoes without protest or exception despite: (a) knowledge of the improper packing, or (b) the defects are apparent upon ordinary observation; or
2. It failed to exercise due diligence to forestall or lessen the loss.

*(e) Order or act of competent public authority – XPN*

1. The order is not a legitimate one, e.g., order to drop scrap iron in the sea.
2. The order is not attended by such force and intimidation that will completely overpower the will of the carrier.
3. \*\* Mere difficulty in the fulfillment of an obligation is not considered force majeure.

## 2. Contributory Negligence

Not a ground for total exoneration if the proximate cause for the LoDeD of the goods is still the negligence of the common carrier but may be a ground for equitable reduction of damages.

## 3. Duration of Liability

*(a) From the time the goods are placed in the possession of the common carrier until the same was delivered to the consignee, actually or constructively.*

1. Goods are placed in the possession of carrier once received by him or his authorized agent, even before loading in the vessels though any form of customary delivery.
2. Execution of bill of lading is immaterial in the commencement of carrier's liability over goods.

What controls is their placement in the carrier's possession.

3. Declaration of goods is not a precondition for the carrier's liability, so long as the same was received by the carrier for transportation.

*Covers unloading*

1. Goods generally remain within the charge of the carrier, even if it is the consignee who assigned persons to assist in the unloading of goods.
2. Mere transfer of custody to arrestre operator will not discharge carrier's liability.
3. The liability of the carrier is care for the good is non-delegable.

*Termination of liability*

1. Upon actual or constructive delivery to consignee or persons entitled to receive the goods.
2. Constructive delivery includes delivery of documents.
3. If the goods are delivered to unauthorized persons on strength of falsified documents, carrier is liable.
4. Turnover to customs authority generally does not discharge the carrier's liability, but parties may agree to limit the liability of the carrier when the goods are in the customs authority since it has no control over said goods at the time.

*(b) Bill of lading*

1. Document issued by carrier to shipper upon receipt of goods. The consignee was likewise given a copy which was surrendered to the carrier upon receipt of the goods.
2. Three characteristics – (i) As proof of receipt for the goods shipped to the common carrier; (ii) As three-party contract involving the shipper, the carrier, and the consignee; (iii) As **evidence** of the existence of the contract of carriage and its terms and conditions thereof.
3. Being mere evidence of the contract of carriage. The contract is perfected once the cargoes are placed in the possession of carrier., whether bill of lading was executed before or after.
4. Although the consignee is not a signatory to the BL, he is bound by its terms and may enforce the same based on – (i) Contract of agency between the shipper and the consignee, with latter as principal; (ii) Stipulation pour autrui in favor of the consignee.

*Termination of carrier's liability upon surrender of BL*

1. Upon arrival at destination, the consignee returns the BL to the shipper and operates to discharge the latter of his contractual obligation. It also operates as cancellation of the mutual obligations of the carrier and consignee.
2. If the BL cannot be returned due to **loss or other causes**, the carrier is discharged of its obligation if (i) the consignee issues a receipt for the goods delivered; (ii) the delivery is acknowledged by him by signing the delivery receipt. The issuance of receipt shall produce the same effect as the surrender of the BL.
3. There can be substantial compliance with the requirement as with the execution of an **Indemnity Agreement** by the consignee in favor of the carrier whereby the former undertakes to indemnify the latter should the shipper file an action against it.

### *a) Actual or Constructive Liability*

\*\*

### *b) Temporary Unloading or Storage*

Carrier's liability continues during the time goods are temporarily stored in the carrier's warehouse while in transit or at point of destination until the consignee was **advised** of

the arrival of goods and has had reasonable **opportunity** to remove or dispose them.

#### 4. Stipulation for Limitation of Liability

Reduction to ordinary diligence:

1. Seller exercises right of stoppage in transit.
2. **Stipulation** – (i) In writing; (ii) Supported by valuable consideration; (iii) Reasonable, just, not contrary to public policy.
3. Hand-carried baggage. Carrier if liable as depositary if: (i) notice of the baggage was given to carrier or his agent; (ii) the passenger took necessary precautions advised by the carrier relative to the care and vigilance of the baggage. Carrier is not liable if loss/damage of baggage due to passenger's fault.
4. LoDeD of goods due to its character, or the faulty nature of packing. Carrier is required to observe ordinary diligence only to forestall or lessen the loss.

**Limitation of liability for LoDeD of cargoes to fixed amount is allowed if:**

1. **Fair and reasonable under the circumstances.**
2. **Fairly and freely agreed upon.**

##### a) Void Stipulations

- (a) That carrier will not observe any diligence
1. Goods transported at the risk of owner or shipper.
  2. Carrier will not be liable for any and all liability arising from LoDeD of goods.
  3. Carrier will not observe any diligence at all.
- (b) That carrier will not observe diligence less than DGFF
- (c) Total exemption from liability
1. Carrier will be exempt from liability for acts/omission of EEs.
  2. Carrier will not be liable (or its liability will be limited) for acts of robbers or thieves who did not act with grave or irresistible threat, violence, force.
  3. Carrier will not be liable for LoDeD on account of defect on vehicle or equipment used in transportation.
- (d) Unqualified limitation of liability
1. Unqualified limitation of liability to an agreed valuation.
  2. Stipulation limiting recovery to 90% of the value of the goods – considered unreasonable, unjust, contrary to public policy.
  3. Denying the owner the right to declare the actual value of his goods – not fair and reasonable under the circumstances.
- (e) Limitation of venue in enforcing liability (fine print in ticket)
1. Passengers had no opportunity to examine.
  2. Contract of adhesion.
  3. Subverts the public policy on venue and virtually defeats the claims of claimants in farther places.

##### b) Limitation of Liability to Fixed Amount

Void for being unfair and reasonable – see (d)

##### c) Limitation of Liability in Absence of Declaration of Greater Value

Valid – stipulation limiting the liability of carrier to value of goods, as appearing in BL or contract of carriage, unless the shipper declares a greater value is valid and binding.

1. If the shipper did not make a higher declaration of value of his goods, despite his attention being called by the carrier, the liability of carrier is limited to that indicated in the contract. It is the duty of the passenger to make a declaration of value rather than the carrier to ascertain the value of the cargoes.

2. If the shipper made such declaration, the carrier's liability is limited to the value so declared.

Declaration of value

1. May be done expressly.
2. Also by incorporation of invoice by way of reference provided – (i) the invoice contains a description of the nature, value and/or payment of freight charges; (ii) shipper pays supplementary charge, if required.
3. Not declaration of value – (i) Mere insertion of invoice number in the BL; (ii) Mere notation in the BL indicating the amount of letter of credit.

Allocation of recovery

1. Damages are recoverable on a per package or per shipment basis, and not per unit.
2. XPN: if the no. of units was declared, and their respective value was declared, accompanied by the payment of supplementary sum, if required.

#### 5. Liability for Baggage of Passengers

##### a) Checked-In Baggage

Carrier must observe EO diligence.

##### b) Hand-Carried Baggage

Carrier if liable as depositary if:

1. Notice of the baggage was given to carrier or his agent.
2. The passenger took necessary precautions advised by the carrier relative to the care and vigilance of the baggage.

**\*\*Carrier is not liable if loss/damage of baggage due to passenger's fault.**

#### C. Safety of Passengers

Common carriers are bound to carry passengers to their destinations as far as human care and foresight can provide, with the utmost diligence of very cautious persons with due regard for all circumstance.

1. Common carrier is presumed negligent for death/injury of passengers while in the course of the travel.
2. Express finding of negligence in an action against the common carrier is not required to hold it liable.
3. The plaintiff need not submit evidence of the common carrier's negligence. It only has to prove (i) existence of contract; (ii) injury/death took place during the existence of the contract. The burden shifts to common carrier to prove exercise of EO diligence or that the injury was due to FM.
4. Doctrine of last clear chance cannot be invoked by the common carrier with respect to the action filed against it by its passenger but may be invoked as between colliding vehicles.

##### 1. Void Stipulations

1. Dispensing or lessening the carrier's responsibility by the posting of notices, statements in the tickets, or otherwise.
2. Limitation of the carrier's liability for willful act or gross negligence.

Limitation of liability allowed if:

1. The passenger was carried gratuitously. – mere reduction of fare is not sufficient.
2. Only for ordinary negligence but not for willful acts or gross negligence.

##### 2. Duration of Liability

From the time the passenger places himself to and is accepted by the common carrier.

*Commencement*

1. Trains – From the time the passenger pays for the ticket and enters the premises of the station, even before boarding.

2. Buses – From the moment the passenger step on the bus' platform even before purchasing a ticket or negotiating a seat. Once it stops, it making a continuous offer to bus riders and the driver may not do anything that will increase the peril to a passenger while attempting to board the bus. He must stop for a reasonable time to give the passengers the opportunity to board and enter. The common carrier is liable for injuries due to sudden accelerations without giving the passengers reasonable opportunity to embark.
3. Taxis – A person who hailed a cab and already held onto the door handle after the driver stopped to ask his destination is already a passenger. Injury resulting from sudden acceleration is also a liability of the common carrier.

#### *During*

1. Remains while the passenger is under the proper care or charge of the carrier.
2. E.g., premature announcement by conductor of arrival at a certain barrio when the train was still 3 minutes away causing passengers to stand up only for the train to suddenly accelerate leading passengers to fall off and be hit by the oncoming train. – carrier is liable.

#### *Termination*

1. The time that the passenger safely alights from the vehicle at the point of destination, after given the reasonable opportunity to leave the premises, including the time that he searches for and claims his baggage.
2. The contract of carriage subsists as long as the passenger is in the premises of the common carrier in pursuance to the contract of carriage.
3. Liability of carriers – (i) to ensure that passengers were able to safely disembark (e.g., while traversing a gang plank); (ii) to disembark only at a proper place; (iii) to give the passenger reasonable opportunity to leave its premises proper under the circumstances. For vessels, it is reasonable to give passengers at least 1h to get their baggage considering that bulk of passengers and cargoes.

#### *(b) Liability for various passengers*

1. Full paying passengers – EO diligence.
2. Passenger who won free pass via credit card promo – EO diligence. The carriage is not gratuitous but paid by CC company.
3. Discounted passengers. EO diligence. Reduction of fair is not ground for reduction of diligence requirement.
4. Born again preacher. Purpose of riding is immaterial.
5. Holduper. Purpose of riding is immaterial.

#### *Non-passengers (EO diligence not required)*

1. Driver
2. Driver's GF
3. Stowaway
4. Pickpocket

**\*\*They may file an action based on tort, but not for breach of contract of common carriage.**

### **3. Liability for Acts of Others**

#### *a) Employees*

Common carrier is liable even if the EE acted beyond the scope of authority, or in violation of the carrier's orders so long as the damage was caused in the course of the employee's duty.

1. Carrier's liability to ensure the safety of its passengers is absolute.
2. Common carrier delegates its contractual duty to protect the passenger with the utmost care prescribed by law to its EEs.

3. Carrier must bear the risk of is EE's wrongful acts or omissions considering that it has the power to select and remove them.
4. Carrier is liable even if the person causing injury does not qualify as an EE under the LC but as independent contractor since the latter is still within the carrier's control.
5. If the injury was due to the assault or negligence of the common carrier's EE, it is liable even if the cause of altercation is personal.

#### *b) Other Passengers and Strangers*

The carrier is liable for the willful acts of negligence of third persons and other passengers if, with the exercise of **ordinary diligence (DGFF)**, the accident could have been prevented.

1. The carrier is not an insurer of the absolute safety of the passengers.
2. Common carrier is not liable if the accident was sudden in character – no prior indication/warning that would require carrier to undertake special measures other than that generally adopted by others in the occupation.
3. But failure to adopt precautionary measures despite previous warnings renders the carrier liable.
4. If the driver's act aggravated the injury, the carrier may also be held liable – e.g., failure to slow down or stop despite commotion.
5. There is no duty to frisk with respect to common carriers by land. Failure to do so is not negligence. But carriers by air is required.

### **4. Extent of Liability for Damages**

#### *(c) Extent of liability*

1. Actual damages
2. Indemnity for death
3. Indemnity for loss of earning capacity
4. Moral damages – if there is gross negligence or bad faith.
5. Costs of suit.

#### *(d) Availability of defenses*

1. Emergency rule may be invoked since it contemplates a situation where the actor causing damage is not negligent under the circumstances.
2. Last clear chance doctrine cannot be invoked with respect to an action filed by the passenger but may be invoked in an action between the two colliding vehicles.
3. Fortuitous event – To exempt from liability: (i) the event must be unforeseen or inevitable; (ii) independent of human will; (iii) of the nature as to prevent the carrier from fulfilling his obligation in the normal manner; (iv) carrier is free from participation or aggravation of damage; (v) carrier observed EO diligence. Accidents due to blowing of tires/automobile was held not to be fortuitous event.
4. Contributory negligence – Will not bar recovery against the carrier if by exercise of EO diligence, it could have prevented the accident (negligence is proximate cause) but may mitigate the award of damages, e.g., deletion of moral damages.

#### *(e) Who are liable for breach of contract of carriage*

1. The owner/operator of the vehicle
2. The registered owner, who is considered the owner/ operator with respect to 3p – without prejudice to his right to proceed against the actual owner/operator.

## D. The Montreal Convention of 1999

### 1. Applicability

MC 99 applies to international air transportation.

- One wherein according to the contract made by the parties (i) the places of departure and destination are situated in different member-states, w/n there is agreed stopping point or transshipment; OR (ii) the places of departure and destination are situated in one member state,

- where there is an agreed stopping point in another country, w/n a member-state.
- Covers carriage of passengers, baggage, cargo.
- MC99 – Convention on the Unification of Certain Rules for International Carriage by Air, amending the Warsaw Convention. Ph is member since Dec. 2015.

### 2. Extent of Liability of Air Carrier

Distinctions	Carriage of passenger	Carriage of cargoes
Diligence required	To ensure the safety of its passengers as far as human care and foresight can provide using the utmost diligence of a very cautious person with due regard to all circumstances	EO diligence in the care and preservation of goods placed in its possession.
Commences when	The passenger is within the premises of the air carrier after checking in for flight	The baggage was placed in the possession of the air carrier
Liability	For death or injury to passenger (i) while on board, or (ii) while embarking/ disembarking. Also, for delay in flight.	For LoDeD to baggage during carriage when the same is under the charge of the air carrier.
Nature of breach	Without improper conduct on the part of the carrier's officials and EEs, and no special injury results. Claim is entirely incidental to the contract of carriage.	Same
Proof required to establish liability	(i) Existence of the contract of carriage; (ii) Breach thereof by failure to bring the passenger to destination	(i) Existence of the contract of carriage; (ii) Breach thereof by failure to bring the cargo to destination
Jurisdiction for enforcing liability	4-jurisdiction under Warsaw Convention + Court of a member-state where the passenger has his principal and permanent residence, and to and from which the carrier operates services, by itself or through an agent is an option.	4-jurisdiction under Warsaw Convention only.
Written complaint	No required for written complaint to be filed with carrier before filing judicial action	Written complaint must be filed with carrier before filing judicial action

#### (a) Common requirements

##### *Prescriptive period for action against carrier*

- 2y from (i) the arrival of carrier to the destination, or (ii) the date it should have arrived, or (iii) the date on which the transportation stopped (Warsaw)
- For carriage of baggage/cargo – **Written complaint**/claim against the carrier must be filed: (i) within 7d from receipt of baggage or 14d from receipt of cargo; (ii) within 21 days from receipt, in case of delay (added by MC99). No o action for damages can lie against the carrier if the complaints are filed beyond the stated period. XPN: if the carrier employed fraud.
- \*\*Does not apply if cause of action is based on torts (not covered by MC99).**

##### *4-jurisdiction rule. Action may be filed in*

- Court of carrier's domicile.
- Court of carrier's principal place of business.
- Court where carrier has establishment where the contract was made.
- Court of the place of destination
- Court of a member-state where the passenger has his principal and permanent residence (not nationality), and to and from which the carrier operates services, by itself or through an agent. Applies only in case of damage arising from the death/injury of a passenger (added by MC99)

##### *Recovery under local law*

- If the claim is covered by MC99, it may no longer be recovered under local law.
- If the claim is not covered, separate case may be filed to enforce the liability under local law.

#### (b) Other causes action

- Damages in addition to that provided in MC99 may be recovered if – (i) the loss, damage, injury is attended by any willful misconduct, BF, recklessness or other improper conduct on the

part of carrier's official or EE; (ii) there is special or EO form of resulting injury. These are no longer covered by MC99 and may be enforced under relevant local laws.

- E.g., humiliation, failure to attend international engagement, anxiety due to delay, tortious conduct of EEs.

#### a) Death or Injury of Passenger

Two-tier liability	
Tier 1	Tier 2
Strict liability. Carrier is held presumptively liable.	Carrier is held presumptively negligent.
Up to 113,100 SDR <sup>38</sup>	Claims in excess of 113,100 SDR, but not exceeding 128,821 SDR
Carrier is liable so long as the death or injury took place (i) while the passenger is on board the aircraft; (ii) in the course of any of the operations of embarking or disembarking.	Carrier shall be liable unless it can show that: (i) the damage was not due to its negligence, wrongful act/omission, or (ii) the damage was solely due to the negligence, wrongful act/omission of a third party.

##### Notes

- The obligation of common carrier does not commence at the precise time of perfection of contract of carriage (issuance of ticket) but from the time the passenger is within the carrier's premises.
- If the passenger was not able to board the plane after the closure of its manifest due to late arrival, the carrier is not liable.
- If the alleged negligence did not occur during the flight or while dis/embarking, the carrier is not liable.
- That the carrier or its agents took all reasonable measures to avoid damages is no longer availing as defense under MC 99 (available under WC).
- MC covers only physical or bodily injury, not psychiatric injury.

<sup>38</sup> SDR or Special Drawing Rights is a type of foreign exchange reserve asset created by the IMF based on a basket of currencies (USD, Eur, Pound, JPY)



## b) Lost or Delayed Baggage

1. Carrier is liable so long as the **DeL DaDe** took place (i) on board the aircraft; (ii) within the period when the baggage is in the carrier's custody, even if not yet actually boarded on the aircraft; (iii) the event causing destruction, loss or damage to cargo took place during the carriage by air.
2. Carrier may be held not liable if **DeL DaDe** resulted from the (i) inherent defect, quality, vice of the baggage; (ii) defective packaging performed by a person other than the carrier, servants or agents; (iii) act of war or armed conflicts; (iv) act of public authority carried out in connection with the entry, exit or transit of cargo.
3. Air crafts liability may be enforced if (i) the carrier admits loss; (ii) if checked baggage has not arrived after expiration of 21d after the date on which it ought to have arrived.
4. For unchecked baggage, carrier is liable if the damage resulted from it or its agent's faults.
5. Limit of liability – 1,131 SDR per passenger per kg of luggage. Excess may be recovered only (i) if there is special declaration of interest at the time of check-in and supplementary sum was paid, if required, or (ii) carrier failed to object during trial evidence of actual damages was adduced.
6. Failure to board the cargoes of the passenger on that ground that he checked in last minute will not exonerate the air carrier from liability. It should not have accepted the passenger if it knew that it will not be capable of transporting the cargoes to its destination.

### \*\*Liability limits

128,821 SDR	Death or injury to passenger
5,346 SDR	Damage caused by delay in the carriage of passengers
1,288 SDR	DeL DaDe to baggage per passenger
22 SDR	DeL DaDe to cargo per kg

## V. Intellectual Property Code (R.A. No. 8293) [Note: Exclude Implementing Rules and Regulations]

### A. Patents

Grants to its holder the exclusive right to **sell, use, make SUM** an (i) invention, (ii) UM, (iii) ID for commerce and industry.

### 1. Patentable Inventions

Any technical solution of a problem in any field of human activity (problem-solution approach), which is new, involves an inventive step, and industrially applicable, and not one of the non-patentable items, may be patented. It may relate to (i) a product, (ii) process, or (iii) an improvement of a product or process.

### a) Novelty

An invention is not considered novel or new if it forms part of **prior art**.

#### Prior art **Emap Cpa**

1. Everything made available to the public anywhere in the world before the filing/priority date of the application claiming the invention. – (i) without patent, the inventor cannot restrain the public from using SUM his invention; (ii) he may register the same as he is not prejudiced by the disclosure; (iii) no one from the public may apply for the patent for lack of novelty.
2. Whole contents of a public application for patent, UM, ID registration filed or effective in the Ph, with a filing/priority date earlier than the filing/priority date of the application (first to file rule).

N.B.: The defense of lack of novelty can only be established by a single prior art reference which discloses **each and every element** of the claimed invention (not multiple prior arts).

### Doctrine of non-prejudicial disclosure **CoDIN**

1. The disclosure of information **contained** in an application for patent registration.
2. **During** 12 months prior to the filing/priority date of application.
3. Shall **not prejudice** the application on ground of lack of novelty.
4. If the disclosure was made by the **inventor** himself.

**\*\*The doctrine effectively gives the inventor a grace period of 12m within which to apply for a patent after he discloses his work to the public.**

### b) Inventive Step

An invention involves an inventive step if having regard to a prior art, it is **not obvious to a person skilled in the art** at the time of the filing/priority date of the application claiming the invention.

#### Person "skilled in the art"

1. Persons with **average skill** level in the concerned field, excluding experts.
2. Ordinary practitioner (i) having access and understanding of all prior art; (ii) aware of common general knowledge in the specific art; (iii) observes development in the related technical field.

#### Factors to determine "obviousness" (Graham Test)

1. Scope and content of the prior art.
2. Difference between the prior art and the claims at issue
3. Level of ordinary skill in the pertinent art
4. Commercial success\*
5. Long felt need\*
6. Failure of others\*

#### \*Secondary considerations.

In drugs/medicine, there is no inventive step if the invention results from:

1. Mere discovery of (i) new **form** or (ii) new **property** FP (iii) of a known substance (iv) which does not enhance the known efficacy of the substance.
2. Mere discovery of (i) new **property** or (ii) new **use** PU (iii) of a known substance.
3. Mere use of (i) a known process (ii) unless it results to a new product (iii) that employs at least one new reactant.

N.B.: Inventive step is not required for UM.

### c) Industrial Applicability

An invention is industrially applicable if it is capable of production and use in any industry **CUPI**.

1. A gas-saving device that will enable cars to consume less gas is industrially applicable.
2. Method to improve tenderness of meat by injecting enzyme solution into the live animal shortly before slaughter is not industrially applicable.

### 2. Non-Patentable Inventions

#### DAM SIP

1. **Discoveries**, scientific theories, mathematical methods DiSma, e.g.,  $E=mc^2$  cannot be patented.
2. **Scheme**, rules, methods for – (i) performing mental acts; (ii) playing games; (iii) doing business; (iv) programs for computers.
3. **Methods** for: (i) treatment of human or animal body by surgery or therapy, or (ii) diagnosis on human or animal body.
4. **Plant** varieties and animal breeds.
5. **Aesthetic** creations.

- Anything contrary to public order or morality (**illegal**)– e.g., biological weapons, bogus coin detector used exclusively for an illegal gambling device.

### 3. Ownership of a Patent

#### a) Right of a Patent

##### (a) Persons entitled

- The inventor
- His heirs
- His assigns – co-incorporators of a corporation established to utilize the invention are not assignees. There is no assignment of invention, only subscription of shares. In case of dispute, the heirs have better right.

##### (b) Term

- Patent of invention – 20y from filing of the application, not renewable or extendible.
- Patent of UM – 7y from filing of the application, not renewable or extendible.

#### b) First-to-File Rule

- The right to patent shall belong to the applicant with the earliest filing/priority date.
- If the first to file is not the actual inventor, the latter may petition for the cancellation of the patent on the ground that the other person is not the real inventor, and to ask for his substitution as patentee.
- Right of first filer is subject to right of prior user (see below).

#### c) Inventions Created Pursuant to a Commission

The person who commissioned the work shall own the patent.

In case of inventions by EEs:

- The patent belongs to the EE if the inventive activity is not part of his regular duties, even if he used the time, facilities, materials of the ER.
- The patent belongs to the ER if the invention resulted from the performance of his regularly assigned duties. XPN: contrary agreement, express or implied.

#### d) Right of Priority

- Applies if the applicant for patent has previously applied for the same invention in another country which country affords similar privileges to Filipinos, by treaty (e.g., Paris Convention), convention, or law.
- The Ph application shall be considered as filed as of the date of the filing of the foreign application.
- Mere rule of preference but does not guarantee an automatic grant. The applicant must still comply with the requirements for a patent grant in the Ph.

Requisites **Claw CC**

- The local application expressly **claims** priority.
- Filed **within** 12 months from the date the earliest foreign application was filed.
- Certified copy** of the foreign application with English translation is filed within 6m from the date of local filing

### 4. Grounds for Cancellation of a Patent

**NDCF**

- Invention is **not** new or patentable, or that the item falls within the list of non-patentable items.
- Patent does not **disclose** the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- The patent is **contrary** to public order or morality.
- Final** order of judgment declaring the person as having right over the patent, or the true and actual inventor.

### 5. Remedy of the True and Actual Inventor

(a) Person declared by final court order as having right to patent §67

- Applies when the patent was issued not to the first filer, but no fraud attended the patent issuance.
- Petitioner must file a petition to be declared the as having right to the patent.
- Within 3m from finality of the decision declaring the him as having right to the patent he may: (i) prosecute the patent application as his own in lieu of the applicant; (ii) file a new patent applicant in respect of the same invention; (iii) require the application to be refused; (iv) seek cancellation of the patent, if already issued.

(b) True and actual inventor deprived of the patent §68

- Available if the actual inventor is deprived of the patent through fraud or without his consent.
- The actual inventor must file a petition to be declared as the true and actual inventor.
- If found true and actual inventor, the court shall order: (i) for his substitution as patentee; (ii) for the cancellation of the patent, at the option of the inventor; (iii) an award of actual and other damages to the inventor, if warranted by the circumstances.
- Upon finality of the judgment declaring petition the true and actual inventory, he may immediately petition for the cancellation of the patent.

(c) Petition for cancellation of patent with IPO

- The petition cannot be filed without prior court judgment declaring the petitioner as: (i) having right to the patent, or (ii) the true and actual inventor.
- Grounds (see above). That the patent is granted not in favor of the true and actual inventor is not a ground for a petition for cancellation of patent but this may be raised as a defense in patent infringement.
- Upon cancellation, the rights conferred by the patent shall terminate.

**\*\*WPI is not available to the true and actual inventor, only to the patentee.**

### 6. Rights Conferred by a Patent

- For products – exclusive right to make, use, offer for sale, sell or import the product **SUMO I**
- For process – exclusive right to use the process, and to manufacture, deal in, use, sell, offer for sale, or import any product obtained in/directly from the process **SUMO ID**
- The patentee may also transfer or assign the patent, or enter into licensing agreements with respect to the same.

### 7. Limitations of Patent Rights

Pertains to situations when the patentee cannot prevent 3p from SUMO I/D the patented products or process.

- (i) Use of a patented product after the same was placed in the market in the Ph by its owner, or with his consent, or (ii) use of a patented drug/medicine after the same was introduced in the Ph or anywhere in the world by the patent owner, or anyone authorized to use the invention. – even if patent was later secured, the possessors of the patented product who acquired the same prior to the filing/priority date cannot be prevented from using the invention.
- Acts done privately on non-commercial scale or for non-commercial purpose, which do not significantly prejudice the economic interests of the patent owners.

3. Exclusively making or using the product for experimental use for scientific or educational purposes and other directly related activities.
4. SUM + testing the drugs/medicines, including related data, solely for purposes reasonably related to the development and submission of information DSI and issuance of approvals by government regulatory agencies IAGRA required under local or foreign law regulating the manufacture, construction, use or sale of the product, subject to rules protecting the rights of patent holder from unfair commercial use FDA.
5. Preparation for individual cases of medicine (in pharmacy or by medical professional) in accordance with medical prescription, and related acts.
6. Use of the invention in any vessel, aircraft, land vehicle of foreign country entering the Ph temporarily or accidentally, exclusively for the needs of the vehicle, and not for manufacture of anything for sale in Ph.
7. Prior user (see below).
8. Use upon government authority (see below).

#### a) Prior User

A person who in **good faith used** of the invention, or **undertook** of serious preparations for its use in his business **prior** to the filing/priority date of the application where the patent was granted shall be allowed to use the patented product or process in the preparations envisaged within the territory where the patent produces effect.

#### b) Use by Government

A government agency or persons authorized by the government, even without the consent of the patent holder, may use the patent under certain conditions, namely:

##### PuNaMa Dnp

1. When **public** interest so requires – (i) specifically, national security, nutrition, health, or development of other sectors **NaSH NuDe**; (ii) as determined by the appropriate agency of the government.
2. In cases of **national** emergency or extreme urgency, as determined by the President.
3. When the **manner** of exploitation was found to be anti-competitive, as determined by judicial or administrative body (PCC).
4. In case of **drugs** and medicines, where there is **national** emergency or extreme urgency requiring the use of the invention.
5. In case of drugs and medicines, there is a **public** non-commercial use of the patent by the patentee, without satisfactory reason.

##### Conditions for exploitation SNIP

1. **Scope** and duration shall be limited to the purpose for which authorized.
2. Use shall be **non-exclusive**.
3. The holder shall be **informed** promptly when the circumstances occur.
4. The holder shall be **paid** adequate remuneration.

### 8. Patent Infringement

Infringement, in general, consists in the performance of act/s in violation of rights granted by law to the owner or holder of IPR.

1. SUMO I (i) of a patented product, or (ii) of a product obtained directly or indirectly from a patented process; or (iii) the use of a patented process, without the authorization of the patentee.
2. XPNs – (i) when the SUMO I falls within the limitations of patent rights (see above); (ii) compulsory licensing; (iii) special compulsory license under TRIPS Agreement.
3. There is patent infringement only if the product or process, or its improvement was patented. **No patent, no protection.**

4. May be filed by the patentee, or anyone possessing right, title, interest **RTI** in and to the patented invention (heirs or assigns). But not the actual inventor if he was not patent holder (see above for remedies of the actual inventor).
5. Must be filed within 4y from the time of commission of the infringing acts.
6. WPI may be granted only if there is showing that (i) the patent is valid and infringed beyond question, and (ii) the record conclusively proves the defense is a sham.

#### Burden of proof

1. A patent in due form is **prima facie** correct and valid. If introduced by plaintiff, the burden of evidence shifts to the defendant to overcome the legal presumption.
2. There is presumption of use of a patented process if: (i) identical product is produced; (ii) product is new; or (iii) there is substantial likelihood that the identical product was made by the process and the owners of the patent has been unable to determine the process actually used despite reasonable efforts. The burden of proof is shifted to the defendant to prove that the process to obtain the identical product is different from the patented process.
3. An infringer is presumed to know of the patent if on the patented product, its container, or on the advertising material are place the words "Philippine Patent" with the number of the patent.

#### Jurisdiction of regular courts to determine in/validity of patent

1. The court where the action for patent infringement was filed has **jurisdiction to declare the patent invalid** – (i) the authority is not exclusive to IPO; (ii) by filing the action, the plaintiff submits to the validity of the patent to judicial determination; (iii) doctrine of primary jurisdiction will not apply if there is an express provision of law to the contrary.
2. Upon finality of judgment finding the patent invalid, it is the ministerial duty of the IPO to execute the same by (i) cancelling the patent; (ii) recording the cancellation in the register of the office; (iii) publishing the cancellation in the IPO Gazette. IPO is bound by the judgment by express provision of law.

#### Civil and criminal actions

1. Civil action for damages may be filed for – (i) actual damages, i.e., profits which could have been earned without the infringement; OR (ii) reasonable royalties, if the actual damages cannot be ascertained with reasonable certainty; (iii) other damages  $\leq 3 \times$  actual damages; (iv) Attorney's fees and costs of suit. Moral and exemplary damages may not be awarded.
2. Criminal action for infringement may be awarded only if – (i) after **finality** of the judgment holding the infringer liable in a civil action filed against him; (ii) he **repeated** the infringing act.
3. Provisional remedies – (i) Preliminary injunction; (ii) Seizure order; (iii) Destruction/disposal order (only upon finality)

#### a) Tests in Patent Infringement

##### (1) Literal Infringement

There is infringement when there is an **exact identity of all the material elements** between the claims of the patent and the accused product.

##### (2) Doctrine of Equivalents

There is infringement if the function-means-and-result FMR test is satisfied, i.e., when a device **appropriates** a prior invention by **incorporating** its innovative concept, which though with some **modifications**, **AIM** performs the same

**function**, in substantially the same way (**means**), to achieve substantially the same **result**.

#### b) Defenses in Action for Infringement

##### SING PAM

1. **Invalidity** of patent or claim thereof.
2. **Grounds** on which petition for cancellation may be brought.
3. Patent is **not** new or patentable.
4. **Specification** of new invention does not comply with the law.
5. Patent was issued not the true or **actual** inventor, or plaintiff did not derive his rights from the true and actual inventor.
6. **Prescription**.
7. The accused object contains a **modification** which produces different result, or same result but through a different means.

##### Not valid defenses MIE

1. No **intent** to infringe – (i) infringement is not an element; (ii) constructive knowledge by presence of the patent mark in the product or its packaging.
2. No **exact** duplication, but only a minor improvement – doctrine of equivalents apply (FMR test).
3. IPO made **mistake** in granting the patent – presumption of regularity in the performance of official duties.

### 9. Licensing

#### a) Voluntary

Authorization given by the patent holder to another person allowing him to produce the patented product or article.

1. Usual terms include (i) the amount of royalties, (ii) quality standards, (iii) market where the product may be sold.
2. Voluntary licensing provisions also apply to all technology transfer arrangements TTA. TTA authorizes the transferee to exploit the SM of the technology transfer arrangement during its whole term.

##### Mandatory stipulations

1. Ph laws shall govern its interpretation. In case of litigation, the venue shall be the court where the licensee's principal place of business is located.
2. Continued access to improvements, techniques and processes related to the technology shall be made available during the term of the arrangement.
3. In case it provides for arbitration, the applicable Ph rules on arbitration and that of the ICC shall apply.
4. Ph taxes on all payments re: TTA shall be borne by **licensor**.

##### Prohibited stipulations

1. Obliging the licensee to acquire goods or other technologies from a particular source, or to permanently employ personnel indicated by licensor.
2. Reserving to the licensor the right to fix sale or resale price of the product (price fixing).
3. Restricting the volume and structure of production (volume fixing).
4. Prohibiting the use of competitive technologies, when the TTA is non-exclusive.
5. Establishing full or partial purchase option in favor of licensor.
6. Obliging the licensee to transfer to the licensor inventions or improvements that may be obtained through the use of the technology.
7. Requiring payment of royalties for patent not used.
8. Prohibiting licensee from exporting the licensed product. XPN: when justified for the protection of the legitimate interest of the licensor.

9. Restricting the use of technology supplied after expiration of the TTA. XPN: if the early termination was due to fault of the licensee.
10. Requiring royalty payments after expiration of the TTA.
11. Requiring the technology recipient not to contest the validity of the patent of the technology supplier.
12. Restricting R&D of licenses to absorb and adopt the transferred technology to local conditions; or to initiate R&D programs in connection new product, process, equipment.
13. Preventing the licensee from adapting imported technology to local conditions, introduce innovations as long as it does not impair the prescribed quality standards.
14. Exempting the licensor for liability for non-fulfillment of his responsibilities under the TTA and/or liability arising from 3p suits brought about by the use of licensed product or technology.
15. Other clauses with equivalent effects.

*\*\*If mandatory provisions are not included, of prohibited clauses are included, the TTA is rendered unenforceable unless approved and registered with the Documentation, Information and Technology Transfer Bureau in exceptional cases.*

#### b) Compulsory

When the government uses or allows another person to produce the patented product or process without the consent of the patentee based on the grounds specified under the IPC.

1. The government must file a Petition for compulsory licensing file with the Director of Legal Affairs of the IPO.
2. Must be filed (i) within 4y from the filing date, or 3y from the patent date, whichever is later, OR (ii) at any time after the grant of patent if covered by [2], [3], [4], or if the patented invention (second patent) in the Ph cannot be worked without infringing another patent (first patent) granted on a prior application or benefiting from earlier priority.

##### Grounds

As determined by the Director General of IPO, in favor of a person having shown capability to exploit the invention:

1. In cases of **national** emergency or extreme urgency, as determined by the President.
2. When **public** interest so requires – (i) specifically, national security, nutrition, health, or development of other sectors **NaSH NuDe**; (ii) as determined by the appropriate agency of the government.
3. When the **manner** of exploitation was found to be anti-competitive, as determined by judicial or administrative body (PCC).
4. There is a public non-commercial use of the patent by the patentee, without satisfactory reason.
5. The patented invention is not being worked in Ph on a commercial scale, although capable of being so worked, without satisfactory reason. N.B.: importation of patented article shall constitute working on the patent.
6. Where the demand for patented drugs/medicines is not being met to an adequate extent and or reasonable terms, as determined by the Secretary of DOH.
7. For the manufacture and export of drugs to any country having insufficient or no manufacturing capacity in the pharmaceutical sector to address public health problems, provided that compulsory license has been granted by such foreign country or has notified the Ph that it is allowed to import into its jurisdiction the patented drugs in compliance with the TRIPS agreement.



#### Conditions for exploitation **SNAP DT**

1. **Scope** and duration shall be limited to the purpose for which authorized.
2. Use shall be **non-exclusive**.
3. License shall be **non-assignable**. XPN: to the part of the enterprise or business with which the invention is being exploited.
4. Use of SM of license shall be **devoted** predominantly for the supply of the Ph market. XPN: if ground is [3]
5. License may be **terminated** upon showing that the circumstances which led to its grant have ceased to exist and are unlikely to recur.
6. The holder shall be **paid** adequate remuneration. XPN: if ground is [3].

*\*\*There is no deprivation of property without due process of law in case of compulsory licensing – (i) the patentee is acknowledged as the owner of the patent, (ii) he is paid reasonable remuneration for its use.*

### 10. Assignment and Transmission of Rights

1. Rights to patent are transmissible by assignment, inheritance, bequest, or license contract.
2. Formalities – (i) Must be in writing and notarized; (ii) must be recorded in IPO; (iii) recording must be made within 3m from the date of the instrument, or prior to the date of subsequent purchase or mortgage.
3. Failure to record renders the instrument void (not binding) as against the subsequent purchaser or mortgagor in GF and for value. However, it remains binding as to the original parties.

## B. Trademarks

### 1. Marks vs. Collective Marks vs. Trade Names

#### (a) Mark

1. Any visible sign capable of distinguishing the good, including the stamped or marked container of goods.
2. Visible + Distinctive. Distinctiveness is the benchmark of registrability.
3. Any word, name, symbol, emblem, sign or device, or combination **WENDS SC** adopted and used by a manufacturer or merchant to (i) identify his goods, and (ii) distinguish it from those manufactured, sold, dealt in by others.
4. If used for goods, trademark. If used for services, service marks.
5. It is protected only if registered.

#### (b) Collective mark

1. Visible sign capable of distinguishing (i) the origin, (ii) any other common characteristic (e.g., quality) of goods or services of different enterprises using the sign under the control of the registered owner of the collective mark. E.g., halal.
2. It is protected only if registered.

#### (c) Trade name

1. Name or designation identifying or distinguishing an enterprise.
2. It relates to the business itself rather than the goods or service.
3. It is protected even if not registered so long as previously used in trade or commerce. Registration is not a requirement to bring an action for infringement of TN.

### 2. Acquisition of Ownership of Mark

TM is acquired exclusively through **registration** validly made in accordance with IPC.

1. The rule that TM is acquired through use was already abandoned.

2. Certificate of registration is *prima facie* evidence of (i) **validity** of the registration; (ii) registrant's **ownership** of the mark; (iii) registrant's **exclusive** right to use the same in connection with the goods/service indicated or to related goods/service.
3. The registration must be made in GF, i.e., without knowledge of its prior use by another. Otherwise, the mark may be cancelled.
4. Relevance of actual use: non-use is ground (i) to refuse application, (ii) to remove the mark from the register, (iii) to cancel the mark on ground of abandonment.
5. Actual use and its declaration are requirements only to maintain ownership of the mark, but not for the acquisition of its ownership.

#### Declaration of actual use (3-1)

1. Within 3 years from filing date,<sup>39</sup> and
2. Within 1 year from the 5<sup>th</sup> anniversary of registration date.

*\*\*Failure to make the required declaration is ground to refuse the application, or removal of the mark from register. XPN: if the non-use is due to circumstances independent of the will of the TM owner. Lack of funds is not valid excuse.*

### 3. Acquisition of Ownership of Trade Name

TN is acquired through actual **use** in trade or commerce.

1. It cannot be used by 3p either as TN, TM, or collective mark.

### 4. Non-Registrable Marks

#### DSI<sup>3</sup>NI MiG<sup>2</sup> DeCoF

- (a) Deceptive/defamatory
- (b) Flag/insignia
- (c) Name, portrait, signature **NPS** of living individual
- (d) Identical to a registered mark (first to file rule)
- (e) Identical with a well-known mark (see below)
- (f) Misleading
- (g) Generic
- (h) Genericidal
- (i) Descriptive
- (j) Shapes
- (k) Color alone
- (l) Illegal

#### (a) Deceptive/defamatory

1. Mark consisting of deceptive, immoral, scandalous **DImS** matter.
2. Those which may disparage, **falsely suggest** a connection with persons (living or dead), institutions, beliefs, national symbols **PIN Be** – used to justify use protection of “Harvard” mark for use in apparel (different goods), even if not registered in Ph.
3. Those which may bring **PIN Be** to contempt or disrepute.

#### (b) Flag/insignia

1. Flags, coat of arms, other insignia of Ph, its political subdivisions, foreign nations, simulations.

#### (c) Name, portrait, signature **NPS** of living individual

1. XPNs – (i) written consent, (ii) **NPS** of deceased President, with written consent of widow/er.

#### (d) Identical to a registered mark (first to file rule)

1. Belonging to a different proprietor having an earlier filing/priority date with respect to: (i) same or closely related goods/service.
2. Confusingly similar to such registered mark.

#### (f) Misleading

1. Likely to mislead the public.

<sup>39</sup> Regardless of the action taken by IPO.

2. On nature, quality, characteristics, geographical origin, etc. of the goods/services.
3. Axilon and Accilone – generic and misleading.

(g) Generic

1. For the goods/service which they seek to identify.
2. Registrable if used for goods/services not identified by the mark.

(h) Genericidal

1. Signs have become customary or usual to designate **CUD** goods/services in everyday language or in bona fide and established trade practice.

(i) Descriptive

1. Signs which merely designate the kind, quality, quantity, purpose, value, geographical origin, time of production of goods/service, or other characteristics.
2. But in TN, the SC allowed the registration of a descriptive term with the generic term, e.g., San Francisco Coffee.
3. XPN: if secondary meaning is acquired, the mark may be registered.
4. Test: exercise powers of perception and imagination. If the term immediately conveys the product without need of using mental powers, it is merely descriptive.
5. c.f.: suggestive marks are registrable. Those which do not identify or describe the product but requires imagination, thought, perception to reach a conclusion as to the nature of the goods. It merely carries a subtle connotation.

(j) Shapes

1. If shapes are necessitated by technical factors (patentable), or by nature of the goods themselves, or factors which affect their intrinsic value **TNI**

(k) Color alone

1. XPN: if defined by a given form.

(l) Illegal

1. Contrary to public order or morality.

*Doctrine of secondary meaning*

1. Also acquired distinctiveness.
2. Applies to descriptive, generic, shapes, colors.
3. A mark that is originally not registrable may be rendered registrable if it has become **distinctive** in relation to the goods for which registration is requested as a result of its **long**, substantially exclusive and continuous use with reference to such product in trade and to that branch of the purchasing public, the word has come to mean that the article was his produce.
4. Prima facie proof of acquired distinctiveness – proof of substantially exclusive and continuous **SEC** use by the applicant in commerce in the Ph for 5y before the date on which the claim of distinctiveness was made.
5. Primary significance of the mark to the consuming public

*Spectrum of distinctiveness*

1. Distinctiveness is the hallmark of registrability.
2. Generic >> Descriptive >> Suggestive >> Arbitrary/ Fanciful

## 5. Test to Determine Confusing Similarity Between Marks

Confusing similarity

1. Confusion of goods – if same mark is used for competing products.
2. Confusion of business (origin or reputation) – if same mark is used for non-competing products

but related enough to produce confusion of affiliation.

### a) Dominancy Test

TM infringement was defined as a **colorable imitation** of a registered mark or a **dominant** (prevalent, main, essential) feature thereof.

1. This is the only test incorporated in the IPC (§155.1).
2. The holistic test was already expressly abandoned by SC. – cited Congressional deliberations showing intent of abandonment.
3. Relies on the visual, aural and connotative comparisons, phonetic similarity (idem sonans), and overall impressions between the two marks **VACCPOI**
4. Only the **likelihood of (not actual) confusion on the part of the buying public** is necessary to render the two marks confusingly similar.
5. Considered by SC – (i) dominant words, prominent similarities in general design as the colors used, word style, logo shape

## 6. Well-Known Marks

1. Marks that are considered well-known internationally and, in the Ph, (i) by a competent authority in the Ph [registering authority or courts], (ii) taking into account, the knowledge of the relevant sector (not the public at large), including that obtained from the promotion of the mark.
2. Identical, confusingly similar, translations ICT of well-known mark are not registrable in Ph.
3. If not registered – for the identical or similar goods/services.
4. If registered – for: (i) **i/s goods/services** and (ii) goods/services that are **not similar** if the use (a) would **indicate a connection** between the goods/services and the owner of the registered mark or (b) would likely **damage the interests** of the registered owner ID.
5. E.g., Harvard is well known mark.
6. Under Paris Convention, the owner of the well-known mark may maintain action for TM infringement in a member State, even if not doing business therein.

## 7. Rights Conferred by Registration

### UND

#### (a) Right to exclusive use

1. Exclusive right to prevent all 3p from **using** in the course of trade, identical or similar **i/s** signs or containers for **goods/services** which are i/s to those covered by the TM, where such use would result to a likelihood of **confusion**.
2. XPNs: CDO – (i) if owner consents; (ii) in case of **drugs** which have been introduced in the Ph or anywhere in the world by the patent holder or anyone authorized to use the invention; (iii) in case of **off-patent** drugs and medicines.
3. Likelihood of confusion is presumed from the use of identical/similar marks for identical/similar goods.
4. Subject to the right of a prior user in good faith who may continue to use the mark even after its registration.

#### (b) Goods/services covered

1. Identical
2. Similar
3. Closely-related
4. Market areas that are normal potential expansion of the business.

#### *Closely-related*

1. Complementarity of goods may indicate that they are closely-related.

2. NICE classification of goods is not controlling in determining whether goods are similar or not. It is merely adopted for administrative purposes.
3. E.g., TV and DVD players [Taiwan Kolin] are held closely related with power supply and audio equipment [Kolin Electronics]. May also be considered within market areas that are normal potential expansion of the business of Kolin Electronics.

*Market areas that are normal potential expansion of the business*

1. Different segments of the market
2. Different price levels
3. E.g., NAN and NANNY (different age brackets, lower price range), Skechers and Strong Rubber Shoes (lower end), OK Hotdog Inasal and Mang Inasal.

*Unrelated goods*

1. Right of TM owner does not include preventing others from using the same mark for unrelated goods.
2. Also does not cover future goods that are unrelated. The protection cannot be based on conjectures.

(c) Right to register as domain name

1. TM holder shall also be allowed to register a domain name containing its registered TM as the dominant feature.
2. The website may be used to sell only those goods covered by the TM registration.

*Rights not covered*

1. Exclusive right to sell, use, make the goods/service covered by the marks.
2. To use the mark in totally unrelated goods.

*Scope of rights*

1. GR: TM takes effect only within the territory of place where it is registered.
2. XPN: Well-known marks are protected even in a territory where it is not registered.

**\*\*Rights terminate upon the cancellation of TM registration.**

## 8. Cancellation of Registration

1. Petition for cancellation of TM registration with IPO.
2. The filing of petition for cancellation does not preclude the filing of infringement case. – (i) the court is not bound by the decision of IPO, (ii) but if IPO cancels the TM, the plaintiff loses COAc in the infringement case.
3. If action for infringement was filed prior, the defendant may no longer file a petition for cancellation. His remedy is to file an answer in the infringement case and raise as AFD that plaintiff is not entitled to the TM. – (i) the court deciding the infringement case acquires jurisdiction to determine validity of the registration which precludes other courts or AA from entertaining the same; (ii) by filing an infringement case, the plaintiff agrees to submit the issue of the validity of registration with the court.

*Grounds*

1. Failure to file declaration and evidence of actual use within 3y from the filing date.
2. Failure to file declaration and evidence of actual use within 1y from the 5th anniversary of the TM registration.
3. Upon **petition** for cancellation by one who believes that he will be damaged by the registration of the mark – (i) within 5y from date of

registration, or (ii) at any time **GAMO**: (a) if the mark becomes **generic** for the goods for which it is registered, (b) if it has been **abandoned**, (c) if the registration was **obtained** fraudulently or contrary to IPC, (d) if the mark is being used by or with consent of registrant to **misrepresent** the source of goods or services in connection with which the mark is being used.

4. Failure to use or cause the mark to be used via license in the Ph without legitimate reason for an uninterrupted period of 3y or more.

*Actual use*

1. There is **actual use** of the mark in the Ph if the business maintains an **interactive website** showing an intent to realize local commercial activity, especially if coupled with actual consummated transactions with Ph citizens or residents, even if the business has no physical establishment in Ph.
2. The intent to produce discernible commercial effect is controlling.
3. Non-use of mark is excused if caused by circumstances independent of the will of the TM owner, e.g., war, but lack of funds is not excuse for non-use.
4. Use of mark in different form is actual use, so long as the distinctive character remains.
5. Use by licensee inures to benefit of TM owner.

## 9. Trademark Infringement

(a) Elements **CURLI**

1. TM infringed in **registered** with IPO.
2. TM is reproduced, counterfeited, copied (exact copy), or colorably **imitated** by the infringer.
3. The infringing mark is **used** in commerce in connection with the SODA<sup>40</sup> of goods/service or applied to its containers or labels.
4. Use or application of the infringing marks is **likely to cause confusion** to the public as to the (i) goods/service, (ii) their source, or (iii) identity of business (gravamen).
5. Use or application of the infringing mark is without **consent** of the TM owner or assignee.

(b) Damages

1. Actual – reasonable profit which could have been earned without infringement, or actual profits earned by infringer, OR
2. Reasonable **percentage** based on the amount of gross sales.
3. Double damages if there is a finding of actual intent to mislead the public, or to defraud the complainant.
4. Attorney's fees, costs of suit.
5. Moral and exemplary are not recoverable.

(c) Limitations

1. Damages cannot be recovered unless the infringing acts were committed with knowledge that the imitation is likely to cause confusion. – (i) knowledge is presumed if the goods/labels contained “registered mark” or ®; (ii) likelihood of confusion is presumed from the use of identical marks for i/s goods.
2. Prior user in gf – a person who had been using the mark in GF in his business before the filing/priority date can continue using the same without being liable for infringement.
3. Innocent infringer – if the infringer is engaged solely in the business of printing is an innocent infringer, the TM owner shall only be entitled to an injunction against future printing.
4. Publishers of infringing materials – if the infringement is part of paid ad in newspaper,

<sup>40</sup> Sale, offering for sale, distribution, advertisement.

magazine, electronic communication, etc., TM owner shall only be entitled to an injunction against the publishers or distributors against presentation of the infringing materials in future issues, unless the injunction will cause delay in the delivery or transmission of the issue or communication.

(d) Provisional/Ancillary Remedies

1. Impounding order – SI, receipts
2. Preliminary injunction
3. Disposal/destruction order
4. Search and seizure warrant – (i) may be applied for even in civil action for infringement based on IPR Rules' (ii) if in connection with criminal action, application shall be made in pursuant to ROC. If there is unlawful search and seizure, damages may be claimed: (a) in separate action, if criminal case; (b) as counterclaim, if civil case.

(e) Criminal actions

1. Criminal action for infringement, even for a single act of infringement.
2. Unfair competition.

## 10. Unfair Competition

Passing of the goods or business of one person upon the public as the goods or business of another with the end and probable effect of deceiving the public.

1. Done by giving the goods the general appearance of the goods of competitors.
2. Fraud or intent to deceive is an essential element.
3. Considered transitory or continuing offense.
4. A petition for cancellation of TM is **not a prejudicial question** to the criminal action for unfair competition.

Elements

1. Confusing similarity in the general appearance of the goods – (i) either from confusing similarity in the mark, or outward appearances as packaging or presentation; (ii) **mere indication of manufacturer's name in the product or the packaging is not sufficient to exempt the maker from liability.**
2. Intent to deceive the public and defraud the competitor – may be inferred from the similarity of general appearances.

Distinctions	TM/TN Infringement	Unfair Competition
Act	Unauthorized use of TM	Passing off one's goods as that of another
Fraudulent intent	Unnecessary	Essential
Prior registration	Element of TM infringement; not required for TN	Registration is not necessary
Unrelated goods	No TM infringement if TM is used in unrelated goods	Even in unrelated goods, if it is being passed off as that of another manufacturer
Nature	Civil or criminal	Criminal

## C. Copyright

### 1. Basic Principles [Sec. 172.2, 175, and 181 only]

Intangible, incorporeal right granted by law to the author or originator or literary/artistic, or scientific/scholarly works by virtue of which, he is invested, for particular period of time, with a bundle of exclusive economic and moral rights.

1. Works are protected by the sole fact of their creation, irrespective of the (i) mode or form of expression, or (ii) content, quality and purpose (172.2). Original intellectual creations are protected from the moment of creation.
2. Non-copyrightable works (175) – see below

3. The copyright is distinct from the property in the material object subject to it (181). – (i) each may be transferred or assigned independently of the other.
4. The right can be enjoyed only with respect to copyrightable works as provided for in IPC. If certificated of registration is obtained for a non-copyrightable work, no protection will be granted.
5. **Protection is given only to the expression of idea, not the idea itself.**

Registration

1. Serves as **notice** of recording and registration.
2. It does not confer right, title or ownership upon the registrant.
3. Creates a **rebuttable presumption** of validity and ownership.

## 2. Copyrightable Works

### a) Original Works

Literary/artistic, or scientific/scholarly works which are original intellectual creations and protected from the moment of creation.

1. books, pamphlets, articles, other **writings**
2. periodicals, newspapers
3. lectures, sermons, addresses, dissertations for oral delivery w/n reduced in writing, other material form.
4. letters – (i) text messages in the nature of letters may be copyrighted, (ii) may also fall under other AL/SS works.
5. dramatic, dramatico-musical compositions, choreographic works, entertainment in dumb shows
6. musical compositions, with or without words
7. drawing, painting, architecture, sculpture, engraving, lithography, other works of art; models or designs for works of art
8. original ornamental designs, models for articles of manufacture w/n registrable as an industrial design, and other works of applied art
9. illustrations, maps, plans, sketches, charts and 3D works relative to geography, topography, architecture or science – e.g., sketch of a practical item may be copyrighted, but the same will not prevent the production of the item itself.
10. drawings, plastic works of scientific or technical character
11. photographic works including those produced by analogous process; lantern slides
12. audiovisual works, cinematographic works, works produced by analogous process
13. pictorial illustrations and advertisements
14. computer programs (not patentable but copyrightable)
15. other artistic/literary, scientific/scholarly **AL SS** works

### b) Derivative Works

Includes:

1. Dramatizations, translations, adaptations, abridgments, arrangements, other alternations of AL works DT **AdAbAr**
2. Collections of AL/SS works; compilations of data and other materials which are original by reason of selection or coordination or arrangement of their contents **SCA**

Notes:

1. Derivative works is protected as in an original work.
2. The protection over the original and derivative work are independent – (i) copyright on derivative work does not affect that on the original work; (ii) right to use original work is not implied; (iii) copyright is not over original work is not extended simply by its incorporation in the derivative work.



3. The author may refuse to have his work published in an anthology (derivative). One of the moral rights of original author is to withhold publication, which is not affected by the copyright on the derivative work.

### 3. Non-Copyrightable Works

#### INJO G

1. Idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, IPSy MOC Co PriDiDa even if expressed, explained, illustrated or embodied in a work. – (i) idea-expression dichotomy; (ii) e.g., format or mechanics of a TV show [concept]; accounting system; discovery of planetary condition even if included in lecture.
2. News of the day, miscellaneous facts having the character of mere items of press information. – news footages are copyrightable being an expressly of the news after the application of creative process (GMA's use of Reuter's footage)
3. Official text of a legislative, administrative or legal nature, and their official translations
4. Any work of the Ph government – (i) if exploitation is for profit, prior approval + compliance with other conditions is required.
5. Statutes, rules/regulations, speeches, lectures, sermons, addresses, LSD A dissertations, pronounced, read, rendered in **courts** of justice, before **administrative** agencies, in **deliberative** assemblies and in **meetings** of public character CADM

#### Useful articles

1. GR: not copyrightable as they are more proper subject of patent.
2. XPN: if the useful article incorporates a design or ornamental element physically and conceptually separable from the underlying product.
3. Denicola test – If the design elements of an article reflect a merger of aesthetic and functional considerations, and the artistic aspect of the work cannot be conceptually separated from the utilitarian aspect, the object cannot be copyrighted. Otherwise, it may be copyrighted but only as to the artistic element.

#### Other examples

1. Directories
2. Functional listing of ingredients

### 4. Rights Conferred by a Copyright

#### (a) Economic rights: exclusive right to ReD FReD PO

1. **Reproduce** the work or substantial portion of it.
2. Carry out **derivative** works: dramatization, translation, adaptation, abridgement, arrangement other transformation of the work (derivative).
3. **First** public distribution of the original by sale or other forms of transfer of ownership – (i) first sale doctrine/ exhaustion of rights doctrine
4. **Rental** of the original or copy – (i) Audiovisual, (ii) Cinematographic, (iii) Work embodied in sound recording, (iv) Computer program, (v) Compilation of data and other materials, (vi) Musical work in graphic form. Distinct from right of first distribution; if covered copyrighted material is acquired, it may be resold but not leased.
5. Public **display** of the original or copy – (i) at open place where substantial number of persons outside the normal circle of family or social acquaintances are gathered; (ii) display to close friends/family is not public display.
6. Public **performance** of the work – (i) Non-/audiovisual means; (ii) sound recording; (iii) other means where performance can be perceived without need of communication

7. **Other** communication to the public, e.g., internet communication, digitalization of works, other wire/less means allowing access to the work.

#### Right to exclusive reproduction

1. Copying the entire work is not necessary. Copying of sufficient portion is sufficient to constitute infringement.
2. Copying is substantial if – (i) it sensibly diminishes the value of original work; (ii) it amounts to an appropriation of the labors of the original author causing injury to him.
3. To violate the copyright, the copying must produce injurious effects to the owners.

#### Permissible reproductions QMC PNAB

1. Quotations of published works – FLA (i) fair use, (ii) limited to extent necessary for the purpose, (iii) with attribution.
2. Communication by mass media – CRIA (i) articles of current events and similar works delivered to public, (ii) not expressly reserved; (iii) for **information purposes** only, (iv) with attribution.
3. Report of current events – (i) reproduction of AL/SS works as part of report of current events through photo/cinematography, broadcasting PCB, (ii) limited to extent necessary for the purpose.
4. Private reproduction for research/study – (i) single copy, (ii) for use by natural person, (iii) exclusively for research/private study, (iv) except: architectural work, **entire book or substantial part**, musical work, data/material compilation, computer program
5. Non-profit library or archives – (i) single copy, (ii) if necessary: (a) original is fragile/rare, (b) for research or study where work is an isolated article contained in a volume, (c) to preserve or replace work no longer available with publishers.
6. Authorized libraries – (i) library is entitled to receive copies work, (ii) reproduction is necessary for collection but out of stock.
7. Back-up copy of computer program – (i) **only 1 back-up copy**, (ii) by lawful owner, (iii) necessary for (a) use, (b) archival, (c) replacement in case of loss or destruction.

#### First sale doctrine/exhaustion principle

1. Once the copyright owner sells or otherwise disposes his work, he loses control over it. One who acquires may freely **sell, display, dispose** the work.
2. However, the acquirer cannot exercise the other exclusive rights of the owner: reproduction, derivative works, rental, performance, other communication.
3. Droite de Suite – right of copyright owner to participate in gross proceeds from subsequent sale of the work

#### (b) Moral rights AtAI IF

1. Right of attribution – (i) right to require that the authorship of the works be attributed to him, (ii) by prominently indicating his name on the copies of his work, and in connection with its public use (paternity right).
2. Right to make alterations of his work prior to, and **to withhold publication**.
3. Right of integrity – (i) Right to object to any distortion, mutilation, other modification of, DiMuMo other derogatory action in relation to his work which would be prejudicial to his honor or reputation.
4. Right against false attribution – (i) Right to restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.

#### Waiver

1. Moral rights may be waived by written instrument.
2. XPNs: if effect is to (i) use author's name or reputation, or his book title for adaptations, which due to the alterations, would substantially tend to injure the literary or artistic reputation of another author; (ii) use the name of the author with respect to a work he did not create.
3. A contributor to a collective work is deemed to have waived his right of attribution unless he expressly reserves it.

#### (c) Term of protection: from moment of creation

In general	Lifetime of creator + 50y after death
Joint authorship	Lifetime of last surviving creator + 50y after death
Unknown author (pseudonym)	50y from first publication, unless author is identified
Works of applied art	25y from making
Photographic works	50y from publication or making
Broadcast	20y from airing
Performers or producers of sound recordings	50y from EOY of performance, if not incorporated in recordings 50y from EOY of recording, if incorporated in recordings
Moral rights other than right of attribution	Co-terminous with economic rights
Right of attribution	Perpetuity

1. The term is deemed to begin on Jan. 1 of the year following the event which gave rise to them, e.g., death, publication.
2. Performance is a neighboring right separate from the right of the creator.

#### (d) Rights of publisher

1. Right to publish granted by the author, heirs, assigns
2. Copyright over the typographical arrangement or the published edition of the work, i.e., the layout, composition, style, general/visual appearance of the page of a published work.

### 5. Ownership of a Copyright

Original AL/SS works	Author or creator
Joint authorship	Co-authors are co-owners. XPNs: (i) contrary agreement, (ii) if separable/identifiable parts may be attributed to one
Made in course of employment	(i) EE owns copyright if the work is not a result of his regular duties, even if he uses the time, facilities, materials of ER; (ii) ER owns copyright if the work is a result of his regular duties. XPN: contrary agreement, express or implied
Commissioned works	(i) Copyright is owned by author/creator. XPN: <b>written</b> stipulation to the contrary; (ii) Material object is owned by the person who commissioned it
Audiovisual works	Copyright is owned by producer, author of scenario, composer of music, film director, author of work adapted
Letters	(i) Copyright is owned by author; (ii) material letter is owned by recipient.
Photographic works	(i) Copyright is owned by photographer, subject to the subject's right to privacy in case of dissemination; (ii) if the photos are sold to a magazine, the latter acquires copyright
Undisclosed authors	Publishers are deemed to represent the authors. XPNs: (i) contrary appears; (ii) pseudonyms leave no doubt as to author's identity; (iii) author discloses his identity

Cannot own copyright

Animals, AI

### 6. Limitations on Copyright

- (a) Private performance – (i) work already made available to public; (ii) private/free of charge OR strictly for charitable or religious institution or society. Performance or works/playing of radio broadcast in commercial establishments are not covered.
- (b) Quotations of published works – **FLA**
- (c) Communication by mass media for information purposes – **CRIA**, e.g., speech of public officials, livestreaming of Pres./VP debates
- (d) Report of current events – (i) reproduction of AL/SS works as part of report of current events through photo/cinematography, broadcasting **PCB**, (ii) limited to extent necessary for the purpose.
- (e) Inclusion of work in communication to public, for illustration purposes – **FTA** (i) fair use, (ii) for teaching/ illustration purposes only, (iii) attribution.
- (f) Recoding in schools – (i) part of broadcast, (ii) for school use, (iii) deleted within reasonable time after first broadcast, (iv) except audiovisual works part of the general cinema repertoire of feature films except brief excerpts.
- (g) Ephemeral recordings – **BFO** (i) by broadcasting organization, (ii) using its own facilities, (iii) for use in its own broadcasts.
- (h) Government directed use – **FPU** (i) fair use, (ii) for public interest, (iii) use (a) by government, (b) under its direction or control, (c) by national library, or (d) by educational, scientific, professional ESP institutions. E.g., NTC's must carry rule which requires cable providers to air shows of free TV, including paid ads.
- (i) **Public performance** or communication for charitable or educational purposes – (i) no admission fee, (ii) for charitable or educational purposes, (iii) subject to other limitations.
- (j) **Public display** of published work – (i) work was published, (ii) original or copy was sold/disposed [right of first sale], (iii) not done by means of film, slide, TV image, otherwise on STS screen or by means of any device or process DP.
- (k) Judicial proceedings or professional advice – e.g., for use in pleadings, or legal opinion. Attribution is not necessary by advisable.
- (l) Reproduction in special format on a **non-profit** basis – (i) for exclusive use of the blind, visually-impaired, reading-impaired persons, (ii) **non-profit** basis, (iii) attribution, including date of original publication.
- (m) Fair use exception (see below)

### 7. Doctrine of Fair Use

Privilege to use a copyrighted material, in a reasonable manner, without the consent of the copyright owner.

#### Four-factor test **PANE**

1. **Purpose** and character of use – (i) use for CrINTS: criticism and comment, news reporting, teaching including multiple copies for classroom use, scholarship/research, and similar purpose; (ii) non-commercial, educational use, etc.
2. **Nature** of work – factual v. creative.
3. **Amount** and substantiality of the portion used in relation to the copyrighted work as a whole.
4. **Effect** of use on the potential market for or on the value of the copyrighted work

### 8. Copyright Infringement

Piracy. The doing by any person other than the copyright owner, without the latter's authority or consent, of an act reserved exclusively by law to the copyright owner.

1. Only substantial, not absolute similarity is required.
2. Malum prohibitum; intent is not an element, and GF is not a defense. XPN: with respect to the possessor of an infringing product who acquired the same through legitimate sources without knowledge that it is counterfeit.
3. If the infringer is a corporation, its officers may be held liable if – (i) they participated in the commission; (ii) they failed to prevent the same despite being in a position to do so.
4. Must be filed within 4y from the time the cause of action arose.

Modes of commission

1. By directly committing infringement
2. By benefiting from an infringing activity of another – (i) had notice/knowledge of infringing activity, (ii) had the right and ability to control the activities of the infringer but failed to do so.
3. By inducing, causing, or materially contributing ICM to the infringing conduct of another, having knowledge of the infringing activity – hacking. May fall under this provision.
4. By possessing an infringing material.

Elements

1. Ownership of a validly copyrighted material by the complainant – (i) registration or deposit of work in NL is not required.
2. Infringement of the copyright by the respondent – exercise of any of the exclusive economic rights + without consent.

Defenses **NTB POPEL**

1. Work is **not** copyrightable.
2. **Term** of copyright has already expired.
3. Use of the work falls within the **limitations** of copyright.
4. Plaintiff is not the **owner** of the copyright.
5. **Non-participation** in the commission of infringing act
6. If based on **benefiting** from the infringing act, lack of notice, or lack of control over the infringement.
7. **Prescription**
8. Lack of **evidence** to support the allegations.

Damages recoverable

1. Actual damages – profits made by infringer: (i) plaintiff must prove amount of sales, (ii) defendant must prove deductions.
2. Double damages – (i) The defendant circumvents effective technological measures ETM, (ii) removes, alters any electronic rights management ERM information<sup>41</sup> to induce, enable, facilitate, conceal infringement, (iii) distribute or communicate to public works without authority, knowing that the ERM information has been removed or altered without authority.
3. Just or statutory damages (50k).
4. Legal costs, other expenses
5. **Moral and exemplary damages** – in patent/TM infringement, there is no right to recover these.

*\*\*Damages may be reduced ≤10k if infringer was not aware and had no reason to believe that his acts constitute infringement.*

Provisional remedies

1. Preliminary injunction
2. Search and seizure order – invoices, infringing materials, tools.

<sup>41</sup> Information which identifies the work, the author or creator, the owner of the right, or information about the terms and conditions on the use of the work; or any number of code representing such information; when these items are attached

3. Order of destruction			
Distinction	Patent	TM	Copyright
Criminal action	Only on 2 <sup>nd</sup> act of infringement	No need for second act	No need for second act
Damages	Other damages not exceeding 3x	Damages 2x – if there is finding of actual intent to defraud	Damages 2x if there is circumvention of effective technological measures or removal of electronic rights management
Moral/exemplary	No	No	May be awarded
Actual damages	Reasonable royalty	Percentage of gross sales, or value of the goods or services	Profit which the infringer made; or the owner would have made (plaintiff must prove sales, defendant must prove deductions)

## VI. Electronic Commerce Act (R.A. No. 8792)

### A. Legal Recognition of Electronic Data Messages, Documents, and Signatures

#### (a) Definitions

1. Electronic data message – Information generated, sent, received, stored **GS ReSt** by electronic, optical, similar **EOS** means.
2. Electronic document – Information or representation of information, data, figures, symbols, or other modes of written expression (i) by which a **right** is established or an **obligation** extinguished, (ii) or by which a fact may be proved or affirmed, (iii) which is received, recorded, transmitted, stored, processed, retrieved or produced electronically or by similar means **RRTS PPR**. The presence of the any mode renders the document an e-doc even if it started as a manual document, e.g., scanning a handwritten document transforms it to an e-doc.

#### Categories of e-docs **CWEST**

1. Computer-stored/generated documents
2. Website data
3. Emails
4. Social media communications and postings
5. Text messages – not ephemeral communication. If deleted, subject to ODR.
6. Audio, video, photographic evidence, recorded electronically – considered documentary evidence under Rules of Evidence.

#### Examples of e-docs

1. Picture image of the paper ballot scanned and recorded by PCOS machines may be considered an e-doc, and likewise considered as “official ballots” (functional equivalent) if the party disputing the ballot shows that the official ballots are lost, or that their integrity has been compromised.

#### (b) Legal recognition

1. Information shall not be denied legal effect, validity, or enforceability solely on the grounds that it is in the form of or incorporated in an e-doc.
2. Principle of non-discrimination – E-docs should not be discriminated against but should be given

to work or appears in conjunction with it (**anything that will remove the identity of the author or creator of the copyrighted work**).



the same legal status as their paper-based counterparts. They shall have the legal effect, validity or enforceability as any other document or legal writing. E-doc is admissible to the same extent as the original.

3. Parity rule – E-doc shall have the same legal effect, validity, or enforceability as any other document or legal writing.
4. The E-commerce act did not alter the requirements under existing laws on the formalities required in the execution of documents for their validity. However, for evidentiary purposes, an electronic document is considered a **functional equivalent** of a written document under existing laws.

#### *Equivalent compliance (Functional equivalent rules)*

1. The legal requirement for a document to be in **writing** is complied with if the e-doc if (i) it maintains integrity and reliability IRA; (ii) it can be authenticated, so as to be usable for subsequent reference – (a) the document remained complete and unaltered (other than those acceptable); (b) it is reliable in light of the purpose for which it was generated, and in light of all relevant circumstances **CU RP**
2. The legal requirement that a document be presented or retained in original form is met by an electronic document if (**ODR**) (i) there exists reliable assurance as to the integrity of the document from the time it was first generated in its final form RAI; (ii) the document is capable of being displayed to the person to whom it is presented **CDP**

#### (c) Validity of electronic contracts

1. Offer, acceptance and other elements required for the perfection of contracts may be expressed in, demonstrated, and proved **EDP** by means of electronic data messages or electronic documents, unless otherwise provided by the parties.
2. No contract shall be denied liability or enforceability on the sole ground (i) that it is it he form e-doc, or (ii) that any or all of the elements required under existing laws for the formation of contract is expressed, demonstrated and proved via e-doc. Non-compliance with SOF cannot be invoked on ground that the document is expressed in e-doc.
3. E.g., (i) Oral offer to donate 20k made through audio/video recording is valid. Screenshot of Facebook message, subject to requirements of authentication, may be used as evidence to prove the perfection of contract of sale (in the context of online selling, where the prospective buyers type “Mine”).
4. BUT a holographic or notarial will cannot be made in audio or video form – (i) the notarial will must be acknowledged before the notary public; (ii) a holographic will must be entirely **WDS** by the hand of the testator.

#### (d) Not considered e-doc

1. Facsimile transmissions of pro forma invoices are paper-based documents, and cannot be considered, nor be admitted as electronic evidence. XPN: computer-generated faxes.
2. Ephemeral e-communication. Phone talks, text messages, chatroom sessions, streaming audio, streaming video/audio, other electronic forms of communication the evidence of which is not recorded or retained **are not considered e-doc and will not comply with a legal requirement for a transaction to be in writing.** – unless they are recorded or saved.

3. A photocopy cannot be considered e-doc if the original document contains a manual signature.

#### Notes

1. The E-commerce act does not regard Internet as a valid medium of publishing laws, rules and regulations. In essence, it is limited recognizing an e-doc as being considered the functional equivalent of a written document for evidentiary purposes.
2. E.g., the Senate cannot invoke publication in the Senate's web page as an substitute to the actual publication of its rules and regulations before it can proceed with inquiries in aid of legislation.

### **B. Presumption Relating to Electronic Signatures**

#### (a) E-sig

1. (i) Distinctive mark, characteristic, sound **MCS** in electronic form, representing the identity of a person, and attached to or logically associated with an electronic data message or electronic document; (ii) any methodology employed by a person and executed with the intent of authenticating and approving the electronic data message or electronic document.
2. Used to (i) identify a person; (ii) authenticate, sign, approve an e-doc.
3. E.g., username and password to access online accounts are considered e-sig.
4. E-sig is equivalent of manual signature if the signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document, exists and conforms with the provisions of the law – (i) it must be shown that the sender, is indeed that one who sent the document; (ii) no alternation during the interval when the receiver received the document.
5. Authentication – (i) by evidence that a method or process was utilized to establish a digital signature and verify the same; (ii) by any other means provided by law; (iii) by other means satisfactory to the judge as establishing the genuineness of the e-sig.

#### *Digital signature gives the recipient reason to believe that:*

1. The message was created by a known sender (identification).
2. The sender cannot deny having sent the message (non-repudiation).
3. The message was not altered in transit (non-alteration).

#### (b) Presumptions

1. E-signature is the signature of the **person** to whom it correlates (authentic).
2. E-signature was affixed by that person with the **intent** of signing or approving the document, unless the person relying on the electronically signed document knows or has noticed of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

### **C. Admissibility and Evidential Weight of Electronic Data Message or Electronic Document**

#### (a) Definitions under Rule of Evidence

1. **Documentary evidence** consists of writings, **recordings**, photographs, xxx offered as proof of their contents.
2. Recording includes letters, words, numbers, sounds. Recording of conversation, speech, other oral communication, even nonverbal sound (e.g., gunshot) is considered documentary evidence.
3. Photographs include pictures, **drawings**, stored images, ex-ray films, **motion pictures, videos** – photographic image or equivalent **stored** in any form.



(b) Admissibility

1. In general, e-doc is admissible if (i) it complies with the rules on admissibility prescribed by the Rules of Court and related laws, and (ii) it is authenticated in the manner prescribed in the Rules.
2. Audio, photographic, video, similar evidence is admissible if: (i) shown, presented, displayed to the court; (ii) identified, explained, authenticated (a) by the person who made the recording, or (b) **by some other person competent to testify on its accuracy**. The law does not require an expert to authenticate the evidence.
3. E-doc is admissible to the same extent as the original.
4. Admissibility cannot be denied – (i) On sole ground that the document is in electronic form; or (ii) On ground that it is not in the standard written form.

(c) Evidentiary weight. Considerations:

1. Reliability of the manner in which it was generated, stored, communicated.
2. Reliability of the manner in which its originator was identified.
3. Other relevant factors.

Notes

1. The confidential character of a privileged communication is not lost solely on the ground that it is in the form of an e-doc – e.g., attorney-client.
2. Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, the term shall be deemed to include an e-doc – e.g., ODR, SOF, parol evidence, business entries exception to hearsay, official records exception to hearsay, public documents.
3. An electronic document is considered an original for the purpose of applying the ODR if it is a printout or output readable by sight or other means, shown to reflect data accurately. Electronic data message or electronic document meeting and complying with the requirements under E-commerce Act, shall be the **best evidence** of the agreement or transaction contained therein.

**D. Obligation of Confidentiality**

Except for purposes authorized by ECA, any person who obtained access to an e-key, EDM or e-doc, book, register, correspondence, information, or other material pursuant to any powers conferred under ECA shall not convey or share the same with any other person.

Punishable acts

1. Hacking or crackling – (i) unauthorized access or interference in a computer system/server or information and communication system; (ii) access intended to corrupt, alter, steal, destroy, using computer or other ICT device. E.g., introduction of virus resulting to corruption of files
2. Online piracy – Use of telecommunication networks, e.g., internet, to violate or infringe on protected works and copyrights. Making protected works available to the public.
3. Violation of Consumer Act – through transactions covered by or using electronic data messages or electronic documents.
4. Other violations of the provisions of the Act.
5. Content-related offenses – Cyber child porn; cybersex; cyberlibel (also punished under Cybercrime Prevention Act).

Lawful wiretap/hacking

1. Covers only terrorist communications under ATA.

2. CA may authorize a police or law enforcement officer to undertake surveillance, interception, recording of terrorist communications.

Cyberlibel

1. Under Disini ruling, the prosecution for ECA and CPA could give rise to double jeopardy since they pertain to the same offense.
2. A person cannot be prosecuted for cyberlibel for a libelous Facebook posting made prior to the effectivity of the cybercrime prevention act since cyberlibel is not yet a crime and not yet punishable at the time of its commission. It is also not punishable under Art. 355 since it does not contemplate online libel but only libel by writing or other similar means.
3. A person can be prosecuted only for the Cyberlibel, but not both for Cyberlibel and libel under Art. 355. Otherwise, it will constitute double jeopardy.

**VII. Foreign Investments Act (RA 7042, as amended by RA 11647)**

**A. Policy of the Law [Sec. 1, RA 11647]**

Policy

1. To attract, promote and welcome productive foreign investments FI in activities which significantly contribute to economic growth, productivity, global competitiveness, employment creation, technological advancement, and countrywide development.
2. Limitation: (i) Constitution, (ii) relevant laws, (iii) consistent with the protection of national security.
3. Focus areas: (i) livelihood, employment creation; (ii) enhancing value of agricultural products; (iii) consumer welfare; (iv) export market; (v) technology transfer.
4. FI to supplement to Filipino capital and technology in domestic market enterprises.
5. To entice FI: to promote (i) accountability and integrity in public office; (ii) administrative efficiency.
6. Governing principles in FI: transparency, reciprocity, equity, and economic cooperation.

FI restrictions

1. In export enterprises – GR: no restriction
2. In domestic market enterprises – GR: no restriction. XPN: those provided in the FINL.

On foreign firms primarily serving domestic market

1. To encourage them to take measures to gradually increase Filipino participation in the business.
2. (i) Taking Filipino partners; (ii) electing Filipinos in BOD; (iii) technology transfer; (iv) employment generation; (v) skills training.

**B. Definition of Terms [Sec. 2, RA 11647]**

**1. Foreign Investment**

(a) Equity investment (b) made by a non-Ph national (c) in the form of (i) forex and/or (ii) other assets (c) actually transferred to the Philippines, and (d) duly registered with BSP.

(a) Equity investment – requires ownership

(b) Ph national

1. Ph citizen;
2. Domestic partnership or association wholly owned by Ph citizens;
3. Domestic corporation at least 60% of voting and OCS is owned and held by Ph citizens
4. Foreign corporation – (i) registered as doing business in the Ph under the Corporation Code; (ii) 100% of voting and OCS is wholly owned by Ph citizens
5. Trustee of pension funds – (i) Ph national; (ii) at least 60% of the fund will accrue to the benefit of Ph nationals

For corporations with foreign SH owning stocks in SEC-registered enterprise to be considered Ph national

1. At least 60% of the voting and OCS of each of both corporations must be owned and held by Ph citizens;
2. At least 60% of the Board members of each of both corporations must be Ph citizens

## 2. Doing Business

Includes: **SOAPA**

1. Soliciting orders, service contracts;
2. Opening offices;
3. Appointing representatives or distributors – (i) domiciled in Ph, or (ii) who stays in Ph for  $\geq 180$ d in any CY.
4. Participating in the management, supervision or control **MSC** of any domestic entity;
5. Any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization (continuity test)

Tests:

3. Twin Characterization Test: (i) Substance Test – a FC is doing business if it is a continuing body of the business for which it was organized; (ii) Continuity Test (see above)
4. Sliding scale Test: (i) specifically tailored to internet businesses; (ii) (a) passive websites: merely posts information, does not generate sufficient contacts for exercise of jurisdiction; (b) active websites: generates business, generates sufficient contacts for exercise of jurisdiction; (c) interactive websites: hybrid, case-by-case basis.

*Isolated transaction*

4. Casual or incidental. TXN set apart from the common business of the corporation, and shows no intent to engaged in the progressive prosecution of the object of its business;
5. A single transaction is not necessarily an isolated transaction if (i) related to corporate purpose; (ii) shows intent to do business.

*Examples of doing business*

8. Granting credit-terms to domestic corporation
9. An airline carrier with no flights originating in Ph is considered doing business in Ph if it appointed a agent (i) domiciled in Ph; (ii) not transacting in its own account, but on the carrier's account; (iii) subject to its full control.
10. Operation of online platform where Ph residents can avail services (active website)
11. Setting-up of game servers.

Does not include:

9. Mere investment as a SH in domestic corporations, and/or the exercise of related rights – (i) if not corporation, e.g., JV/partnership, doing business and must register.
10. Having a nominee director or officer to represent its interests;
11. Appointing a representative or distributor – (i) transacting in its own name, (ii) for its own account
12. Publication of advertisement
13. Maintenance of stock for processing
14. Consignment of equipment for processing goods for export
15. Collection of information
16. Performance of auxiliary services on isolated txn

## 3. Export Enterprise EXEN

1. Manufacturer, processor, service enterprise, which exports at least 60% of its output;
2. Trader which purchases domestically, and exports at least 60% of its purchases

## 4. Domestic Market Enterprise

1. Produces/sells goods, renders service entirely to the domestic market, or otherwise engages in any business in the Ph – (i) “any business” includes investment in stocks of foreign corporations.
2. If exporting, exports less than 60% of its outputs.

Allowable foreign investment:

1. Paid-in capital  $< \$200$ k – up to 40%
2. Paid-in capital  $\geq \$200$ k – up to 100%
3. Paid-in capital  $\geq \$100$ k – up to 100%, IF: (i) involving **advance** technology as determined by DOST; (ii) endorsed as **start-up** by the lead host agency under the Innovative Start-up Act; (iii) **employs**  $\geq 15$  Filipino EEs

## C. Registration of Investment of Non-Philippine Nationals [Sec. 6, RA 11647]

A qualified non-Philippine national must register with **SEC**<sup>42</sup> or **DTI**<sup>43</sup> without need of prior approval:

1. To do **business** in the Ph
2. To **invest** in a DME. GR: up to 100% of capital. XPN: if participation is prohibited or limited by Constitution, law. N.B.: SEC or DTI shall not impose limitation on extent of foreign ownership of an enterprise other than those provided in FIA.
3. Additional requirement: if intending to engage in the same line business as existing JV in which he is a majority SH or substantial partner – disclosure in the application with SEC of (i) the fact; (ii) names/addresses of the partners in existing JV.

A qualified non-Philippine national must register with **BOI**

1. To avail **incentives** under the Omnibus Investments Code of 1987

## D. Foreign Investments in Export Enterprises [Sec. 7, RA 11647]

Allowable FI

1. GR: allowed up to 100%
2. XPN: if products and services of EXEN fall within Lists A and B of FINL

Requirements for non-Ph national EXEN (registration and reportorial)

1. Must register with BOI;
2. Must submit reports to ensure compliance with export requirements;
3. Must comply with export requirements under NIRC to avail of tax incentives.

In case of failure to meet export requirement (at least 60%)

1. BOI to advise SEC, STI;
2. SEC/STI to order the EXEN to reduce its sales to the domestic market to not more than 40% of total production;
3. Unjustified non-compliance with order is ground for: (i) cancellation of registration with SEC/DTI; (ii) imposition of (administrative) penalties.

## E. Foreign Investments in Domestic Market Enterprises [Sec. 7, RA 7042]

Allowable FI

1. GR: up to 100% (minimum capital of \$200k or 100k)
2. XPN: micro and small DMEs with paid-in capital  $< \$200$ k, up to 40%
3. XPN to XPN: micro and small DMEs with paid-in capital  $< \$100$ k, up to 100%, IF: (i) involving

<sup>42</sup> Corporation or partnerships.

<sup>43</sup> Sole proprietorships

**advance** technology as determined by DOST; (ii) endorsed as **start-up** by the lead host agency under the Innovative Start-up Act; (iii) **employs** ≥15 Filipino EEs

Change of status to EXEN

1. Exporting at least 60% of its output
2. Consistently for a period of over 3 years

#### F. Foreign Investment Negative List [Sec. 8, RA 11647]

List of areas of economic activity whose foreign ownership is limited to a maximum of 40% of the equity capital of the enterprises engaged therein.

1. List A – areas of economic activity reserved to Ph nationals by Constitution and laws;
2. List B – areas of economic activity regulated by law which are (i) defense-related, or (ii) have implications on public health and morals.
3. Amendment to be made not more than once every 2y.

#### VIII. Public Service Act (Commonwealth Act No. (CA) 146, as amended by RA 11659)

Public service **PS**

1. Under C.A. No. 146, sec. 13[b] – (i) A person (natural, juridical, including governmental agencies) who **owns, operates, manages or control OOMC** public services in the Philippines which may include distribution of goods or rendering of services to the public; (ii) OOMC must be for **hire** or compensation; (iii) OOMC must be done for **general** business purposes. (not amended by R.A. 11659)
2. General business purpose: habitual or regular engagement on the activity for purposes of earning livelihood or profit.
3. Permanence is not an element: PS may be permanent, occasional, or accidental.
4. The business may be with general or limited clientele.

Public Service Commission

1. Created under C.A. No. 146
2. Its functions now pertains to the various Administrative Agencies.

#### A. Critical Infrastructure [Sec. 2(e), RA 11659]

Any public service which owns, uses, operates (not ownership) systems, assets **OUO SA** – physical or virtual – so vital to the RP that their incapacity or destruction would have detrimental impact on national security.

This includes **telecommunications**, and other vital services as may be declared by the President of the Ph.

Under IRR: (i) only telecommunications; (ii) no other public service shall be considered infrastructure unless declared by the President.

Declaration of PS as CI

1. President is authorized to make declaration, upon recommendation of NEDA;
2. Through issuance of executive order;
3. Classification applies **prospectively**.

Equity structure:

1. Foreign nationals cannot own more than 50% of capital;
2. Subject to reciprocity, foreign nationals may own up to 100%

**\*\*Prospective application – applies only to investments made after the public service is declared as CI.**

Reciprocity

1. Must be provided in foreign law, treaty, international agreement.
2. Satisfied if the foreign country allows Ph citizens to own or invest more than 50% capital stock in activity related to agriculture, industry, service in the foreign country.
3. If the foreign investment in PU or CI exceeds 50%, the administrative agency or SEC shall require documentary proof from the foreign investor to prove reciprocity (e.g., official publication of relevant law or issuance granting the investment privilege to Ph nationals, attested by legal custodian; relevant documents granting such privilege apostilized or consularized)

#### B. Foreign State-Owned Enterprise [Sec. 2(g), RA 11659] FSE

Entity where a foreign state:

1. Owns more than 50% capital (direct or indirect) – taking account both voting rights and beneficial ownership;
2. Controls the exercise of more than 50% of voting rights – through ownership interests;
3. Holds power to appoint majority members of the BOD or equivalent.

**\*\*Analogous to a GOCC in the Ph.**

Rules:

1. Entities controlled or acting on behalf of FSE are prohibited from owning capital in public utilities and public infrastructure – (i) prohibition applies to investments made after effectivity of R.A. No. 11659; (ii) FSE owning capital prior to effectivity of R.A. No. 11659 is prohibited from investing additional capital.
2. Entity controlled or acting on behalf of FSE are also prohibited from making any data or information disclosure; extending assistance, support, cooperation to any foreign government, instrumentalities, or agents.
3. XPN: Sovereign wealth funds and independent pension funds of each state may collectively own up to 30% of the capital of public utilities/ critical infrastructure.

#### C. Public Service as Public Utility [Sec. 4, RA 11659]

**Exclusive** enumeration of PU – PS that operates, manages, controls for public use: **DTP WaSP**

1. **Distribution** of electricity;
2. **Transmission** of electricity;
3. **Petroleum** and petroleum product distribution system;
4. **Water** pipeline distribution system, wastewater (including sewerage) pipeline system;<sup>44</sup>
5. **Seaports**;
6. **Public** utility vehicle;
7. All concessionaires,<sup>45</sup> JVs, similar entities that wholly OMC for public use these sectors are also public utilities.

PUVs: (i) only internal combustion engine vehicles; (ii) electric-powers vehicles are excluded; (iii) TNVS also not PUVs.

Reclassification of PS as PU

1. By **law** only – upon recommendation of the President, upon recommendation of NEDA.
2. Criteria – **RNaNeO** (i) Person **regularly** supplies, transmits, distributes **STD** to the public, through a network, a commodity or service of public consequence; (ii) Commodity or service is a

<sup>44</sup> Includes MWSS, Local Water Districts.

<sup>45</sup> Maynilad and Manila Water which are concessionaires of MWSS are also considered PUs.

**natural monopoly**<sup>46</sup>; (iii) Commodity or service is **necessary** for the maintenance of life and occupation of the public **MLOP**; (iv) Commodity or service is **obligated** to provide adequate service to the public on demand **ASPOD**.

Requirement of legislative franchise:

1. Enumeration does not amount to imposition of legislative franchise requirement where none is required by law.

Constitutional limitations on PUs

1. Ownership: limited to Ph citizens or to domestic corporations or associations at least 60% of whose capital is owned by Ph citizens. Participation of foreigner investors in governing body shall be limited to their proportionate ownership. All executive and managing officers must be Ph citizens.
2. Franchise – (i) not exclusive; (ii) maximum of 50y; (iii) subject to alteration, amendment, repeal by Congress when common good requires.
3. Subject to state takeover – (i) temporarily in case of national emergency; (ii) permanently in the interest of national welfare of defense upon payment of JC.
4. State to encourage public participation;
5. State to regulate or prohibit monopolies when the public interest requires;
6. No combinations in restraint of trade or unfair competition shall be allowed.

Effect on Gamboa v. Teves,<sup>47</sup> Roy v. Herbosa

1. No longer applicable to telecommunications companies, which is already considered a critical infrastructure.

PS not classified as PU

1. Considered business affected with public interest
2. Subject to Sec. 17, 18, Art. XIII, Const. – (i) temporary takeover in times of national emergency; (ii) permanent takeover for interest of national welfare and defense.
3. PS/PU must be established in the PH and not merely a branch of foreign corporation.

Notes:

1. Foreign ownership restriction does not apply to ownership of infrastructure assets or facilities. Administrative Agencies cannot impose nationality requirements.
2. PS not considered PUs are still regulated e.g., rate-fixing, subject to COA audit<sup>48</sup>
3. Foreign construction companies are not subject to equity limitations.

Power of Congress to declassify public utilities

1. Laws are presumed valid.
2. Question of GAD subject to judicial review.

#### D. Unlawful Acts [Sec. 9, RA 11659]

1. Provision maintenance of unsafe, improper, inadequate service; withholding or refusal of service which can be reasonably demanded and furnished;
2. Making or giving undue or unreasonable preference or disadvantage to any person; subjecting any person to prejudice or disadvantage; adoption, maintenance, enforcement of unjust, unreasonable, unduly preference and unjustly discriminatory regulation, practice, or measure;

3. Refusal or neglect to carry public mail on regular trips – (i) upon demand by Postmaster General or authorized representative; (ii) under T&C and consideration agreed upon, or fixed by the Administrative Agency;
4. Refusal or neglect to use, deliver, render public service to avoid further loss on human, material, economic, or environment during a state of calamity – upon demand by Administrative Agency.

#### E. Powers of the President to Suspend or Prohibit Transaction or Investment [Sec. 23, RA 11659]

The President is authorized to suspend or prohibit (i) any proposed merger or acquisition m/a; (ii) any investment in public service, that will effectively result in the grant of control – direct or indirect – to a foreign corporation.

Parameters: (i) In the interest of national security; (ii) Upon review, evaluation and recommendation of the concerned administrative agency; (iii) In accordance with Sec. 36 (factors to consider in the conduct of national security review), 37 28 (national security review process); (iv) (4) Suspension or prohibition must be made within 60 days from receipt of the recommendation

PCC shall be informed and consulted on all matter relating to m/a without prejudice to the its power to review m/a under RA 10667, Ph Competition Act.

#### F. Investments by an Entity Controlled by or Acting on Behalf of the Foreign Government, or Foreign State-owned Enterprises [Sec. 24, RA 11659]

Entities prohibited from making investment or owning capital in any PU or CI:

1. Foreign government or FSE
2. Entity controlled by [1]
3. Entity acting on behalf of [1] – i.e., if [1] has ability to intervene in the management, operation, administration, control of the entity.

*\*\*[2] and [3] shall not make any data, information disclosure, or extend assistance, support, cooperation to any foreign government, instrumentality agent.*

Entities allowed to invest:

1. Sovereign wealth funds and independent pension funds of foreign states
2. Limit: (i) collective ownership of capital of PU or CI is up to 30% only; (ii) investment shall not exceed 30% capital investment; (iii) submission of proof of adherence to international best practices and generally accepted principles of sovereign wealth fund management.

Prospective application – investments existing prior to effectivity of R.A. 11659 may maintain the same but are prohibited from making additional.

Duties of administrative agencies

1. To have jurisdiction and ensure compliance with the prohibition through reports furnished by SEC
2. To require documentary proof of nature of ownership as part of registration or disclosure of entities intended to operate and maintain PU or CI in Ph.

#### G. Reciprocity Clause [Sec. 25, RA 11659]

*\*\*See Critical Infrastructures*

Employment of foreign nationals

<sup>46</sup> Exists when the market demand for a commodity or service can be supplied by a single entity at a lower cost than by two or more entities.

<sup>47</sup> The 60% requirement applies to both: (i) total equity; (ii) total voting shares.

<sup>48</sup> This is not based on the classification of an entity as public utility.



1.	Foreign nationals shall be employed in public service, only after determination of non-availability of Ph national who is competent, able, willing to perform the service.
2.	XPN: As provided by law, international agreement.

Requirements for employment of foreign national

1.	EE/ER shall secure an Alien Employment Permit AEP
2.	ER shall comply with DOLE rules on issuance of AEP
3.	ER shall implement an understudy training or skills development program to ensure technology/skills transfer – (i) understudy training program: training plan designating at least 2 understudies per foreign national employed. Understudies must be next-in-rank Filipino regular EEs; (ii) skills development program: training plan designating at least 2 trainees per foreign national employed through learning sessions or similar methods. Trainees must be next-in-rank Filipino regular EEs.
4.	ER shall submit Understudy Training or Skills Development Program to DOLE within 60 days from employment of foreign national.

## PART TWO: TAXATION LAW

### I. General Principles

#### A. Power of Taxation as Distinguished from Police Power and Eminent Domain APPEBAR

Distinctions	Taxation	Police power	Eminent domain
<b>Authority</b> who exercises	State or political subdivisions	State or political subdivisions	State or political subdivisions; <u>delegable</u> to public service companies or public utilities
<b>Purpose</b>	<u>Revenue</u> generation for the support of the government	<u>Regulation</u> of an activity to promote the general welfare of the public	<u>Taking</u> of private property for public use upon payment of JC
<b>Persons</b> affected	Community; Class of individuals	Community; Class of individuals	Individual owner of the property
<b>Effect</b>	The property (in monetary terms) taken forms part of the public funds	No taking of property, no transfer of title. Usually, the regulation of an <u>activity</u> , restraint in engaging in the same	There is transfer of <u>title</u> from the private owner to the government. The property is taken, subject to the payment of its market value.
<b>Benefits</b> received	Taxpayers are deemed to receive benefits equivalent to the amount of the taxes paid	Indirect benefits in form of maintenance of a healthy economic standard of the society	The property owner receives the market value of the property taken
<b>Amount</b> of imposition	Generally unlimited	Sufficient only to cover the regulation	No imposition
<b>Relationship</b> to constitution	Inferior to non-impairment clause	Superior to non-impairment clause	Inferior to non-impairment clause
<b>Limitations</b>	Inherent/ Constitutional	Lawful object/ Lawful means	Public use; just compensation; due process
<b>Examples</b>	Income tax, VAT, LBT, RPT	Collection of universal charge under the EPIRA Law <sup>49</sup>	Ordinance requiring cemetery owners to reserve 6% of their burial

<sup>49</sup> this is for the purpose of paying NAPOCOR's stranded debts. Other examples: Prohibition of barber shops from doing massage business; Zoning ordinances; Opening of streets;

Distinctions	Taxation	Police power	Eminent domain
			grounds for paupers

### B. Inherent and Constitutional Limitations of Taxation PENIT

#### (a) Inherent limitations

##### (1) Public purpose

1. The power to tax exists for the general welfare of the public.
2. It cannot be used for the exclusive benefit of private individuals, or solely for a private purpose.
3. However, incidental benefit to private persons does not make the exercise illegal if it still generally benefits the public. Conversely, incidental benefit to State when the direct object is to benefit private interest is improper use of public funds.
4. Public purpose includes essentially government functions. – e.g., Rehabilitation/stabilization of an industry imbued with public interest, e.g., sugar, oil, power.
5. Taxpayer's have standing to challenge a law or a government act involving the illegal disbursement of public funds even if there is no direct injury to him.

##### (2) Exemption of government entities

1. Taxes cannot be imposed on the same power that wields it.
2. Otherwise, it will be an exercise in futility.

##### (3) Non-delegability

1. Power to tax is inherently legislative, exercised by the law-making body.
2. XPNs – delegation to PAL: (i) to LGUs; (ii) to the President under the flexible tariff clause; (iii) of the administration to executive offices.

##### (4) International comity

1. Adoption of GAPIL as part of the law of the land.
2. Pacta sunt servanda. Parties to a treaty to perform the obligations under it in good faith. They must enact laws, regulation to comply with its international obligations.
3. Prior application for a BIR ruling is not required to avail of a tax treaty relief. Non-compliance with procedural requirements will not divest persons entitled to the same under a tax treaty.

##### (5) Territoriality

1. The government can exercise authority only to persons within its territorial limits.
2. Each state are sovereign equals under international law, and each is supreme within its own territory.

#### (b) Constitutional limitations PURED POLES

##### (1) Progressive system

1. Taxation must, as much as possible, be based on the taxpayer's ability to pay. "Ability to pay" principle.
2. However, the mere fact that a tax is regressive does not render it unconstitutional. The Const. mere directs the Congress to evolve a progressive system of taxation.

##### (2) Uniform and equitable

1. Uniformity – (i) all taxable articles or kinds of property TAKP of the same class shall be taxed at the same rate; and (ii) it operates with the same force and effect SFE in every place where the subject is found. (iii) Reasonable classifications are

Ordinance penalizing movie theaters charging full amount of the tickets to children (but invalid for being confiscatory);

<p>allowed, if requisites are complied with, and not arbitrary.</p> <p>2. Equitability – distinctions among taxpayers based on ability to pay but must not be oppressive or confiscatory.</p> <p>(3) Freedom of religion</p> <p>1. Ordinance imposing tax on the sale of bibles (for non-commercial, and for minimal cost) was declared void on ground that it would impair the Constitutional right of people to the free exercise of religion and the exercise of religious profession. <b>FER ERP</b></p> <p>2. It will restrain the free distribution of bibles and other religious literatures, which will restrain the exercise of the right itself.</p> <p>3. BUT the imposition of fees to cover the cost of regulation is not prohibited.</p> <p>(4) Equal protection</p> <p>1. Must be based on substantial distinctions which make for real differences.</p> <p>2. Must not be limited to current conditions.</p> <p>3. Must apply equally to all members of the same class.</p> <p>4. Must be germane to the purpose of the law.</p> <p>(5) Due process</p> <p>1. The power of taxation adversely affects people's property rights.</p> <p>2. Both due process and equal protection clauses may be invoked to invalidate a revenue measure.</p> <p>(6) Freedom of the press</p> <p>1. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.</p> <p>(6) Obligation of contracts</p> <p>1. Tax exemptions is a privilege. If it granted unilaterally without condition, it may also be taken away. Franchises are privileges given under the condition it is subject to the amendment, alteration, or repeal by Congress.</p>	<p>2. However, when the grant is for a valuable consideration, it cannot be unilaterally withdrawn.</p> <p>(7) Law-making</p> <p>1. All revenue or tariff bills shall originate exclusively in the HR but the Senate may propose or concur with amendments.</p> <p>2. One subject-one bill.</p> <p>3. Since taxation is exercised through a law, the constitutional mechanism for law-making also applies revenue measures.</p> <p>(8) Tax exemptions</p> <p>1. Charitable institutions – all lands, buildings, and improvements <b>LB</b> ADE used for religious, charitable, or educational purposes shall be exempt from taxation. (i) The test is usage, not ownership; (ii) "Improvements" do not include machineries. Hence, the same may be subject to RPT.</p> <p>2. NS NP Educational institutions – All revenues and assets ADE for educational purposes shall be exempt from taxes and duties.</p> <p>3. Proprietary Educational institutions – also entitled to such exemptions granted to NS NP EI subject to statutory limitations including restrictions on dividends and provisions for reinvestment.</p> <p>(9) Supremacy of national government over LGs</p> <p>1. LGUs cannot exercise their taxation power against the authority which is the source of the power.</p>
---	--

#### C. Requisites of a Valid Tax JUNP

1. For public purpose
2. Uniform and equitable
3. The person or property taxed is within the jurisdiction of the taxing authority.
4. Notice and hearing in the assessment and collection of certain kinds of tax (due process)
5. It must not violate the inherent and constitutional limitations on the power to tax

#### D. Tax as Distinguished from Other Forms of Exactions

Distinctions	TAX	DEBT	TOLL	LICENSE FEE	PENALTY
Definition	Enforced proportional contribution levied by the law-making body upon persons and properties within its jurisdiction to raise revenue to support the government	Agreement for one party to deliver to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid (mutuum)	Amount imposed for the use of a public property or infrastructure	Amount imposed for the regulation of an activity	Sanctions that are imposed as a punishment for the violation of a law or for the commission of acts deemed injurious; may be imposed for violation of tax laws or for failure to settle tax liabilities
Source	Law	Contract/ Judgment	Utility of the public improvement	Law	Law
Basis	Demand of sovereignty/ Power of taxation	Consensuality	Demand of proprietorship	Police power	Police power
Amount	Generally, unlimited	Amount contractually agreed, including interest, or legal interest if there is delay	Amount sufficient to cover the construction, maintenance, operation of the public improvement, and reasonable income margin	Amount sufficient to cover the direct and incidental cost of police surveillance or regulation which the persons engaged in the activity may be compelled to bear	Amount fixed by law
Purpose	Revenue generation	Private purpose	Operation of public improvement	Regulation of occupation or activity affecting the general welfare of the public	Regulation of conduct; punitive
Time of payment	Usually after the commencement of the business, taxes are the consequences of the business, i.e., income (for business taxes)	Based on agreement	Based on usage	Usually paid before the commencement of the business [1]	Upon determination of violation and demand to pay from enforcing authority
Non-payment	May be imprisoned [2] except non-payment of	No imprisonment for non-payment of debt	As provided by law.	For businesses, commencement without	As provided by law.

Distinctions	TAX	DEBT	TOLL	LICENSE FEE	PENALTY
	poll tax. For businesses, non-payment does not make the business illegal but subjects the delinquent taxpayer to penalties			first securing license and paying the corresponding fees make the business illegal	
Mode of payment	Generally, in money	Money, property, services, as agreed	Generally, in money	Generally, in money	Generally, in money
Authority imposing	Public; government or political subdivisions only	Private individual	Public; government or political subdivisions; by private proprietors	Public; government or political subdivisions	Public; government or political subdivisions.
Surrender	Cannot be surrendered except for lawful consideration			May be surrendered with or without consideration	

- (i) Taxes and fees are distinct impositions and may be imposed on the same business without violating the prohibition against double taxation. (ii) The denomination of the imposition is not the determining factor as to whether the same is a tax or a fee, but rather its PURPOSE and EFFECT.
- Although obligations to pay tax are civil liabilities, its non-payment constitutes a criminal offense for which the person may be imprisoned.

#### Other characteristics

- Taxes are personal and not assignable, while debt may be assigned.
- Taxes generally do not bear interest, unless deficient or delinquent, while debt bears interest if stipulated, or if there is delay (legal interest).

### E. Kinds of Taxes

#### (a) As to object

Personal/poll	Imposed on the person without regard to his property or occupation	Community tax
Property	Imposed on the property	RPT
Excise	Imposed on the privilege to engage or perform certain activities	Income tax, estate, donor's, VAT

#### (b) As to impact and incidence

Direct	The person upon whom it is initially demanded is also the person upon whom the incidence or ultimate burden of paying falls.	Income, estate, donor's
Indirect	The person upon whom it is initially demanded is not the person upon whom the incidence or ultimate burden of paying the tax falls. The former may shift the burden to the another, not as a tax but as part of the purchase price.	VAT, Excise, OPT, DST (usu. Business taxes)

#### (c) As to rate

Specific	Fixed amount imposed by head or number, or some other standard of measurement	Excise tax on cigarettes and liquors
Ad valorem	Based on value of property	RPT
Mixed	Combination of specific and ad valorem	

#### (d) As to scope

National	Levied by the NG	Income, estate, donor's
Local	Levied by the LG	LBT, RPT, community

### F. Doctrines in Taxation

#### 1. Construction and Interpretation of Tax Laws, Rules, and Regulations

##### (a) Tax Laws

- Strictly against the government and liberally in favor of the taxpayer.
- Tax laws impose burden on the property rights of the people. It cannot be presumed but must be clearly shown.

- BUT once the imposition is shown to exist, the burden shifts upon the taxpayer to show entitlement to an exemption.
- Interpretations of tax laws by administrative bodies tasked for its implementation are deemed written in the law subsequently re-enacted. The Congress is presumed to know such interpretations.
- In case of conflict between NIRC and RR, former prevails.
- Special laws prevail over general laws – e.g., (i) On prescriptive periods for tax liabilities, NIRC prevails over the NCC. In the action for refund of EIAC tax, the 2-year period under the NIRC applies, and not the 6-year period for solutio indebiti under NCC. Also, there is previous relation between State and TP created by law; (ii) E-VAT law is a general law which cannot repeal PAGCOR's exemption under its franchise by implication.
- Equity cannot be invoked to seek exemption from a positive provision of law – e.g., failure to file claim for tax refund within the prescriptive period cannot be excused on the basis of equity since prescriptive periods are fixed by law.

##### (b) Tax Rules and Regulations

- Requisites for validity – (i) Issued under authority of law; (ii) Within the scope and purview of the law; (iii) Reasonable; (iv) Published in the OG/NPGC; (v) If imposing a penalty, the law itself must declare as punishable the violation of the regulation, and the law must fix the penalty for the violation.
- May be in the form of (i) Subordinate legislation or (ii) Interpretative rules.
- Subordinate legislation – Implements the law by supplying the details. Hearing necessary before adoption, especially if it increases the burden of taxpayers.
- Interpretative rules – Interprets or construes a tax law, binding until changed. The officer vested with the authority to interpret tax laws are not bound by the rulings of their predecessors.
- Due process requirement – (i) Hearing is not needed for the promulgation of general regulation; (ii) notice is also not needed as it is merely (a) procedural; (b) legal opinion; (c) substantive rules where the class to be affected is large, and the issues involved discretion of the body upon whom rule-making is committed.
- Publication is also not required (a) for regulations involving merely for the internal administration of the officers and employees of the administrative agency; (b) in rendering of opinion via Memo Circular, since it merely interprets and pre-existing law.
- Tax RR are not binding upon the court but given weight as the construction comes from the administrative body which is tasked to implement the law.

## 2. Prospectivity of Tax Laws

Tax laws are generally prospective.

1. XPN: if the law provides for retroactivity.
2. Prospective application does not apply in SC decisions which are mere interpretations of the law and become part thereof from the time the law becomes effective. It can be applied to cases pending at the time of its promulgation.
3. BIR Rulings cannot be given retroactive effect if the modification or reversal will be prejudicial to the taxpayer. XPNs: **DFA** (i) taxpayer **deliberately** misstates or omits material facts; (ii) **facts** upon which the original ruling is based is materially different from the present facts; (iii) taxpayer **acted** in bad faith.

## 3. Imprescriptibility of Taxes

1. **Unless expressly provided by law**, statutes of limitation do not run against the State. This rule is applicable to the collection of taxes.
2. Prescriptive periods for the assessment and collection under tax laws are binding on the State and its agents.
3. In **civil** cases, provisions providing for prescriptive period for assessment and collection of taxes is construed **strictly against the government** and in favor of the TP to protect the TP against unreasonable assessment, investigation, examination.
4. In **criminal** cases, provisions providing for prescriptive period for the prosecution of offenses is construed **strictly against the TP** and in favor of the government, since it prescription in such case is a waiver by the State of its right to prosecute the offender.

## 4. Double Taxation

May be (a) direct, or (b) indirect. Only direct DT is prohibited.

1. Double taxation was no per se prohibited under the Constitution; thus, it cannot be a valid defense against the legality of a tax measure. In order to successfully assail the validity of the tax measure, the impositions must constitute DDT.
2. The mere fact that there are two or more pecuniary imposition upon the same taxpayer or property does not in itself constitute double taxation that is prohibited.

### (a) Direct DT

1. When the same person/property is taxed twice when it should only be taxed once.
2. Same: **SM, Purpose, Period, Taxing authority, Jurisdiction**, Kind or character **SPPA JK**.
3. Prohibited and unconstitutional for violating the due process and equal protection clauses.
4. E.g., requiring the TP to declare this in his/her ITR cash dividends already subject to FWT.

### (b) Indirect DT

1. Covers all situations where there are two or more pecuniary impositions on the same person/property, if one or more of the aspects for direct DT is not present.
2. Not prohibited although its impact is recognized, and the law affords for some reliefs, e.g., tax credit for foreign income tax paid (available to RC, DC who are taxable on their worldwide income).
3. Two impositions one in the exercise of taxation power, and another in the exercise of police power is allowed. Both tax and license fee/business permit may be imposed on the same business or occupation. One is a revenue-generating measure, another is a regulation measure.
4. Tax on the product itself is different for the tax imposed on the sale of the product.
5. Taxes may be imposed on the same person or businesses carried on the same establishment,

where two different lines of businesses were being carried out.

6. GRT and FWT on banks is not DDT

Distinction	FWT	GRT
Subject matter	On the passive income earned	On the privilege to conduct banking business
Taxing period	Due immediately when income is earned	Due at the end of each quarter
Kind/character	Income tax; Subject to withholding	Business tax/excise; Percentage tax, not subject to withholding

7. Tax on compensation income and FWT on interest income earned when such compensation was deposited with bank have different subject matters.
8. Same income earned by DC/RC are taxed in Ph and foreign country is merely IDT. – different taxing authorities and jurisdiction.

## 5. Escape from Taxation

### a) Shifting of Tax Burden

1. Applies to indirect taxes.
2. The statutory TP or the person legally liable for the tax (impact) passes on the tax to another who ultimately bears the burden as part of the price of goods sold or service rendered (incidence).
3. Only the burden is shifted not the liability to pay the same.

### b) Tax Avoidance

1. Tax-saving mechanism TSM within the bounds of law, exercised by the TP in good faith and at arm's length.
2. E.g., the transfer of a property to a corporation in exchange of a controlling share considered as a tax-free exchange, and the subsequent sale of the shares of the corporation to another entity is a valid way of tax avoidance. The seller of the property pays the lower tax on the CG on sale of shares, instead of the tax payable had he directly sold the property to another entity.

### c) Tax Evasion

Scheme outside lawful means which when availed of, subjects the taxpayer to further civil and criminal liabilities.

#### Elements

1. the **end** to be achieved which is the payment of taxes that is less than what is legally due.
2. the accompanying **bad** faith or evil intent.
3. and unlawful **act** or omission to carry out said end.

#### E.g.,

1. Using a pass-through entity to save of transfer taxes of properties.
2. An intermediary transaction motivated primarily by the mitigation of tax liabilities rather than by legitimate business purposes constitutes tax evasion.

## 6. Exemption from Taxation

Immunity from tax burden on persons, property or the exercise of an activity, **granted by the Congress** to particular persons/class, absent which said persons are bound to pay the taxes.

1. Grant may be express or implied.
2. The executive cannot grant tax exemption, even in the exercise of its treaty powers.
3. Interpreted strictissimi juris against the taxpayer claiming the exemption, and liberally in favor of the taxing authority. Taxation is the rule, and exemption is the exception.



- Taxes are the lifeblood of the government. Its prompt and certain availability is indispensable for the proper functioning of the government. Since tax exemption reduces the revenue necessary for the support of the government, it is in derogation of sovereignty. Thus, highly disfavored, and strictly construed against the taxpayer.
- Tax amnesty, deductions are in the nature of tax exemption.
- Tax exemptions are **personal** and can only be claimed by the person upon whom the right is granted. – tax-exemption of PEZA-registered enterprises cannot be invoked by their suppliers.
- Income from sale of property to the government through expropriation is not exempt.
- Under the LGC, the tax exemptions previously enjoyed by the natural or juridical persons were already withdrawn, except those expressly enumerated.

#### To prove exemption

- The taxpayer must be able to point out to a **specific provision** of law granting the exemption.
- The provision must be clear as to the grant of exemption, expressed in terms **too plain to be mistaken**, and not based on vague or ambiguous implication.
- He must prove **compliance** with requirements to avail of the tax exemption.

#### Relationship with the non-impairment clause

- Exemptions under franchises entered by the government in **government** capacity are inferior to non-impairment clause. The exemption may be withdrawn since franchises are granted under the condition that it is subject to the amendment, alteration or repeal by the Congress.
- Exemptions under contracts entered by the government in **proprietary** capacity are superior to non-impairment clause. The exemption cannot be withdrawn without impairing the obligations of contracts. By entering a private contract, the government sheds its immunity and goes down to the level of the private contracting party.

### 7. Equitable Recoupment

Doctrine which allows the TP to interpose an equitable defense in the nature of set-off or compensation against an action tax collection.

- Applies when a TP has a claim for tax refund against the government which had already prescribed, but it is allowed to recover by applying or setting-off the prescribed claim for refund against tax liabilities that may be currently due and demandable from him.
- The doctrine is not applicable in the Ph.

### 8. Prohibition on Compensation and Set-Off

GR: Compensation/set-off of tax liabilities is not allowed

- It is an imposition by law, and not a debt or an ordinary obligation.
- TP and the government are not mutual debtors and creditors of each other.
- Public policy considerations demand that the integrity and independence of taxes are maintained.

XPNS: When both obligations are

- overdue
- demandable, and
- fully liquidated

### 9. Compromise and Tax Amnesty

#### (a) Compromise

- Contract whereby the parties, by making reciprocal concessions, avoid litigation, or put an end to one already commenced.

- CIR has the power to compromise tax liabilities.
- Grounds – (i) Reasonable doubt as to the validity of the claim against TP; (ii) Financial position of TP shows a clear inability to pay.
- Minimum – (i)  $\geq 10\%$  of the basic assessed tax, if based on financial incapacity; (ii)  $\geq 40\%$  of the basic assessed tax, if based on other grounds.
- Approval of Evaluation Board required if – (i) Amount of basic tax involved  $> 1M$ ; (ii) Settlement offered is less than the prescribed minimum rates.

#### (b) Tax amnesty

- General pardon, intentional overlooking by the government of its right to impose penalties upon persons guilty of violating a tax law.
- In the nature of an absolute waiver on the part of the government of its right to collect what is due it.
- Intended to give tax evaders who wish to relent a chance to start with a clean slate.
- Not presumed; construed strictly against TP (in the nature of exemption).

#### Immunity v. Exemption

Distinctions	Exemption	Immunity
Scope	Civil only	Civil, criminal administrative liabilities arising from the non-payment of taxes
Effect	Freedom from tax burden (specific individuals or class) where others as subject	Grant of general pardon to all erring TP
Effectivity	Generally prospective	Generally retroactive (amnesty)

## II. National Taxation

### A. Taxing Authority

#### 1. Jurisdiction, Power, and Functions of the Commissioner of Internal Revenue

##### a) Interpreting Tax Laws and Deciding Tax Cases

#### (a) EOJ to power to **interpret** NIRC and other tax laws

- Appealable to SOF
- Decisions of the SOF are appealable to the CTA even if not expressly mentioned in R.A. No. 1125 or RROC CTA. This falls under the “other matters” jurisdiction of the CTA.
- Rules may be (i) Legislative which implements law by providing details; or (ii) interpretative which provides guidelines for implementation.

#### (b) EOJ to **decide** disputed assessments, refunds of IR TFC and related penalties, other matters arising from the NIRC, and other laws administered by BIR – Appealable to CTA D.

#### Power to review revenue issuances

- CTA – appeal on ruling of CIR.
- Regular court – original action to question the validity or constitutionality of regulation or administrative issuance.
- SOJ – constitutionality and legality of local tax ordinances.

##### b) Non-Retroactivity of Rulings

Revocation, modification, reversal of RR promulgated under NIRC, rulings and circulars promulgated by CIR, shall not be given retroactive effect **if prejudicial to TP**

#### XPNS

- Deliberate** misstatement or omission of material facts from return or other required documents
- Material** difference between the facts subsequently gathered by BIR, and the facts upon which the ruling is based.
- BF on part of TP

## 2. Rule-Making Authority of the Secretary of Finance

- (a) Revenue Rules and Regulations (RR)
- Promulgated by SOF, upon recommendation of CIR to enforce NIRC.
  - In the nature of subordinate legislation. Has the force and effect of law until reversed by courts, revoked or superseded by SOF.
- (b) Limitations
- Must not increase/decrease **requirements** under the law, or embrace matters not covered or intended to be covered by law.

- Must comply with substantive and procedural **due process** if it has impact on tax burden of TP – in terms of administrative compliance, amount, nature of taxes.

### (c) Requisites **PEN**

- Necessary for proper **enforcement** of law
- Not** contrary to law or constitution
- Published** in OG or NPGC

## B. Income Tax

TP	Income Source		Tax Types							Revenue	Expenses
	Within	Without	All income	Passive income <sup>50</sup>	Sale of shares <sup>51</sup>	Sale of real property <sup>52</sup>	Inter-corporate dividends from DC	BPRT	MCIT		Deductions
RC	Y	Y	Graduated NIT (\$24) or 8% optional	FWT	15% FWT	6% FT/CGT on higher of FMV/GSP	N/A	N/A	N/A	Inclusions Exclusions Exemptions	Allowed <sup>53</sup>
NRC	Y	N					N/A	N/A	N/A		Allowed <sup>54</sup>
RA	Y	N					N/A	N/A	N/A		Allowed <sup>55</sup>
NRA ETB	Y	N					N/A	N/A	N/A		Allowed <sup>56</sup>
NRA NETB	Y	N	25% GIT	25% GIT			N/A	N/A	N/A		Not allowed
DC	Y	Y	25% NIT	FWT <sup>57</sup>		Exempt	N/A	1% on GI	Allowed		
RFC	Y	N	25% NIT	FWT		N/A <sup>58</sup>	Exempt	15% FT	1% on GI		Allowed
NRFC	Y	N	25% GIT	25% GIT		N/A	15% FWT	N/A	N/A		Not allowed

## 1. Definition, Nature, and General Principles

### Features of Income Tax

- Direct tax imposed on the person intended to bear its burden.
- [Mainly] Progressive – based on TP's ability to pay
- Comprehensive tax situs based on citizenship, residence, and source.
- Semi-global or semi-schedular – (i) income subject to graduated tax rate: compensation, income from T/B/EP, capital gains not subject to CGT, passive income not subject to FWT; (ii) specific rates are imposed on certain kinds of income: CGT of RP/shares, FWT on passive incomes.

### (c) Source

- Alien individuals and foreign corporations are subject to Philippine income tax if they earn income from sources within the Philippines.
- As the source of income is within the jurisdiction of the Philippines, so may the country impose taxes on these.

## b) Types of Philippine Income Taxes

### (a) Tax systems

- Net Income Tax System
- Gross income Tax System
- Withholding Tax System

#### Net Income Tax System

- $[(\text{Gross Income}) - (\text{Allowable Deductions})] \times \text{Rate}$

#### Gross income Tax System

- $(\text{Gross Income}) \times \text{Rate}$
- In the nature of final tax (withheld)

#### Withholding Tax System

- Way of advance collection by the government of the tax due to ensure that the taxes are collected on time.
- When the income earner receives the income net of tax deducted by the source. The source in turn, has the duty to remit the tax withheld to the BIR.
- CWT – The tax collected is treated as an advance payment of future taxes with the right to credit the same from the tax due at the end of the relevant period.
- EWT – Usually arise from purchase of services without ER-EE relationship; also creditable.

## a) Criteria in Imposing Philippine Income Tax

### Citizenship, residence, and source

- RC/DC are taxed on their worldwide income.
- Other types of TP are taxed only on their income within Ph.

### (a) Citizenship

- A citizen of the Philippines is taxable on his worldwide income, if he also resides in the Philippines.
- A citizen of the Philippines residing elsewhere (qualified NRC) is taxed only on his income from sources within the Philippines. Those derived from sources outside the Ph are exempt.

### (b) Residence

- An alien individual or a foreign corporation is taxed on his income from sources within the Philippines.
- Income from sources outside the Philippines is exempt from income tax.

<sup>50</sup> (a) interest on bank deposits; (b) royalties; (c) prizes/winnings; (d) dividends – derived from within or from domestic corporation

<sup>51</sup> (a) Shares of domestic corporation; (b) Not traded in stock exchange; (c) Capital asset

<sup>52</sup> (a) RP; (b) Located in Ph; (c) Capital asset

<sup>53</sup> Except if earning pure compensation income

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> But holding period is not applicable to juridical entities for LT deposits

<sup>58</sup> They are not allowed to own real property in Ph

5. FWT – The transaction will no longer be subject to any other kind of tax because it is taxed with finality.		
(b) Kinds of tax under Title II		
On individuals	Personal income tax	Graduated rate
On corporations	RCIT	25% of net income
	MCIT	1% of gross income
	IAET	10% of the IAE
On certain assets	BPRT	
	Real property located in the Ph classified as capital asset	6% of the higher of FMV or zonal value
On types of income	Shares of stock of domestic corporation, not traded in the stock exchange	5% on the first 100k, 10% on the amount in excess
	On passive income	various
	On income subject to FWT	various
	FBT	

### c) Taxable Period

Period	Description	Available to:
Calendar year	12-month period ending Dec. 31	Individuals
Fiscal year	12-month period ending other than in Dec. 31	Corporations
		Corporations only

**\*\* All income and expenses for tax computation are reckoned in relation to the applicable tax period.**

- In case of conflict, tax rules prevail over accounting principles. Receipts in the taxable year for services to be rendered in the subsequent year shall be reported on the **year of receipt** for tax purposes, whereas, the same income is to be reported when earned or when the related service was rendered for accounting purposes under the accrual basis.
- Income earned by the taxpayer is included in his gross income, generally from the time of **receipt**, unless a different accounting method is allowed under the Tax Code or revenue regulations.
- Deductions shall be claimed in the taxable year paid or incurred/paid or accrued.

**Doctrine of constructive receipt**  
Income is deemed received even if not physically placed in the possession of the TP when:

- The amount of income is set-apart/credited to the account of the taxpayer.
- The taxpayer may withdraw this at anytime.
- There is no substantial limitation or restriction as to the time or manner or payment or condition upon which payment is to be made.

### d) Kinds of Taxpayers

**Classification based on income earned**

Compensation income earner	Earning from ER-EE relationship	R&FE
		Managerial and supervisory
		Minimum wage earner
Self-employed individual	Earning from trade or business T/B	
Self-employed professional	Earning from exercise of profession EP	
Mixed income earner	ER-EE + T/B	
	ER-EE + EP	
	ER-EE + T/B + EP	
Corporate income earner	Earning from T/B	

**Classification under NIRC**

IDV	Citizens (a)	Resident (b) Non-resident (c)
-----	--------------	----------------------------------

CRP	Aliens (d)	Resident (e)	
		Non-resident (f)	ETB
			NETB
	Estates and Trusts (g)	Revocable	
		Irrevocable	
	Domestic (h)		
	Foreign	Resident (ETB) (i)	
		Non-resident (NETB) (j)	
	Partnerships	General Co-Partnership GCP (k)	
		Exempt	GPP (l)
JV or consortium engaged in petroleum or other energy operations (m)			
De facto corporations (h)			

#### (a) Citizens

- May be resident **RC**, or non-resident **NRC**.
- GR: A citizen only has one status for a taxable year, RC/NCR
- XPN: When during the taxable year (i) he leaves Ph and qualifies as NRC, or (ii) he was a former NTC who reacquires his Ph residence.
- Income earned from sources outside the Ph are exempt from Ph income tax during the periods that he is a qualified NRC.

#### (b) Resident citizen

- Citizen EEs (RC) of foreign embassies and international organizations in the Ph are taxable on income earned since RC are taxable on their worldwide income, including RC employees of the ADB. XPN: if there is a law expressly exempting the income.
- Alien EEs (RA) of foreign embassies and international organizations in the Ph are exempt from Ph income tax, even if they reside in the Ph. – based on international agreements, e.g., Vienna Convention.

#### (c) Non-resident citizen **ELAW**

- Ph citizen who **establishes** to the satisfaction of the Commissioner: (i) the fact of his physical presence abroad, (ii) with a definite intention to reside therein.
- Ph citizen who leaves the Philippines during the taxable year to reside abroad, either: (i) as an immigrant or (ii) for employment on a permanent basis. – they become NRC from the time of departure.
- Ph citizen (i) who **works** and derives income from abroad and (ii) whose employment thereat requires him to be physically present abroad most of the time during the taxable year (≥183 days), e.g., OFWs, OCWs, Seamen – they do not become NRC upon departure but upon presence abroad for ≥183d.
- Ph citizen (i) who has been previously considered as NRC and (ii) who **arrives** in the Ph at any time during the taxable year to reside permanently in the Philippines. – treated as NRC with respect to income earned without Ph during the taxable year, until his arrival.

#### Kinds

- Immigrants
- Permanent EEs
- Overseas Contract workers
- Former NRC on income without

#### (d) Alien

- Residence means actual physical or bodily presence in the country in a given period of time.
- Determined based on **INTENTION**, in relation to the **LENGTH** and **NATURE** of the stay ILN.
- An alien loses his resident status upon leaving the country without any intention of returning.

(e) Resident alien

1. Foreign individual residing in the Ph.
2. If – **NFD** (i) **Not** a mere transient or sojourner; (ii) with **floating** intention, indefinite as to the time of return abroad; (iii) for a **definite** purpose which accomplishment requires extended stay in the Ph, even though it is his intention to return abroad upon completion or abandonment of the purpose.
3. Mere bodily presence in the Ph for a period of time is required, not the intention to make Ph a permanent abode.
4. There is no distinction as to whether the RA is ETB or NETB.
5. Mere transient if arrival in Ph is for definite purpose which may be promptly accomplished.

(f) NRA ETB and NETB

1. ETB – NRA who comes and stays in the country for an **aggregate period of > 180 days** (181 days; although intermittent) during the taxable year. Actual engagement in business in Ph is not required.
2. Indicators of engaged in T/B – (i) **Habitually** engages in commercial transactions in the Ph; (ii) Putting up a **branch**; (iii) Hiring of **EEs**; (iv) **Appointment** of agents; (v) **Aggregate** stay of at least 181 days **HEBAA**
3. ETB v. NETB

Distinctions	ETB	NETB
How taxed	Same manner as an individual citizen or a resident alien	Generally, 25% FWT
Tax base	Net Income from sources within Ph	Gross Income from sources within Ph
Allowable deductions?	YES. Allowed to claim.	NO. Since the it does not incur expenses and costs in the country.

EEs entitled to preferential tax rates

EEs of Ph branches of MNCs

1. Alien EEs of – (i) RHQ, RAHQ, ROHQ of MNCs in the Ph; (ii) OBU established in the Ph; (iii) Foreign service contractor or sub-contractor engaged in petroleum operations in the Ph.
2. Preferential tax rate of 15% of gross compensation income of alien individuals.
3. Filipino occupying managerial or technical positions in RHQs and ROHQs has option to be taxed at 15% preferential rate or be taxed at the graduated rate – (i) earning annual gross income of at least P975,000. If the employee subsequently earned less, he shall be subject to the regular graduated rates in the taxable year when the change in compensation took effect; (ii) must be a regular employee of the RHQ or ROHQ, not employed elsewhere, and not merely a consultant or contractual employee.

EEs of OGLs

1. Alien individuals assigned in the Ph by an offshore gaming licensee or service provider shall be subject to 25% FWT on their gross compensation income, which should not be lower than 12,500 for any taxable month.

(g) Estates and Trusts

1. Estate – artificial being created by the operation of law upon the death of a person, leaving properties for his compulsory and other heirs.
2. Trust – A legal arrangement whereby a person (trustor) places the legal title of his properties in the name of another (trustee), with the latter managing or administering such properties for the benefit of a third person (beneficiary) and eventual transmission to the latter. The Beneficiary retains beneficial title over the property in trust.

3. The income of estates and trusts are taxed as individuals, subject to claiming of additional allowable deductions.

Who is taxed

1. In revocable – The **trustor**, since he maintains control over the properties.
2. If irrevocable – The **trustee**, since the legal title is with the trustee.
3. **\*\* Income to be included their respective tax returns.**

Additional allowable deductions

1. (i) Income for the year to be distributed currently by the fiduciary to the beneficiary **TBDC**; (ii) Income collected by the guardian of the infant to be held or distributed as the court may direct **TBHD**. Income allowed as deduction shall be included as income of the distributee, whether actually distributed to them or not.
2. For estates only – (i) income received by the estate during the period of settlement or administration; (ii) income which depending on the discretion of the fiduciary may be distributed or accumulated. Amounts paid or credited during the taxable year is allowed as a deduction.
3. **\*\*Amounts allowed as deduction under (1) shall no longer be allowed as deduction under (2).**

Exempt trust

1. Employee's trust part of pension, stock bonus, profit sharing plan by ER for the benefit of EE
2. Requisites – (i) Contribution by ER, EE or both; (ii) Purpose is to distribute accumulated earnings and principals to EE; (iii) Under the trust instrument, it is impossible for the principal and income of the trust to be used for other purposes without first satisfying the obligation to EEs.
3. Amount distributed to EE in excess of his contribution is taxable to him on the year of distribution.

(h) Domestic corporations

1. Created and organized under **Ph laws**.
2. The law under which the corporation is created or organized determines whether the corporation is domestic or foreign without regard to the nationality of owners (law of incorporation test).
3. Foreign branches of the domestic corporation are treated as extension of the Ph head office corporation. Branch income are remitted, consolidated, and reported as income of the head office (single entity concept).
4. The remittances of the foreign branches of Ph domestic corporations are not subject to BPRT: (i) branch income of the was already taxed when reported by the Ph head office; (b) BPRT applies to branches of foreign corporations in the Ph. Only **outbound** remittance of profits is subject to BPRT.
5. De Facto corporations are taxable as an ordinary corporation – e.g., co-heirs who decided to pool their inheritance into a common fund to do business.

(i) RFC – ETB

1. Organized under foreign law ETB in the Ph.
2. Two conditions – (i) Habituality; (ii) Commercial conduct, dealings, or arrangements.
3. Doing business – (i) Performance of some **acts** or works, or the exercise of some functions normally incident to and in the progressive prosecution of commercial gain, or for the purpose of business organization; (ii) **Intention** to establish a continuous business.
4. Indicators – (i) Habitually engages in commercial transactions in the Ph; (ii) Putting up a branch; (iii) Hiring of EEs; (iv) Appointment of agent **HEBA**



under the control of the FC and not transacting in his own name and for his own account.

5. Only the income from sources within Ph are subject to Ph income tax.
6. In one case, the SC held that when the parent corporation transacted the business, the principal-agent relationship is set aside, and the foreign principal becomes the TP and not the branch.
7. May be (i) Not deriving income from Ph: e.g., RHQ of MNCs rendering service other units and paid on reimbursement basis only; (ii) deriving income: e.g., ROHQ, OBUs, international air carriers, international shipping lines, foreign service contractors and sub-contractors engaged in petroleum operations in the Ph.

(j) NRFC – NETB

1. Organized under foreign law NETB in the Ph but deriving income from sources within Ph.
2. Source – **activity, property or service** APS giving rise to the income. FC need not be doing business in the Ph to be subject to Ph income tax. What is controlling is the source of the income. Business activity is different from the place of business of the corporation. A foreign corporation may conduct its business activities outside its place of business.

(k) General co-partnership

1. Business partnerships other than GPP and JV or consortiums undertaking construction projects or engaged in petroleum or other energy projects under an operating contract with the government.
2. Taxes as an ordinary domestic **corporation**.
3. Share of the partners in the distributive share in the net income of the partnership DSNIP – (i) Subject to 10% dividend tax; (ii) not no further deductions is allowed since the income received by the partners are already net of all the costs and expenses.
4. Concept of constructive receipt – net income of the partnership is deemed distributed to the partners, and to be reported as income by said partners during the year when the income was earned, whether actually distributed or not.

(l) General professional partnership

1. Established by two or more persons for the sole purpose of exercising their **common profession**, and which **no part** of the income is derived from other trade or business.
2. No **active income** must be derived from other T/B but the partnership may earn **passive income**.
3. A GGP is a **non-taxable** entity. It was a mere flow-through entity, devoid of income tax personality.
4. BUT the partners making up the GPP are taxable on their respective DSNIP.
5. Concept of constructive receipt also applicable.

(m) JVs

1. Elements – (i) Contribution: MPI; (ii) Profit-sharing; (iii) Joint interest or mutual control over the subject matter of the JV; (iv) Usually, there is only a single business transaction or definite undertaking.
2. May be taxable or exempt.

Taxable	Exempt
Incorporated entity	<b>Unincorporated</b> entity Composed of two or more persons: individuals, partnerships, corporations
Engaged in other lines of business than construction and energy-related projects under an operating agreement with the government	(i) Undertakes a construction project (real estate development) [a] or (ii) engaged in coal, petroleum, geothermal and other energy operations (oil exploration), pursuant to an operating consortium agreement under service contract with the government <b>OCA SCG</b>

Exempt JVs

1. Separate joint venturers must report their respective shares in the income of the JV.
2. Exempt JV or consortium formed among NRFCs in connection with a local project should also not sell any goods nor render any service in the Ph. Otherwise, they may be taxed on the Ph-sourced income unrelated to the local project.
3. Taxable events after the completion of the project are not covered. – The tax exemption is valid only up to the completion of the project. If after the project, the joint venturers engaged in the business of leasing the property, then they will be considered a taxable partnership. The same rule applies when the completed units are sold to third parties.
4. Other non-taxable event – (i) Transfer of property to the JV; (ii) Distribution of developed units which is a mere act of partitioning a co-owned property. Also, mere allocation of the floors or units between or among the joint venturers is not a taxable event.

[a] Requirements for exemption (RR – 10-2012)

1. Formed for the purpose of undertaking a construction activity.
2. Involves the pooling of resources of local contractors licensed by the Philippine Contractors Accreditation Board (PCAB).
3. The local contractors are engaged in a construction business.
4. The JV itself is licensed by the PCAB.

(n) Co-ownership

1. Not considered as a separate taxable entity subject to income tax. Co-owners are subject to income tax on their respective **distributive shares** on the income of the co-owned property.
2. XPN – If the co-owners invest their common properties and income and placed them under the single management for purposes of earning profit, a taxable (**unregistered**) **partnership** is created. Conversion happens automatically from the moment the properties are used as a common fund to produce profits, in proportion to their respective shares in the co-ownership.
3. XPN to XPN – (i) When the placement of the property to a single management is only for purposes of: (a) **Management** of the property; (b) **Collection** of income therefrom. (ii) When the transactions yielding profits is **not** characterized by **habituality** peculiar to business transactions for the purpose of gain, but rather just **isolated**.
4. The mere sharing of profit from an isolated transaction is not sufficient to constitute partnership. The intention to make one must be shown. – e.g., acquisition of property and selling the same a few years thereafter, they merely shared the profits as co-owners.

2. Income

a) Definition and Nature

Anything that (i) **flows** to wealth of the TP or (ii) **increases** his net worth (iii) **other** than mere return of capital **FW INW OMRG**.

Capital	Income
Source of wealth	Flow of wealth
Investment which is the source of income	Fruit of capital
Fund	Flow
Wealth	Service of wealth
Property existing at a point in time	Flow of services rendered by the capital, or other benefit derived from the fund
Tree	Fruit

## b) When Income is Taxable

### FRE

1. When the money or property received represents and **flow** of wealth, i.e., income, gain or profit, and not a return of capital.
2. The money or property had been **received** or realized (actually or constructively) during the taxable year.
3. The income, profit or gain is not **exempt** under the Constitution or laws.

**\*\*Mere return of capital is not taxable.**

1. Association dues, membership fees, other assessments/charges which are merely intended for capital maintenance, preservation, or upkeep.
2. Subsidies remitted by a FC principal to a Ph representative office who does not engage in any profit-making activities in the Ph, and merely intended for the continued operations of the representative office.

## c) Tests in Determining Whether Income is Earned for Tax Purposes

### (1) Realization Test

Revenue is recognized when: (i) the earnings process is complete or virtually complete; (ii) an exchange has taken place.

It requires that revenues be earned first before they are recorded. Payments received in advance for future delivery of goods or rendering of service are not recorded in the period that they are received but in the period when the related revenue is earned. In the meantime, they are carried as unearned revenue (liability).

### (2) Economic Benefit Test, Doctrine of Proprietary Interest

AKA Doctrine of proprietary interest DPI

1. Anything which benefits a person materially or economically in whatever way is taxable.
2. Any economic benefit accruing to the taxpayer which **increases his net worth** is considered income.
3. E.g., stock options: at time of exercise, the difference between the fair market value of the shares and the option price constitutes taxable compensation income of the EE.

### (3) Severance Test

Something exchangeable in value must be separated from the capital.

1. Mere increase in value of a property is just increase in capital. The increase still forms part of the capital, and there is no separation yet.
2. There is not taxable income until there is separation of the capital from the exchangeable value.
3. E.g., (i) appreciation in the value of RP is not taxable until the property is sold where the gain from the increase in value is realized and severed from the original cost of the property or the capital; (ii) There is no income in case of stock dividends where there is no change in the proportionate ownership of the shareholder.

## d) Tax-Free Exchanges

GR: The amount of gain or loss shall be recognized on the sale or exchange of properties.

XPN: (a) Tax-free exchanges where no gain or loss is recognized (recognition is deferred); (b) sale of principal residence.

### (a) Tax-free exchanges

1. Covers exemption from income tax, transfer tax, VAT.

2. Prior BIR Ruling is not required to avail of exemption.
3. Kinds – (i) Reorganization; (ii) Recapitalization; (iii) Reincorporation; (iv) **Share swap transaction**.

### (i) Reorganization

1. Exchange of property of a corporation solely for stocks of another corporation – both corporations being party to m/c (stock purchased for property)
2. Acquisition by one corporation of the stock of another corporations solely for its voting stocks – if after the acquisition, the acquiring corporation gains control of the other corporation (stock purchased for voting stock)
3. Acquisition by one corporation of substantially all of the properties of another corporations solely for its voting stocks – if after the acquisition, the acquiring corporation gains control of the other corporation (property purchased for voting stock)

### (ii) Recapitalization

1. Agreement to readjust the stocks and bonds of a corporation as to amount income or priority.
2. Agreement between the SH and creditors of a corporation to change, and increase/decrease the capitalization or debts of a corporation, or both

### (iii) Reincorporation

1. Formation of a new business with the same assets, SH, surviving under a new charter

### (iv) Share swap transaction

1. Transfer of property to a corporation by a person alone or with others, not exceeding 4 persons.
2. In exchange for stocks in the corporation.
3. As a result, transferor/s gain control of the corporation.

### Requirements

1. The transferee is a corporation.
2. The transferee exchanges its shares of stock for properties, share of stocks/securities in another corporation of the transferor.
3. The transferor can be a person acting alone, or together with others not exceeding four.
4. The transferor gains control ( $\geq 51\%$ ) of the transferee as a result of the exchange transaction.

### (b) Sale of principal residence

1. Sale of principal residence is tax-exempt, subject to requirements.
2. Principal residence is the house, including the land where it is built (except when the land is leased only, where the husband and wife, or an unmarried individual, together with his/her/their family actually resides.

### Requirements for exemption SUM CNOD

1. The **sale** of the old principal residence preceded the acquisition of a new one.
2. The proceeds of the sale of the old residence are fully **utilized** in the acquisition or construction of a new principal residence. – unutilized portion shall be subject to CGT.
3. The utilization of proceeds must be within **18m** from the date of sale or disposition of the old principal residence.
4. The historical **cost** or adjusted basis of the old residence is carried over to the new principal residence.
5. Due **notification** of the Commissioner in writing of the taxpayer's intent to avail the exemption, within 30d from the sale of the original residence.
6. The exemption is availed only **once every 10 years**.
7. Deposit of the 6% CGT in an escrow account, to be released only upon compliance with the

documentary requirements. – if not complied, the deposit will be forfeited in favor of BIR and may subject TP to deficiency interest for failure to pay CGT within 30d from sale.

**\*\* Only the individual TP may avail.**

#### e) Situs of Income Taxation

##### General rules

Interests on loans	Residence of the debtor
Interests on bank deposits	Location of bank
Dividends	Country of incorporation of the paying corporation [a]
Services	Place of performance [b]
Rentals and royalties	Location or use of the property [c]
Sale of real property	Location of property
Sale of personal property	Place of consummation [d]
Reinsurance premiums paid to foreign corporation	Location of property insured

##### [a] Dividends

1. From domestic corporation – Ph-sourced
2. From foreign corporation – depends on source of corporation's gross income for the past 3y preceding the declaration, or for such time as the corporation has been in existence: (i) 100% Ph-sourced if ≥50% of income is Ph-sourced; (ii) Proportionate if <50% of income is Ph-sourced.

##### [b] Services

1. If performed partially in Ph/abroad – income from Ph source is determined on a time basis (no. days services rendered in the Ph/total number of days rendered).
2. From Ph sources – (i) rendered in Ph territory; (ii) rendered in coastwise vessel.

##### International carriers

1. Taxed based on Gross Philippine Billings
2. International air carrier – Revenue from carriage of persons, cargoes, mail (i) originating from any point in the Ph (ii) in a continuous and uninterrupted flight CUF. If there is transshipment, Ph-sourced income shall only be the aliquot portion of the revenue pertaining to the point of origin to the transshipment point.
3. International shipping – Revenue from the carriage of passengers, cargoes mail originating from the Ph to final destination. No requirement to be continuous and uninterrupted. Even if there is transshipment, revenue earned from entire voyage is considered Ph-sourced.
4. In the British Overseas Airways Corporation (BOAC) case, the court ruled that the **source** of income is the activity, property or service **APS** which gives rise to the income. – even if BOAC is an offline air carrier not having flights originating from the Ph, the court held that the **sale of the tickets** is the activity producing the income, and therefore income derived therefrom is Philippine-sourced and also subject to Philippine income tax. BOAC also appointed an agent in Ph.

[c] Rentals and royalties – e.g., royalties paid to a developer abroad for the use of computer software in the Ph in Ph-sourced since the software is used in the Ph.

##### [d] Sale of personal property

1. Sale of shares of stock of domestic corporation is income from Ph-source.
2. If trader, source of income is **where the good were sold**, i.e., where there had been transfer of **ownership**. So, in an FOB shipping point shipped from foreign port, the transfer of ownership is at foreign port. Thus, income is sourced from without the Ph.

3. If manufacturer, depends on (i) place of sale; (ii) place of production or manufacture.

Produced	Sold	Income
Within (whole or part)	Within	Within
Without (whole or part)	Without	Without
Within (whole or part)	Without	Partly within; partly without
Without (whole or part)	Within	Partly within; partly without

**\*\* The source rules under the tax code are not exclusive.**

### 3. Gross Income

#### a) Definition

All items of income derived from whatever source, including but not limited to **CG2DIR2AP3** – non-exclusive list

Income, profit or gain subject to tax.

1. Includes compensation for personal or professional services, income from dealing in property, and income from whatever source (legal or illegal).
2. Except those which are exempted by the Constitution, statutes, or tax treaty.

##### Items of GI

1. Compensation income
2. Gross income from T/B, EP
3. Gains from dealings in property
4. Interests
5. Rents
6. Royalties
7. Dividends
8. Annuities
9. Prizes and winnings
10. Pensions
11. Partner's DSNI of GPP

##### Including

1. Increase in the value of inventory at the end of period
2. Transfer of property to the EE for services rendered is income of the EE
3. Just compensation for expropriated property

#### b) Concept of Income from Whatever Source Derived

Reflects the legislative policy to treat as taxable income all forms of income not otherwise expressly excluded or exempted by the constitution, statutes or treaty are taxable.

1. Regardless of the **participation** of the taxpayer in earning the income, i.e., voluntary, or involuntary.
2. Whether **legal** or illegal – the imposition of tax on an illegal income does not legalize the activity.

#### c) Gross Income vs. Net Income vs. Taxable Income

Gross receipts (services)/Gross sales (goods)

Less: Cost of services/sales/goods sold

**Gross Income**

Less: Allowable Deductions

**Net Taxable Income**

x Tax Rate

**Tax Due**

Less: CWT

**Net Tax Due**

#### d) Sources of Income Subject to Tax

##### General grouping

1. All income
2. Passive income
3. CG on sale of shares of stock
4. CG on sale of real property

GR: All income is subject to income tax

XPNS:

1. Income exempted by law
2. Income excluded by law from computation of GI under Sec. 32(b) NIRC

### (1) Compensation Income

All remuneration received by an EE, cash or otherwise, for services rendered under an **employer-employee relationship** unless specifically exempted under the Constitution, statutes, or treaty.

#### (a) Convenience of ER rule

1. Non-cash items given by ER to EE is not taxable income to the latter if given for convenience of ER.
2. Board and lodging are not taxable if – (i) within the **premises** of the business; (ii) given as a **condition** for employment.
3. Meals are not taxable if provided for a **substantial non-compensatory business purpose**, usually when the employee is required to be on office station during meal periods.
4. If the facilities and privileges were only partly for the convenience of the EE, then the EE is only entitled to a ratable portion of their value as exclusion from his taxable income.

#### (b) ER-EE relationship

1. Recall: elements
2. The non-inclusion of a person's name in the alphalist is not conclusive as to his status as non-employee.
3. A director whose function is merely to attend and participate in the Board meetings is not considered an EE.
4. An EE must be a natural person. If juridical, not an employee but a **contractor** – income earned is not compensation income but income from **T/B**.
5. If ER is foreign government or international organizations in Ph – (i) Compensation of citizen-EEs of in Ph are is still generally taxable since RC are taxed on their worldwide income, unless expressly exempt under the Constitution, law, treaty, or international agreement; (ii) Compensation of alien-EE are exempt if it is considered sourced from outside the Philippines.

#### (c) Person liable

1. GR: EE is liable for the payment of the taxes as income recipient.
2. XPN: EEs qualified for substituted filing – when the employee derives **purely compensation** income, from a **single employer** only during the taxable year, and the amount of income tax **due** from the employee is **equivalent** to the amount **withheld** by the employer from the compensation and **remitted** to the BIR, the EE is no longer required to file ITR. BIR Form No. 2316 as proof of withholding and remittance is considered equivalent.

#### (d) Minimum Wage Earner

1. Exempt from income and withholding tax.
2. On – **BOHNN** (i) Basic salary; (ii) Holiday pay; (iii) OT pay; (iv) Hazard pay; (v) NSD pay.
3. If the MWE receives compensation and other benefits, in excess of the exempt threshold of P90,000, he does not lose his exempt status.
4. The RR of the BIR that the MWE earning such other benefits loses his exempt status and becomes subject to the graduated rate on the entire income received, was declared **void** by the SC for adding a requirement for the exemption which is not found in the law granting the exemption.
5. Not exempt income – additional compensation – e.g., commissions, honoraria, FB, taxable allowances, benefits in excess of the allowable 90k.

#### (e) Awards in labor disputes

1. Includes backwages, allowances, benefits.
2. Considered taxable compensation income which must be reported, subject to withholding taxes – amount to be spread from the time of termination up to the finality of the decision making the award.
3. If award is executed through garnishment, the withholding agent is the one having control over the credit, i.e., the garnishee.
4. But actual, moral, exemplary damages, and attorney's fees are not taxable, as these are considered merely as recovery of capital.

### (2) Fringe Benefits

(a) Any good, service, or other benefit in cash or kind granted by the ER to its EEs, except R&FE, other than basic compensation.

1. Tax base – **Grossed-up monetary value** of the benefits (benefits + FBT). [Actual monetary value of the benefit]/[65%].
2. Tax on EE compensation but assumed and paid for by ER – GMV is deductible expense.
3. If received by R&FE, part of compensation income subject to graduated rates, and withholding.
4. Not taxable if: (i) required by nature, or necessary to the T/B or profession of ER, (b) for the convenience of the ER.
5. Rates – FT

35%	All others
25%	NRA NETB
15%	EEs of RHQ, ROHQs, OBU, foreign petroleum service contractors or sub-contractors, or Filipino counterparts occupying the same positions

#### Exempt FBT BRDS

1. Exempted under **special laws** – e.g., ER contributions to SSS/GSIS
2. Contribution of ER to **benefit** plans – retirement, hospitalization, insurance
3. Given to **R&FE**
4. **De minimis**
5. By nature, necessary for T/B or profession of ER
6. For convenience of ER

#### Stock Option Plans

1. Considered taxable income for the excess of FMV/BV over option price at time of exercise.
2. Subject to FBT if given to managerial and supervisory EEs

#### (b) De Minimis Benefits

1. Benefits in cash or kind, **facilities** or privileges offered by ER to EE of **relatively small value** intended merely as means to promote the health, goodwill, contentment, or efficiency **HGCE** of employees **FERM**
2. (i) If received by R&FE, exempt from income tax; (ii) if received by a managerial or supervisory EE, subject to FBT.
3. Must not exceed 10k per EE per taxable year.
4. Not considered in computing the 90k threshold. Only the excess amount shall be considered.
5. Deductible expense of the ER.

### (3) Professional Income

Income derived by an individual from the exercise of his profession.

1. No ER-EE relationship involved. The person engaging the individual only has control over the result of the work performed, but not as to the methods or means.
2. **Deductions may be claimed against professional income** but not against compensation income. The classification between pure compensation income earners and TP earning income from T/B EP for purposes of



availing deductions was held by SC as valid and reasonable.

#### (4) Income from Business

Doing business is characterized the continuity or habituality of commercial dealings, and the performance of works or acts, the exercise of functions that are normally incident to or in the progressive prosecution of commercial gain or the object of the organization.

1. Rent income is income from T/B, not passive income.
2. Building constructed by lessee on leased property under agreement that it shall become property of the lessor at no cost at the end of lease term is considered income of lessor from T/B. Lessor may – (i) Report the FMV of the building at the time of completion (Outright method); (ii) Spread over the expected value of the building at the end of the lease term over the lease period (Spread-over method).

#### (5) Income from Dealings in Property

##### (a) Exchange transactions

1. Gains derived from exchange transactions are taxable – subject to either NIT or CGT depending on the kind of asset, whether ordinary or capital.
2. Covers both voluntary and involuntary sales.
3. In expropriation cases, the “seller” is liable for tax upon receipt of JC. This cannot be passed on to the government.
4. In foreclosure sales, the “seller” is liable for tax upon expiration of redemption period since it is when ownership over the property is consolidated to the buyer. If the property is redeemed, there is no transfer of ownership. Hence, there is no CGT.

##### Not exchange transactions

1. Assignment by a corporation of its golf club shares to one of its consultants so that the latter may enjoy the privileges of club membership. – (i) no **transfer of ownership**; (ii) the latter is under obligation to transfer the said shares to his successor.
2. Conveyance of the **common areas** by the developer to the condominium corporation for the **management and maintenance** of the common areas for the benefit of the unit owners. – (i) exemption provided under the Condominium Act; (ii) no consideration changed hands.

##### (b) Asset types – ordinary and capital

1. Ordinary assets **SIHUR** – (i) **Stocks** in trade; (ii) **Inventories**; (iii) Property primarily **held** for sale to customers in the ordinary course of business; (iv) Property **used** in trade or business, of a character which is subject to allowance for depreciation; (v) **Real** property used in trade or business.
2. **Capital** assets – property held by the TP w/n connected with T/B which is not ordinary asset.
3. Depreciation – (i) of capital asset, not tax effect; (ii) of ordinary asset, allowable deduction.
4. Conversion of use – (i) CA may be converted to OA subject to proof that the asset is being used for T/B; (ii) OA may be converted to CA subject to proof that the asset is no longer used for T/B for a long period of time; (iii) BUT in case of person engaged in real estate business, all real properties owned whether used in T/B are ordinary assets, and cannot be converted to CA.
5. Taxation

Income from dealings in ordinary assets

Subject to NIT

<sup>59</sup> Includes – (i) RP abroad held as capital asset; (ii) shares of stock of foreign corporation.

Income from dealings (i) RP in Ph held as capital asset; (ii) shares of stock of domestic corporation not traded in LSE	Subject to CGT
Income from dealings in other capital assets <sup>59</sup>	Subject to NIT

##### (c) Taxation of capital gains/losses

1. Under NIRC, it covers only two kinds of capital assets – (i) Real property in the Ph held as capital asset; (ii) Shares of stock of domestic corporation not traded in the LSE. Gains from dealings with other capital assets are subject to NIT, unless otherwise provided.
2. Capital gain/loss may be recognized if – (i) There is a sale or exchange transaction; (ii) The property involved is a capital asset of the TP. XPN: capital loss may be recognized on stocks becoming worthless, even if there is no exchange txn.
3. Capital losses can be deducted only to the extent of capital gains. – it cannot be deducted from ordinary gains since such would amount to deduction of unrelated expense from income from T/B EP.
4. Holding period for individual TP (not corporate) only – (i) LT >12m: only 50% CG is recognized; (ii) ST ≤12m: 100% CG is recognized. For corporation, 100% CG is always recognized.

##### (d) Dealings in real property in Ph

By real estate dealer (1)	Subject to NIT (3)
By non-real estate dealer	Ordinary asset (2)
	Capital asset other than principal residence
	Principal residence
	Exempt, if conditions are complied (5)

1. Person engaged in the buying, developing, selling, exchanging real properties as principal, holding himself out as a dealer in real properties. Real property is considered ordinary assets. Gains therefrom are ordinary gains.
2. If (i) fixed asset used in the T/B, or EP of the TP, subject to depreciation; (ii) RP used in T/B of the TP.
3. Rates

Individual (N/RC, RA, NRA ETB)	Graduated
NRA NETB	25% FWT
DC/RFC	25% RCIT or 2% MCIT
NRFC	25% FWT

**\*\*Dealings in real property abroad held as capital asset also subject to NIT – income without.**

4. 6% Final CGT on the higher of FMV or GSP. N/A to foreign corporations. – (i) tax is imposed in the presumed gain; (ii) applies to involuntary sales: foreclosure, expropriation, conditional sales, pacto de retro.
5. See discussions above.

##### (e) Dealings in shares of stock of domestic corporations

By securities dealer (1)	Subject to NIT (2)
By non-securities dealer (3)	Listed and traded in LSE
	Listed but not traded, or not listed
	Subject to stock transaction tax (4)
	Subject to CGT (5)

1. One who habitually engages in the purchase of sale of shares of stock in his own account for purposes of taking advantage of short-term prices changes. Stocks are considered **ordinary** assets (w/n listed and/or traded). Gains therefrom are ordinary gains.
2. Rates

Individual (N/RC, RA, NRA ETB)	Graduated
NRA NETB	25% FWT
DC/RFC	25% RCIT or 2% MCIT
NRFC	25% FWT

**\*\*Dealing in shares of stock of foreign corporations also subject to NIT – income without.**

- One who holds the stocks by way of investment. Stocks are considered capital asset.
- 6/10 of 1% [0.6%] of the GSP (percentage tax). Tax is imposed even if there is net loss since tax is imposed on the GSP.
- 15% Final CGT on the net capital gains.**
- Shares of stock include warrants, options, units of participation in a partnership, or other associations taxable as a corporation.

## (6) Passive Investment Income

### (a) Interest

	RC	NRC	RA	NRA ETB	NRA NETB	DC	RFC	NRFC
PH (1)	20	20	20	20	25F	20	20	25F
FC (2)	15	Ex	15	Ex	Ex	15	7.5	Ex
Loans (4)	NIT	NIT	NIT	NIT	25F	NIT	NIT	25F

- Income from Ph currency bank deposit – (i) 20% FWT, in general; (ii) 25% GIT for NRA ETB/NRFC; (iii) Exempt if EE trust fund or accredited retirement plan. Includes yield, deposit substitutes, trust funds, government debt securities (treated as deposit substitute), or similar arrangements. Subject to rule on LT deposits for individual TP.

≥5y	Exempt if evidenced by a certificate in a form prescribed by BSP
4y to <5y	5%
3y to <4y	12%
<3y	20%

**\*\*N/A to corporations which are always subject to 20% FWT.**

- Income from foreign currency bank deposit with OBUs or FCDUs. – (i) OBUs: Branch, subsidiary or affiliate of a foreign bank authorized by BSP to transact offshore banking business in the Ph; (ii) FCDU: A unit of a local bank/branch of a foreign bank authorized by BSP to engage in foreign-currency denominated transactions. Both OBUs and FCDUs are located in the Ph.
- Rate – (i) 15%, in general; (ii) 7.5% for RFC; (iii) Exempt for non-residents, other than RFC. If joint bank account of resident and non-resident: 50% taxable, 50% exempt.
- Interest income from traditional loans by local banks and other creditors – (i) subject to NIT, except NRA ETB/NRFC who are subject to 25% FWT; (ii) Not subject to final or creditable withholding tax except NRA NETB/NRFC; (iii) subject to 2% EWT if payment is made by top withholding agent.

### Other rules

- Interest on banks located outside Ph are income from without, subject to NIT.
- Interest on foreign loans: (i) 20% FWT, if extended by NRFC unless a lower tax rate is imposed under a treaty; (ii) Exempt, if extended by foreign government, or by a financial institution enjoying refinancing from the foreign government.

### (b) Dividends

- Cash – taxable.
- Property – taxable. May include shares of another corporation.
- Stock – exempt, unless: (i) There is change in corporate identity after the declaration; (ii) There is change in the percentage ownership; (iii) There is

subsequent cancellation or redemption of stock dividend. Payment in the form of distribution of corporation's own shares of stock.

### 4. Rates – paid by domestic corporation.

RC, NRC, RA	10% FWT
NRA ETB	20% FWT
NRA NETB	25% FWT
DC, RFC	Exempt. Inter-corporate dividends
NRFC	15% [a]

- Subject to tax sparring rule: the country where the NRFC is organized shall allow as deduction from the income of such NRFC taxes which are deemed paid in the Ph. Otherwise, 25% FWT.
- Dividends paid by foreign corporation is subject to NIT. Source rules apply determine whether income within or without (see above).

### (c) Royalty

- If active income, subject to NIT – when the property is developed or sold on a regular basis for consideration.
- Passive income rates (FWT) – paid by domestic corporation.

NRA NETB/ NRFC	25%, unless a lower tax is allowed under existing treaty
Other TPs	20% Other royalties 10% On books, literary works, musical compositions

**\*\*If paid by foreign corporation, considered income from without, subject to NIT.**

### (d) Rent

- Considered as income from trade or business.
- Subject to preferential rates in case of vessels, aircraft, machineries and other equipment, other assets.

## (7) Annuities, Proceeds from Life Insurance or Other Types of Insurance

### (a) Proceeds of LI received by heirs or beneficiaries upon death of insured

- Proceeds are excluded.
- Interest on proceeds is taxable.

(b) If insured survives, amount received under LI, endowment, annuity contract, either during the term, upon maturity or upon surrender

- Return of premiums are excluded.
- Amount in excess of premiums paid are taxable.

## (8) Prizes and Awards

### (a) Rates

Prizes (Games of chance)	≤10k	NIT
	>10k	20% FWT
Other winnings	>10k	20% FWT
	≤10k PCSO/ lotto	Exempt
NRA NETB	25% FWT	
NRFC	25% FWT	

### (b) Exclusions

(1) Primarily in recognition of religious, artistic, charitable, educational, scientific, literary, or civic achievement **RACE SLC**

- Where the winner was selected **without** any action on his part to enter the competition.
- No substantial future service** is required of the winner as a condition for the award.

### (2) Received by athletes

- In local or international sports **competition**
- Sanctioned** by the respective national sports association – Philippine Olympic Committee of the Philippine Sports Commission
- Amateur** sports, not professional. – if professional, the income is received in exercise of profession.

#### Notes

1. The donors of these awards are likewise exempt from donor's taxes.
2. Does not include other incentives received.
3. The consolation prize of the losing alien competitor is subject to FWT – NRA NETB.

#### (9) Pensions, Retirement Benefit or Separation Pay

##### (a) Exempt Pensions, Retirement Benefit

1. ER has BIR-approved retirement plan [reasonable private benefit plan/EE trust under NIRC] – (i) EE has been in service with ER for at least 10 years; (ii) EE is at least 50 years; (iii) EE has not previously availed of a tax-free retirement benefit from the same or different ER.
2. ER has no BIR-approved retirement plan [under LC] – (i) EE has reached 60, but not more than 65; (ii) EE has been in service with ER for at least 5 years; (iii) Benefits may be availed of only once.

##### (b) Separation pay

1. Exempt, if due to death, sickness, physical inability or other causes beyond the control of the EE.
2. Taxable, if voluntarily caused by EE.

##### (c) Other exempt retirement benefits and pensions

1. Benefits from foreign government agencies and other institutions, private or public – RC, NRC, RA.
2. Benefits under US Laws administered by the US Veterans Administration – RC, RA.
3. SSS benefits.
4. GSIS benefits.

#### (10) Income from Any Source

GR: Money, property, or other benefits received by the person which increases his or her net worth is taxable income.

1. Other benefits or compensation, regardless of the mode by which it was received forms part of taxable compensation income
2. E.g., stock options: the additional compensation pertains to the excess of FMV of the shares at the time of the exercise of the option, and the exercise price.

XPN: If TP was able to show that the increase in net worth is not a result of income but other circumstances, e.g., correction of errors which increases the capital account.

#### e) Exclusions

##### (1) Taxpayers Who May Avail

The **recipient** of the income excluded from gross income for purposes of computing the tax.

##### (a) Categories of exclusion

1. Return of capital (R) – includes (i) cost basis of the property sold; (ii) Indemnities.
2. Subject to another internal revenue tax (S) – e.g., even though gifts increase the flow of wealth of TP, it is not subject to income tax since these are already subject to transfer taxes.
3. Expressly exempt from income tax (E)

##### (b) Items of Exclusion under NIRC LGC TRM

###### (1) Life insurance

(i) Proceeds of LI received by heirs or beneficiaries upon death of insured

1. Proceeds are excluded (R).
2. Interest on proceeds is taxable.

(ii) If insured survives, amount received under LI, endowment, annuity contract, either during the term, upon maturity or upon surrender

1. Return of premiums are excluded (R)
2. Amount in excess of premiums paid are taxable.

#### (2) Gifts, Bequests, and Devises

1. Value of **property** acquired by gift, bequest, devise GBD is excluded (S) – already subjected to estate or transfer taxes.
2. Income acquired from the property are taxable.
3. GBD of income from any property in case of transfers of divided interest are also taxable.

#### (3) Compensation for Injuries or Sickness “Reparations”

1. Compensation for **personal injuries** or sickness are excluded (R) – includes proceeds of non-life insurance, Workmen's Compensation Act.
2. Compensation for **work-related injury** or sickness are excluded (R) – from SSS, ECC, GSIS, PHIC, private accident or hospitalization insurance.
3. Amounts of damages on account of such injuries or sickness are excluded (R)
4. Damages for lost profits are taxable.

#### (4) Income Exempt under Treaty

1. Interest income on loans extended by **foreign governments**, or a financial institution owned and controlled by the government are exempt – creditor (E).
2. BUT the mere allegation of a foreign creditor that it is a representative of the foreign government is not sufficient to allow the exemption, especially when the loan agreement did not even mention the foreign government, and it is only the financial institution which is the contracting party in this case.

#### (5) Retirement Benefits, Pensions, Gratuities, etc.

##### (i) Exempt Pensions, Retirement Benefit

1. ER has BIR-approved retirement plan [reasonable private benefit plan **RPBP**/EE trust under NIRC] – (i) EE has been in service with ER for at least 10 years; (ii) EE is at least 50 years; (iii) EE has not previously availed of a tax-free retirement benefit from the same or different ER.
2. ER has no BIR-approved retirement plan [under LC] – (i) EE has reached 60, but not more than 65; (ii) EE has been in service with ER for at least 5 years; (iii) Benefits may be availed of only once.

##### RPBP

1. Pension, etc. plan maintained by an ER for the benefit of ER, where contributions are made by ER for EEs, or both, for the purpose of distributing to EEs the accumulated earnings and principal of the fund, and where it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the EEs.
2. Current distributions of income from the fund are taxable.
3. Benefits to be received by the EE at the time of his retirement are excluded (E).
4. Mere return of contributions of the EE are excluded (R).
5. Income of the EE trust fund is exempt (E).

##### (ii) Separation pay

1. Exempt, if due to death, sickness, physical inability or other causes beyond the control of the EE.
2. Taxable, if voluntarily caused by EE. – includes, those availed under voluntary separation program of ER; dismissal due to just cause.
3. Taxable also, if remuneratory, i.e., given to an employee upon retirement because of his “invaluable service”. It is remuneration received by the EE by reason of the ER-EE relationship.

4.	Employer's Motivation Test – if moving factor for the ER to give the EE the amount granted is the services rendered, then the same constitutes taxable income to the EE.
(iii)	Other exempt retirement benefits and pensions
1.	Benefits from foreign government agencies and other institutions, private or public covering social security benefits, retirement gratuities, pensions, other similar benefits – RC, NRC, RA.
2.	Benefits to Ph residents under US Laws administered by the US Veterans Administration – RC, RA.
3.	SSS benefits, GSIS benefits.
4.	Terminal leave pay of the government EEs are excluded – Monetary equivalent/commutation of unused vacation and sick leaves.
(6)	Miscellaneous
1.	Investment/interest Income of the following derived from Ph sources are tax exempt: (i) Foreign governments; (ii) Financial institutions owned, controlled, or enjoying refinancing from foreign government; (iii) International or regional financial institutions established by foreign governments.
2.	Income from any public utility from the exercise of public functions accruing to the government or any of its political subdivisions.
3.	Prizes and awards – in recognition of RACE SLC; received by athletes (see above)
4.	13 <sup>th</sup> month pay and other gross benefits not exceeding 90k.
5.	GSIS, SSS, Medicare, Pag-IBIG contributions, PHIC, union dues.
6.	Gains realized from the sale or exchange of retirement bonds with maturity >5y. Interest on bonds is subject to 20% FWT, unless qualified LT investment (see above) of individual TP.
7.	Gains realized from redemption of shares in mutual funds.
8.	Income of government – (i) taxable, if from exercise of proprietary functions; (ii) excluded, if from exercise of governmental functions.
(c)	Expressly exempt from income tax (E)
1.	Under Const. – Revenues of the NS NP EI used ADE for educational purposes.
2.	Under tax treaty
3.	Under special laws
Exempt entities under special laws	
1.	Cooperative Code – (i) Agricultural MP Cooperatives registered with the CDA are exempt from taxes on their transactions with members and non-members for 10y. After 10y exemption applies only to the transactions with members; (ii) Cooperatives with accumulated reserves and undivided savings ≤10M are also exempt.
2.	UDHA – (i) NHA is exempt; (ii) Private sector participating in socialized housing are also exempt on project-related income; (iii) CGT on sale of land for use in socialized housing projects.
3.	New Central Bank Act – BSP is exempt from taxes.
4.	PEZA Law – ITH for PEZA-registered enterprises of (i) 6y for those engaged in pioneer activities, or (ii) 4y for non-pioneer activities.
5.	Barangay Micro Business Enterprises Act – BMBEs are exempt from tax: assets, excluding land, ≤3M.
6.	RA 10026 – Local Water Districts are exempt from tax.
7.	Personal Equity and Retirement Account Act.
(d)	Items of exemption under NIRC – various provisions
1.	Income without of NRC, RA, NRA, RFC, NRFC
2.	Income of MWE

3.	De minimis benefits within the maximum limits under the law
4.	PCSO and lotto winnings 10k or less
5.	Interest on LT deposit for at least 5 years
6.	Intercorporate dividends – DC to DC or RFC
7.	CGT in case of sale of actual principal residence

## (2) Distinguished from Deductions and Tax Credits

Exclusions	Deductions	Tax Credits
<b>Items of income</b> /flow of wealth which are not treated as gross income for purposes of computing taxes because: (i) these are <b>exempt</b> by the <u>Constitution</u> ; (ii) <u>law</u> ; or (c) does not come within the <b>definition</b> of income under the tax code.	<b>Items of expenses</b> that reduce the gross income of the taxpayer to arrive at the net taxable income	Amount directly deducted from the tax liability of the taxpayer to arrive at the tax payable
Pertains to the computation of gross income	Pertains to the computation of net income	Pertains to the computation of tax due
E.g., proceeds from life insurance because of the death of the insured; benefits not in excess of 90k	E.g., business expenses, depreciation, etc.	E.g., taxes withheld, estimated taxes
Not reported in ITR	Reported in ITR	Reported in ITR

## 4. Deductions from Gross Income

Who may claim
1. TP earning income from T/B EP
2. Mixed income earners with respect to income from T/B EP
3. RC, NRC, RA, NRA ETB, DC, RFC
Cannot be claimed
1. By pure compensation income earner
2. With respect to income subject to FWT
3. By NRA NETB, NRFC who are subject to GIT

### a) Concept as Return of Capital

Amounts subtracted from the gross income to arrive at the taxable income. Pertains to recovery of the cost basis of the property sold.
1. Tax is levied only on the income or the flow of wealth and not merely on the return of capital.
2. Return of capital is generally excluded from taxable income by allowing the cost of the asset sold to be deducted from the proceeds.
3. E.g., Payment of the principal of a loan is not income but recovery of capital. Only the interest income earned forms part of the taxable gain.
4. Sellers of inventory are allowed to deduct the cost of goods/manufacturing cost from gross income, being mere return of capital.
5. Sellers of real estate are allowed to deduct the amount specifically attributable to the property sold from gross income.
6. Sellers of services are allowed to deduct the cost of services from their gross income.

### b) Itemized Deductions vs. Optional Standard Deduction

1. Itemized deductions are available to TP engaged in <b>T/B</b> or EP.
2. OSD are available to individual and corporate TP deriving income from T/B, EP, capital gains, passive income, or other income not subject to final tax.
3. Special deductions are those allowed under special laws.
(a) Itemized deductions <b>TOILD BaC DRP</b>
1. Business-related expenditures.
2. General requirements – <b>PreWNS</b> (i) Necessary in T/B; (ii) Actually paid or incurred; (iii) Reasonable in amount; (iv) Compliance with withholding; (v) Duly substantiated.



3. Best proof is the document evidencing the transactions shows compliance with the requirements.

(1) Ordinary and Necessary Trade, Business or Professional Expenses **PASCOW** O/NE

1. **Ordinary** and necessary – (i) ordinary: normal in relation to the business of the taxpayer and the surrounding circumstances; (ii) necessary: helpful in the development of the taxpayer's business or is proper for the realization of the profits.
2. **Paid** or incurred during the taxable year
3. Directly **attributable** to, the development, management, operation and/or conduct **DMOC** of the T/B, or EP
4. Duly **substantiated** with **OR** or other adequate records establishing (i) the amount of the expense, and (ii) its direct connection or relation with the T/B or EP of the TP.
5. Not **contrary** to law, morals, or public policy – bribes, kickbacks and similar payments are not allowed as deductions.
6. Proper **withholding** with proof of remittance.

*Examples*

1. Salaries – including (a) FB; (b) labor training expenses under apprenticeship agreement ≤10% of direct labor cost.
2. Travel allowances
3. Rent allowances for property used in business
4. Entertainment, amusement, recreation expenses related to DMOC of the business (subject to ceilings)
5. Utilities
6. Repairs – (i) O/NE if minor; (ii) Capex if major, subject to depreciation.
7. Marketing expenses – (i) O/NE if for purposes of maintaining the sales; (ii) Capex if for purposes of increasing the sales or building goodwill.

*Option available to private educational institutions*

1. Deduct expenditures otherwise considered as CAPEX, OR
2. Deduct allowance for depreciation.

(2) Interest

1. TP-debtor.
2. Allowed deduction, subject to the rule on interest rate arbitrage, i.e., the amount of interest rate paid for the year shall be reduced by 20% of the interest income earned subject to FWT.
3. Borrowing costs for acquisition property for the T/B or EP may be – (i) claimed the interest as an expense; or (ii) capitalized.
4. Requirements – PaSCOW +VINA

*Additional requirements* **VINA**

1. Incurred on **valid** and existing indebtedness where TP is the debtor – (i) unconditional and legally enforceable; (ii) includes the obligation to pay tax. Interest on the late payment of taxes is deductible.
2. **Interest** is legally due and stipulated in writing.
3. **Not** expressly disallowed by law to be deducted from gross income.
4. Subject to the rule on interest rate **arbitrage**.

*Non-deductible interest*

1. Interest paid in advance via discount or otherwise – not deductible upon incurrence of debt; deductible upon payment of debt or spread over amortization period.
2. Between related parties.
3. Interest to finance petroleum operations.

(3) Taxes

1. National and local taxes paid or incurred by the taxpayer during the taxable year. e.g., RPT, Professional tax, business tax.
2. XPNs – (i) **Ph income** tax, VAT; (ii) **Foreign** income tax claimed as tax credit; (iii) **Estate** and donor's taxes; (iv) **Special** assessments on real property; (v) Electric energy consumption tax under BP 36.
3. Foreign income tax may be claimed as deduction or tax credit by RC/DC (mutually exclusive).
4. Requirements – PASCOW + (i) TP is the statutory TP; (ii) Taxes are not specifically excluded by law from being deducted from the taxpayer's gross income.
5. Foreign tax credit limit – lower of: (i) [Foreign tax] x [(Income from the foreign country)/(worldwide income)] or (ii) [Foreign tax] x [(Income from all foreign sources)/(worldwide income)].
6. Unused creditable income taxes can only be recovered through filing claim for refund or tax credit and cannot be expensed outright.

(4) Losses

*Requisites*

1. Actually sustained, incurred or charged off during the taxable year.
2. **Attributable** with the T/B or EP of the TP; or sustained in relation to transactions for profit even if not so related; or **property** connected with T/B if the loss arose from fire, storm, shipwreck, other casualties, or from robbery, theft, embezzlement.
3. Evidenced by a closed and completed transaction – no more possibility for recovery.
4. Loss must be that of the taxpayer.
5. Not claimed as deduction for estate tax purposes.
6. Not compensated for by insurance or otherwise.
7. If casualty loss, declared to the BIR within 45d from occurrence.

**NOLCO**

1. May be carried over as deduction over the next 3 consecutive taxable years.
2. Requirements – (i) Not previously offset as deduction from GI; (ii) Incurred when TP was not exempt from income tax; (iii) no substantial change in ownership (>75%).

*Capital losses*

1. Allowed as deduction only to the extent of capital gains.
2. Must be sustained from an exchange transaction. XPN: capital loss may be recognized on securities (held as capital asset) becoming worthless, even if no sale or exchange transaction took place.

*Other losses*

1. Loss on wash sales of securities – Not deductible. XPN: to a securities dealer. There is wash sales of securities if 30d prior to the transaction where a loss was sustained, or 30d after the same, the taxpayer bought identical or substantially similar securities.
2. Wagering losses – Deductible to the extent of the wagering gains.
3. Abandonment losses – (i) Deductible expenses include: (a) Accumulated exploration and development expenses; (b) Unamortized and undepreciated costs. Applies to abandoned contract areas where petroleum operations are undertaken.

(5) Bad Debts – Requirements

1. Valid, existing, legally demandable obligation due to the taxpayer.
2. Amount is in relation to the T/B EP of the taxpayer.
3. Transaction giving rise to the receivable is not one between related parties.

4. Amount was actually ascertained to be worthless or uncollectible.
5. Exercise of diligent efforts to collect.
6. Written off during the taxable year.
7. Reported as receivable in the FS of the prior years.

#### Tax benefit rule

1. Applies to – (i) taxes, (ii) losses, (iii) bad debts.
2. If the debt is allowed as a deduction the year written-off, the same shall be reported as part of gross income in the year that it is recovered.
3. If the taxpayer is benefited by the deduction of the tax/loss/bad debt, then when the tax/loss/debt was refunded/indemnified/recovered, it should be reported as part of the taxable gross income.
4. There is no additional benefit from the deduction if on the year of write off, the TP already sustained a loss. In such case, there is no need to report as income the refund/indemnification/recovery.

#### (6) Depreciation – Requirements

1. Must be reasonable.
2. Must be for a property that is used in the T/B EP of the TP.
3. Charged off during the taxable year from the taxpayer's books of accounts.
4. **\*\*Total of depreciation must not exceed the acquisition cost of the property.**

#### (7) Charitable and Other Contributions – Requirements

1. Must be made to qualified donee – (i) government of the Ph; (ii) agencies, political subdivisions of the government; (iii) accredited domestic corporations or associations in the Tax Code; (iv) Exclusively for public purpose: charitable, religious, educational.
2. Made/paid during the taxable year.
3. Within prescribed ceilings. – (i) if individual donor, ≤10% of taxable income before the donation; (ii) if corporate donor, ≤5%; (iii) 100% for specified donations.\*\*
4. Duly substantiated by OR adequate records.
5. The amount deductible shall be based on the acquisition cost of the property donated.

#### Donations deductible in full\*\*

1. Donations to the Government for a priority activity (NEDA National Priority Plan).
2. Donations to foreign institutions, international organizations pursuant to agreements, treaties, commitments of Ph government.
3. Donations to accredited NGO – by the Philippine Commission for NGO Certification PCNC: administrative expenses shall not exceed 30% of total expenses.

#### (8) Other itemized deductions

1. Depletion of Oil and Gas Wells and Mines.
2. Research and Development – Option: (i) outright recognition as O/NE, (b) defer and amortize ≤60m. e.g., feasibility studies.
3. Amounts transferred to EE Pension Trusts, contributions thereto, not previously claimed as deduction.

#### (b) Optional standard deduction

1. Available to RC, NRC, RA, DC – NRA and NRFC are not entitled to claim OSD.
2. Qualified TP must indicate in his first quarterly return, the intention to elect OSD, otherwise, he is deemed to have claimed itemized deductions.
3. Once OSD is elected, it is irrevocable for the year made.
4. OSD is 40% of the TP's gross sales/receipts.
5. Proof of actual deductions not required.
6. GPPs may also elect OSD. Partners must report in their respective returns the amount of their DSNIP

in the year earned regardless of whether actually received or not. They are then no longer allowed to claim additional deductions, and they are also not allowed to claim the 8% tax rate.

Distinctions	Itemized	OSD
Amount	Actual amount of expenditures, unless a limit was prescribed under the Code	40% of GR/GS of individual TP, or GI of corporation
Substantiation	Required	Not required
Election	Applies by default	Must be elected
Who may avail	RC, NRC, RA, <b>NRA ETB</b> , DC, RFC	RC, NRC, RA, DC, RFC

#### c) Items Not Deductible

##### PCR PL

1. **Personal**, living, family expenses.
2. **Capital** expenditures. – depreciation is deductible, subject to the right of proprietary educational institution to claim capex as deduction.
3. **Repairs** and maintenance to restore a property where an allowance for depreciation had been provided.
4. **LI premiums** paid by the TP for the life of any person financially interested in his T/B EP, when he is the beneficiary.
5. **Loss** from sale or exchanges of property between and among related parties at arm's length

##### Related parties

1. Family members.
2. SH and Corporation, where the SH owns more than 50% of the shares of the corporation (Corporation and controlling SH).
3. Between two corporations with common SH owning at least 50% OCS of both corporations (2 corporations with the same controlling SH).
4. Grantor and beneficiary of a trust.
5. Beneficiaries of a trust created by the same grantor.
6. Fiduciary and beneficiary of a trust.

#### 5. Income Tax on Individuals

##### a) Resident Citizens, Non-Resident Citizens, and Resident Aliens

(a) NIT – Applicable to individual TPs, except NRA NETB.

##### Tax rates

1. Graduated rates (0-35%)
2. Optional 8% flat rate
3. 15% preferential tax rate

##### Tax base

1. Compensation income
2. Income from T/B or EP
3. Capital gains not subject to final CGT.
4. Passive income not subject to FWT
5. **\*\*Less allowable deductions.**

##### Optional 8% flat rate

Tax base – **gross** receipts/sales in excess of P250k

##### To whom available

1. Purely self-employed individuals/professionals, with income from T/B or EP ≤P3M (VAT threshold).
2. Mixed income earners with respect to income from T/B or EP.

##### To whom not available **CV NOGEN**

1. Purely compensation income earner
2. VAT-registered
3. Non-VAT registered whose gross sales/receipts >P3M
4. Taxpayers subject to OPT

5. Partners of GPP/GCP since their DSNIP is already net of costs and expenses, and the 8% rate is applied on the gross receipts
6. Individual enjoying exemption
7. NRA NETB who is subject to 25% GIT

**Election of option**

1. Must be indicated in the first quarterly return. If not, NIT automatically applies.
2. Choice is irrevocable for the taxable year.

**15% preferential tax rate**

1. To whom available – Alien individuals employed by R/AHQ, ROHQ, OBUs, foreign petroleum contractors or subcontractors, and their citizen counterparts.
2. The tax base – gross compensation income derived from covered entities without deduction.

**(1) Inclusions and Exclusions for Taxation on Compensation Income**

**(a) Inclusion – Gross compensation income (see above)**

**(b) Exclusions**

1. 13th month pay and other gross benefits ≤90k
2. De minimis benefits
3. GSIS, SSS, Medicare, Pag-IBIG contributions, PHIC, unions dues

**(c) Exemptions**

1. First 250k
2. Income from sources outside Ph, except RC

**(d) Deductions – NOT ALLOWED**

**(e) Rate – Graduated rate of 0-35%**

**(2) Taxation of Business Income/Income from Practice of Profession**

**(a) Inclusion**

1. Income from T/B
2. Income from EP
3. Both

**(b) Exclusions – LCG TRM (see above)**

**(c) Exemptions**

1. First 250k – if optional rate of 8% not elected
2. Income from sources outside Ph, except RC

**(d) Deductions – ALLOWED if optional rate of 8% not elected**

1. Itemized deductions **TOILD BaC DRP** (see above)
2. OSD, except NRA

**(e) Rates**

1. Graduated rate of 0-35% or
2. 8% optional rate of the gross sales/receipts, and other non-operating income, if qualified (see above)

**\*\* Also applies to mixed income earner (with compensation income) but only with respect to the income from T/B or EP**

**(3) Taxation of Passive Income**

**(a) GR: Part of gross income for purposes of computing taxable income**

**(b) XPNs – passive income subject to FWT**

1. Interest Ph currency – 20%
2. Interest FCDU – 15%
3. Interest LT deposit – 20% [<3y]; 12% [3y to <4y]; 5% [4y to <5y]; Exempt [≥5y]
4. Dividends – 10%; 20% NRA NETB
5. Royalties in general – 20%
6. Royalties in books, literary, musical composition – 10%
7. Prizes – 20%; graduated rate if ≤10k

8. Winnings – 20%; exempt if ≤10k on PCSO/Lotto

**(c) FWT**

1. Tax prescribed on certain kinds of passive income.
2. No creditable against tax due.
3. Constitutes full and final payment of the tax due on the income earned.
4. Income for which the tax was withheld need not be reported in the tax return.

**(4) Taxation of Capital Gains**

**(a) GR: Part of gross income for purposes of computing taxable income**

**(b) XPNs – Capital gains subject to CGT**

1. Sale of RP in the Ph – 6% of the higher between GSP or FMV (tax imposed in presumed gain); exempt if sale principal residence **SUM CNOD**
2. Sale of shares of stock of domestic corporation not traded in the stock exchange – 15% of the net capital gain; 0.6% if listed traded in the stock exchange (stock transaction tax).

**(5) Capital Asset vs. Ordinary Asset**

**\*\*See previous discussion**

**b) Income Tax on Non-Resident Aliens Engaged in Trade or Business**

**NRA – TP who comes and stays in the Ph for an aggregate period of >180 days in any calendar year.**

1. Taxed in the same manner as RC, NRC, RA

**\*\*See previous discussion.**

2. XPN: FWT of dividends, including DSNIP other than GPP – 20% [passive income subject to FWT].

**c) Income Tax on Non-Resident Aliens Not Engaged in Trade or Business**

**GR: 25% FWT on gross income for all income earned from Ph sources.**

**XPNs:**

1. Capital gains on sale of shares of domestic corporation not traded in stock exchange – 15% of net capital gains.
2. Capital gains on sale of shares of real property in Ph – 6% of GSP/FMV. N.B.: alien individuals are not allowed to own land in Ph, except by way of legal or compulsory succession.

**d) Individual Taxpayers Exempt from Income Tax**

**(1) Senior Citizens**

**GR: Senior citizens deriving returnable income are required to file ITR.**

**XPN:**

1. If he is a minimum wage earner, he shall be exempt from tax on the compensation income earned.
2. If annual taxable income does not exceed the poverty level as determined by the NEDA for that year.

**\*\*Bill providing for income tax exemption of senior citizens not yet passed.**

**(2) Minimum Wage Earners**

1. Exempt from income and withholding tax.
2. On – **BOHNN** (i) Basic salary; (ii) Holiday pay; (iii) OT pay; (iv) Hazard pay; (v) NSD pay.
3. If the MWE receives compensation and other benefits, in excess of the exempt threshold of P90,000, he does not lose his exempt status.
4. The RR of the BIR that the MWE earning such other benefits loses his exempt status and becomes subject to the graduated rate on the entire income received, was declared **void** by the SC for adding a requirement for the exemption

- which is not found in the law granting the exemption.
- Not exempt income – additional compensation – e.g., commissions, honoraria, FB, taxable allowances, benefits in excess of the allowable 90k.

### (3) Exemptions Granted Under International Agreements

- EE benefits of aliens, NRs from foreign governments, embassies, diplomatic missions, international organizations.
- EE benefits of Filipinos employed by covered ER.

#### Covered ER

- Foreign governments
- International missions
- International organizations – UN, WHO, FAO, UNDO, UN Special Agencies, International organization for migration, International seabed authority.

## 6. Income Tax on Corporations

### (a) NIT – Applicable to DC, RFC

#### Tax rates

- 25% RCIT
- 2% MCIT
- Special tax rates under Tax Code
- Special tax rates under treaties

#### Tax base

- Income from T/B
- Capital gains not subject to final CGT.
- Passive income not subject to FWT

**\*\*Less allowable deductions.**

#### 2% MCIT

- Alternative corporate income tax imposed on the gross income of the corporation – DC, RFC.
- Rate – 2% [1% from Jul 2020 to Jun 2023].
- Difference between MCIT and RCIT may be credited for three immediately succeeding taxable years.
- Application of MCIT may be suspended by SOF if corporation is suffering of losses on account of (i) prolonged labor dispute, (ii) force majeure, (iii) legitimate business reverses.

#### When imposed

- Starting the 4<sup>th</sup> year immediately following the year when the corporation commenced business – e.g., if operation started in 2012, the corporation will be subject to MCIT starting 2016.
- When MCIT > RCIT
- When corporation sustained net loss

Distinctions	RCIT	MCIT
Tax base	Net taxable income	Gross income
Period	Applicable from commencement of operations	Beginning 4 <sup>th</sup> year immediately following the year of commencement of operations
Imposition	Imposed if RCIT > MCIT	Imposed when MCIT > RCIT, or corporation sustains a loss

#### Special tax rates under treaties

- Income earned by RFC and NRFC from sources within the Ph may also be subject to lower tax rates depending on the applicable treaty.

- Failure to strictly comply with the requirement of securing a prior tax treaty relief from BIR, will not deprive the TP of the benefit of a tax treaty.
- Obligations arising from treaties has the force of law between or among the contracting states and must be complied with in good faith. Pacta sunt servanda.

### a) Income Tax on Domestic Corporations and Resident Foreign Corporations

Tax base – (i) Income from T/B; (ii) Capital gains not subject to final CGT; (iii) Passive income not subject to FWT [less allowable deductions]

Taxpayer	Tax rates
<b>Domestic Corporations</b>	25% RCIT, or 2% MCIT, whichever is higher [1% from Jan 2020 to Jun 2023]
► Proprietary, non-profit educational institutions and hospitals	10% preferential rate, unless their gross income from unrelated trade, business or other activity exceeds 50% of their entire gross income [from Jul. 1, 2020, to Jun. 30, 2023]
► Non-stock, non-profit educational institutions	Exempt – all revenues and assets ADE used for educational purposes (Const.)
► Offshore gaming licensee	25% RCIT, or 1% MCIT, whichever is higher, on non-gaming revenue. N.B.: gaming revenue is subject to 5%
► DC with net taxable income ≤5M, and total assets ≤100M, <sup>60</sup> excluding land	20% RCIT
<b>RFC</b>	25% RCIT, or 2% MCIT, whichever is higher, on income from sources within the Philippines
► R/AHQ and representative offices	Exempt since they do not derive income from their operations in the Ph
► ROHQs	10% of net income from Ph sources [RCIT starting Jan. 2022]
► International carriers	2.5% on GPB <sup>61</sup>
► OBUs/FCDUs	10% FWT on income from foreign currency transactions
► Offshore gaming licensee	25% RCIT, or 1% MCIT, whichever is higher, on non-gaming revenue. N.B.: gaming revenue is subject to 5%

### (1) Branch Profit Remittance Tax

#### (a) Tax rate and tax base

- Rate – 15%
- Tax base – Profit remitted by a branch of a foreign corporation in the Ph to its Head Office abroad (**outbound**). Total profits applied or earmarked for remittance without any deduction for the tax component.
- Excludes – fixed or determinable annual, periodic, or casual gains, profits, income and capital gains which are not treated as branch profits, unless effectively connected with the conduct of T/B.

#### (b) Taxable corporations

- RFCs, including (i) Ph branch in the Philippines of a foreign corporation; (ii) ROHQ; (iii) OBUs/FCDU.
- Ph branch – Ph branch of a foreign corporation is not a corporation under Ph laws, but a mere extension of the head office abroad. They are classified as RFC for taxation purposes.

<sup>60</sup> Net of depreciation and bad debts, if any

<sup>61</sup> In international air carriage – revenues earned from transport of passengers, cargoes, mails, from a point in the Ph to a foreign country in a continuous uninterrupted flight;

In international shipping – revenues earned from transport of passengers, cargoes, mails, from a point in the Ph to the final destination in the foreign country.



3. If a foreign corporation does business in PH by incorporating a domestic corporation and investing in its shares, the DC is subject to RCIT (c.f.: branch or ROHQ are subject to preferential rates). It is not subject to BPRT since it has separate personality.

(c) XPN – PEZA-registered activities

#### (2) Itemized Deductions vs. Optional Standard Deductions

Deduction	DC	RFC	NRFC
Itemized deduction	Y	Y	N
OSD	Y	Y	N
Base	Gross income, not gross sales or receipts (applicable to individual)		N/A

#### b) Income Tax on Non-Resident Foreign Corporations

Tax base – (i) Income from T/B; (ii) Capital gains not subject to final CGT; (iii) Passive income not subject to FWT [less allowable deductions]

Taxpayer	Tax rates
<b>NRFC</b>	25% FWT on income from sources within the Philippines
► Cinematographic film owners	25% of GI from Ph
► Lessor or vessels chartered by Ph nationals	4.5% of gross rentals
► Lessors of aircraft, machineries, equipment	7.5%
► Interest income on foreign loans contracted after Aug 1, 1986	20% FWT
► Cash/property dividends received from domestic corporations –	15% FWT, subject to the tax sparring rule
► CGT from the sale of shares of stock of domestic corporations, other than those traded in the stock exchange	15% on net capital gain

#### c) Income Tax on Special Corporations

- (a) NP proprietary educational institutions and hospitals
1. Proprietary – Private hospital or school maintained and administered by private individuals with permit from DepEd, CHED or TESDA.
  2. 10% of taxable income; 1% (from Jul. 1, 2020, to Jun. 30, 2023)
  3. Provided, income from unrelated T/B or other activity  $\leq$  50% of total gross income from all sources. Otherwise, 25% RCIT applies to the entire income (**predominance test**).
  4. UT/B OA – those not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function.

*Exempt if*

1. NS charitable institution – (i) NS corporation or association; (ii) Organized exclusively for charitable purposes; (iii) No part of its income or asset shall inure to the benefit of any member, organizer, officer or any specific person (Sec. 30[E]).
2. Civic league – Not organized for profit but operated exclusive for the promotion of social welfare (Sec. 30[G])
3. NS NP EI – All revenues and assets ADE for educational purposes (Sec. 30[H], Const.)
4. Government EI

(b) GOCCs

1. GR: Taxable as ordinary corporation
2. XPNs: GSIS, SSS, HDMF, PHIC, LWD.

#### d) Exemptions from Tax on Corporations

(a) Under Sec. 30 NIRC

*Requisites for exemption*

1. NS NP Corporation
2. No part of its income inures to the benefit of any private individual, and all the income earned are devoted by the organization in pursuing its purpose (NP)
3. In case of dissolution, its assets shall be transferred to similar organizations or the government.

*Includes*

1. (e) NS corporation association, exclusive for charitable, religious, athletic, cultural, scientific CRACS purposes, or for the rehabilitation of veterans, no part of income or asset belong or inures to the benefit of member, organizer, officer, any specific person.
2. (g) NP civic league organization operated exclusively for the promotion of social welfare
3. (h) NS NP EI
4. (i) Government EI

*Extent of exemption*

1. “income as such” – income earned by the organizations pursuant to their purpose, and consistent with their nature are exempt from 25% RCIT only.
2. Not exempt – (i) Income from **property**, real or personal; (ii) Income from **activity** for profit, regardless of disposition. XPN: with respect to NS NP EI whose exemption is based on the Const.
3. Exemption is based on source, regardless of use or disposition.

(b) Charitable organizations

1. Exemption from **RPT** based on Const. – lands, buildings, and improvements, ADE used for religious, charitable, or educational purposes. If used for other purposes, regardless of disposition of income, not exempt.
2. Exemption from **income tax** based on NIRC Sec. 30(e)(g). – income derived “as such”, excluding income from property or activities for profit. E.g., income from bank deposits is taxable.

(c) Religious institutions

**\*\*Same rule with (b) charitable organizations**

(d) NS NP Educational Institutions

1. Exemption from **all taxes** and duties on its revenues and assets based on Const. – ADE **used** for education purposes.
2. Basis is the use/disposition of the assets and income, regardless of the source, even if from activities for profit.
3. Revenue from cafeteria/canteen, bookstore is also exempt if: (i) Owned and operated by the educational institution; (ii) Operated by the institution as ancillary activities.
4. Interest income and royalties are also exempt from 20% FWT.
5. Exemption is from all internal revenue taxes, local taxes, TCD.
6. Constitutional provision which guarantees total exemption from all taxes to a NS NP EI as regards revenue and properties ADE for educational purposes prevails over the tax treatment under Sec. 30 NIRC, which exempts income earned only if earned such educational institution.

(e) Proprietary educational institution

1. RPT – exempt if ADE **used** for education purposes (Const.)
2. Related activity – exempt.

3.	Unrelated activity – (i) 10% preferential rate if ≤50% of total income; (ii) 25% RCIT if >50% (same with proprietary hospital)
4.	Basis is the source of the income, regardless of disposition.
(f)	Government educational institutions, public schools
1.	RPT – exempt under LGC. Property belonging to GRP and instrumentalities, unless the beneficial use pertains to non-exempt entity for a consideration.
2.	Related activity – exempt.
3.	Unrelated activity – taxable.
(g)	Non-stock, non-profit hospital
1.	The fact that it derives income from activities for profit does not remove its income tax exemption. The limitation however to avail of the 10%/1% preferential rate is that income from the unrelated trade or business or other activity shall not exceed 50% of its total income.
2.	A charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, as long as the money received is devoted or used altogether in the charitable object which it is intended to achieve, and no money inures to the private benefit of the persons managing or operating the institution.
(h)	Proprietary hospital
1.	RPT – exempt if ADE <b>used</b> for charitable purposes (Const.)
2.	Related activity – exempt.
3.	Unrelated activity – (i) 10% preferential rate if ≤50% of total income; (ii) 25% RCIT if >50% (same with proprietary EI)
4.	Basis is the source of the income, regardless of disposition.
(i)	Governmental agencies
1.	Taxable on income from proprietary functions.
2.	Exempt on income from governmental functions.
(j)	GOCCs
1.	Generally taxable.
2.	XPNS: PHIC, GSIS, HDMF, PCSO, LWDs.

#### e) Period Within Which to File Income Tax Return of Individuals and Corporations

(a)	Persons required to file
1.	Individuals – RC, NRC, RA, NRA ETB
2.	Corporations – DC, RFC
	Persons not required. Individuals:
1.	Whose income does not exceed 250k for the taxable year, unless ETB/P
2.	Whose income was subjected to FWT
3.	MWE
4.	Who are qualified for substituted filing (see below)
(b)	Period to file
Purely compensation income	Annually, subject to the qualifications on substituted filing
Purely trade, business, or professional income; or mixed income	3 quarterly + 1 annual return, on a cumulative basis May 15, Aug. 15, Nov. 15, Apr. 15 following year
DC and RFC	3 quarterly (60 days after the end of each quarter) + 1 annual return (on or before the 15 <sup>th</sup> day of the 4 <sup>th</sup> month following the close of the taxable year), on a cumulative basis
Capital gains	Sale of shares of stock of domestic corporation listed and traded in stock exchange Exempt from income tax, but subject to 6/10 of 1% stock transaction tax; stockbroker is

		constituted as withholding agent
	Sale of shares of stock of domestic corporation not traded in the stock exchange	By the seller within 30 days after the sale + annual CGT on all transactions involving shares of stock of domestic corporation
	Sale of real property located in the Philippines	By the seller within 30 days after the sale
Passive Income	Interest, royalties, etc.	No return required if subjected to final withholding tax
Remittance of withholding taxes	10 days after the end of each month	
Remittance of output VAT payable	25 days after the end of each month	

#### f) Substituted Filing

- (a) Who are qualified
1. Individual TP
  2. Pure compensation income earner, regardless of amount
  3. Only 1 ER in the Ph during the calendar year – the taxable period of an individual is always CY.

**\*\* The certificate of withholding filed by the ER duly stamped received by the BIR shall be tantamount to substituted filing of ITR by the ER.**

- (b) Who are not qualified
1. Those with multiple ER – concurrently or successively. Even if the subsequent ER will consolidate the previous income of the EE from previous ER, the EE is still not qualified to avail of the substituted filing.
  2. EEs who income tax has not been properly withheld and remitted.
  3. Individuals deriving income from T/B or profession (mixed income earner).

#### g) Failure to File Returns

- (a) Effect of failure to file
1. The period of assessment is longer, i.e., 10 years from the date of discovery of the omission.
  2. Deficiency tax may be collected by court action even without prior assessment within 10 years from discovery of omission.
  3. Judicial action for collection may either be civil or criminal – **a prior assessment is not necessary for a criminal action for collection of deficiency taxes.**
- (b) Filing in wrong venue
1. As if there is no filing or payment.
  2. Remedy: refund + file in proper venue.
- (c) Penalty – 25% + 12% interest.

#### 7. Withholding Taxes

##### a) Concept

- (a) The withholding system is a **system of collecting taxes in advance** from the income recipient by constituting the payor as withholding agent of the government with the obligation to withhold a certain portion of the amounts due to the payee, with the same being remitted to the BIR.
1. The payee of the income is the person upon whom the tax is imposed. The payor is merely constituted as agent of the government to ensure the collection of taxes due.
  2. If the payee is a tax-exempt person, or the income is exempt from tax, then there should be no withholding on the same.
  3. If the withholding agent fails to withhold the taxes on its income payments, then the corresponding expenses are not deductible.

#### Liability for tax

1. TP (income payee) remain liable for the tax due.
2. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government.

#### Liability for payment/remittance

1. The withholding and remittance of the taxes is the liability of the withholding agent.
2. The income payee does not have to prove that the income withheld from it was properly remitted to the BIR.
3. Said payee has not control over such remittance, and he shall not be prejudiced by the acts/omissions or fraud committed by the withholding agent in its non-remittance of the taxes.
4. If the withholding agent fails to remit the tax, the amount imposed upon it is in the form of penalty for the non-remittance but not in the form of taxes since the tax liability remains with income payee.

#### (b) Creditable withholding taxes

1. An expense is paid or payable by the taxpayer which is income subject to income tax of the recipient.
2. The income is fixed or determinable at the time of the payment.
3. The income is one wherein tax is required to be withheld, or the payor is one who is required to withhold taxes.
4. The income recipient is a resident of the Philippines subject to income tax.
5. The withholding agent is also a resident of the Philippines.

#### (c) Persons exempt from withholding taxes

1. Since the withholding tax system is a means of collecting taxes in advance, then this does not apply to persons whose income is exempt from income tax.
2. Exempt persons – (i) Government, instrumentalities, political subdivisions; (ii) Persons enjoying exemptions from income tax.

#### (d) Period and sanctions

1. Tax shall be withheld and remitted when the income payment is paid or payable or accrued, whichever comes first.
2. The taxpayer-seller of goods or services shall claim the tax credit, evidenced by the creditable withholding tax certificate in the year when the related income was earned.
3. Non-withholding. – The payor will not be allowed to claim the corresponding expense as **deduction** from its gross income.
4. Non-remittance. – (i) Payee will still be **allowed to credit** the taxes withheld. He need not prove the actual remittance of the withholding taxes to claim the tax credit. The certificate of withholding taxes issued by the payor is prima facie proof of the remittance. (ii) Payor will be subject to penalties.

#### (e) Tax credit or refund

##### Available when

1. TP's quarterly tax payments > total tax due for the taxable year.
2. TP's CWTs > total tax due for the taxable year.

##### Options

1. Carry over the excess credit to succeeding taxable years.
2. Apply for a claim for refund or issuance of tax credit certificates.

##### Irrevocability rule

1. Once the TP opted to carry over the excess credits to succeeding quarters it is already barred from applying for a refund, or the issuance of tax credit certificate. The election is irrevocable for the taxable period when made.
2. However, a TP who opted to apply for a refund or tax credit certificate is not barred from later carrying over the excess credits to subsequent taxable quarters, provided that no refund or TCC was issued yet. **Hence, the irrevocability rule is limited to the carry-over option.**

##### Proof of withholding

1. A TP applying for claim for refund/TCC on account of excess CWTs can do so by presenting the tax withholding certificate (Form 2307).
2. He is not required to – (i) Present the officer who prepared the tax withholding certificate; (ii) Prove actual remittance of the tax since this is under the control of the withholding agent and not of the TP.

#### b) Creditable vs. Withholding Taxes

Distinctions	FWT	CWT
Nature	The amount withheld constitutes full and final payment of the tax due	The amount is intended to equal, or at least approximate the tax due from the income payee
Creditability	The FWT is not creditable from the ordinary income tax or RCIT of the taxpayer	Taxes withheld shall be credited against the tax liability of the taxpayer for the taxable year
Inclusion in GI	The income subjected to FWT need not be included in the gross income	The income subject to CWT must still be reported as part of GI
Necessity to file ITR	The income payee is no longer required to file income tax return, if the income subject to final tax is the only source of income	The income payee is still required to file tax return, and pay the difference between the tax due, and the creditable taxes withheld
Applicability	The finality of the withholding tax is limited to the specific item of income subjected to the same, and does not extend to other income of the payee	The creditable withholding tax applies on certain types of income. There are three types: (i) Expanded withholding tax on certain income payments; (ii) Withholding tax on compensation of employees; (iii) Withholding tax on government money payments.

#### C. Value-Added Tax (VAT)

##### 1. Concept and Elements of VATable Transactions

###### (a) VAT is tax on the value-added to the goods/service.

1. It is a tax on the transaction itself imposed at every stage of the distribution process, not on the profit.
2. **Profit is not a condition/element for the imposition of VAT**, in fact even NS NP organizations and government entities are covered.

###### (b) Covered transactions

1. Sale, lease, exchange, barter SELB of goods in the course of T/B **ICTB**
2. Sale of services **ICTB**
3. Importation of goods w/n **ICTB**

###### ICTB

1. **Regular** conduct or pursuit of commercial or economic activity **RCP CEA**, including **incidental** transactions. **Nature** of TXN in relation to primary purpose of the business is also considered.
2. Incidental TXN. E.g., sale of fully depreciated vehicle formerly used in business and forming part

of the business' PPE subject to depreciation. An isolated TXN may also be considered an incidental TXN subject to VAT.

3. Services rendered by **NRA** in Ph are considered rendered ICTB, notwithstanding rule of regularity.
4. Whether done NS NP private organizations, or government entity.
5. c.f.: isolated transaction. E.g., (i) sale of ships by entity engaged in ship leasing is not ICTB but mere isolated TXN when done pursuant only to a government privatization program (involuntary sale); (ii) Sale of NPC power plants pursuant to PSALM's mandate to privatize NPC generation assets to liquidate NPC obligations.

(c) VAT rates

1. Regular 12%
2. Zero-rated
3. Exempt

(d) VAT on sale of goods/properties – 12% of GSP

*Gross selling price*

1. Money or equivalent required to pay for the goods, **exclusive of VAT**, but inclusive of excise taxes.
2. Sales returns and allowances – May be **deducted** from GSP in the quarter when refund was made, or credit memo issued.
3. Sales discount – May be **excluded** from GSP in the quarter when given if (i) indicated in invoice at time of sale; (ii) unconditional.
4. Excludes – Amounts (i) **earmarked** for payment to unrelated parties, or (ii) intended for **reimbursement**, as indicated in the invoice or contract.

*When imposed*

1. Actual SELB of goods/properties
2. Transactions deemed sale (see below)
3. Change in status from VAT-registration – 12% VAT also imposed for goods disposed or remaining in inventory as at certain date if the status of a person as VAT-registered changes **or is terminated**.

(e) VAT on sale of services/lease of properties – 12% of GR

*Gross receipts*

1. (i) Contract **price**, rental, or royalty, (ii) including amount charged for **materials** supplied with the service, (iii) **deposits** and advanced payments.
2. Actually or constructively **received** during the quarter for service performed or to be performed.
3. Exclusive of VAT.
4. Excludes – Amounts (i) **earmarked** for payment to unrelated parties, or (ii) intended for reimbursement; (iii) which do not belong to TP, and do not redound to its benefit, as indicated in the receipt or contract.
5. E.g., of exclusions from GR – (i) Amount received by HMOs earmarked and actually spent for medical utilization of members (paid to doctors, hospitals when a member avails the service). HMO's gross receipts consists only of service fees; (ii) Room charges entrusted to local travel agencies by foreign travel agencies earmarked for payment of hotels.

*When imposed*

1. Sale of service – performance of all kinds of service **in the Philippines ICTB** for a **fee**. E.g., SVC rendered by tollway operators. Toll fees are VATable.
2. Lease of properties – property leased or used is **in the Ph**, regardless of where the lease or licensing agreement was executed.

Not sale of service

1. **Showing** or exhibition of motion or picture films by cinema/theater operators.
2. This is not the same as **lease** of motion picture films, films, tapes, discs.
3. (i) the legislative intent is to subject this to **amusement tax** imposed by local governments; (ii) NIRC exempts persons subject to amusement tax from the coverage of VAT; (iii) amusement tax under NIRC is limited to operators of cabarets, clubs, Jai-Alai, racetracks.

(f) VAT on importation of goods – 12%

*Tax base*

1. Total value used by BOC in determining TCD + [(i) customs duties, (ii) excise taxes, (iii) other charges]
2. OR Landed cost + excise taxes (if TCD is based on volume or quantity)

*Statutory TP*

1. Non-exempt exporter
2. The subsequent buyer or transferee who is a non-exempt person who shall be considered the importer, in case of tax-free importation.

## 2. Impact and Incidence of Tax

VAT is an indirect tax which is demanded at the first instance from one person (impact; statutory TP) in the expectation and intention that he can shift the burden to someone else (incidence; ultimate payee)

1. Impact – The point at which the tax is originally imposed by law. On the statutory TP, i.e., the person who SELB goods, sells service, imports goods.
2. Incidence – The point at which the tax burden finally rests or settles down. On the final consumer, the place at which the tax comes to rest.

## 3. Destination Principle and Cross-Border Doctrine

No VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority **DCOT TA**

1. Sale TXN is subject to zero rate when **intended for use or consumption outside Ph**.
2. Goods and services are taxed only in the country where they are **consumed**. Thus, exports are zero-rated, while imports are taxed.

*XPN*

1. Zero-rated services performed in Ph by a VAT registered person, if those services were for a non-resident person NETB in the Ph, paid in FC, accounted for according to BSP RR.
2. Zero rated even if the service is "consumed" (rendered) in Ph (situs-of-service principle)

*Special economic zones*

1. Considered a separate customs territory for tax purposes. Considered foreign territory by fiction of law under R.A. No. 7916.
2. Deemed exportation – Sale from customs territory to ecozone.
3. Deemed importation – Sale from ecozone to customs territory.

**\*\* VAT exemption and zero-rating of PEZA-registered entities are limited to goods, SVC directly and exclusively used in the registered project or activity.**

## 4. Imposition of VAT on Transfer of Goods by Tax Exempt Persons

VAT is imposed on the subsequent buyer or transferee who is a non-exempt person who shall be considered the importer.

1. Tax due shall constitute lien on the goods superior to all charges or liens, irrespective of possessor – contemplates a situation where VAT is not paid at



point of importation because the importer is tax-exempt.

## 5. Transactions Deemed Sale Subject to VAT

Transactions where no actual sale transpired, yet the law considers the transaction as one of sale subject to VAT

1. Transfer, use or consumption **TUC** not ICTB of goods or properties originally intended for sale or for use ICTB.
2. Distribution or transfer to: (i) **SH/investors** as share in the profits of the VAT-registered persons; (ii) **Creditors** in payment of debt.
3. **Consignment** of goods if actual sale is not made within 60d following the date such goods were consigned. – VAT will be imposed again upon actual sale.
4. **Retirement** from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

## 6. Zero-Rated and Effectively Zero-Rated Sales of Goods or Properties

VATable transactions but VAT is not imposed at all stages of transaction.

1. It **does not result** in any output VAT.
2. However, the related **input tax** shall be available as credit/refund. (twin privilege)
3. May be automatic or effective zero-rating

Automatic zero-rating	Effective zero-rating
Intended for the seller's benefit who is directly and legally liable for the VAT	Intended for the buyer's benefit who, not being directly and legally liable for the payment of the VAT, will ultimately bear its burden
To make the seller internationally competitive	To encourage the development of certain industries

**\*\* Destination principle primarily applies to automatic zero-rating**

### (a) On sale of goods

#### (1) Export sales

1. (i) Sale and actual shipment of goods from Ph to abroad [regardless of when ownership is transferred]; (ii) Paid in FC, accounted for according to BSP RR.
2. Sales of raw and packaging materials to **NR** buyer – (i) For delivery to local export-oriented enterprise to be used in manufacturing, processing, packaging **MPP** buyer's goods; (ii) Paid in FC, accounted for according to BSP RR.
3. Sale to export-oriented enterprise – Export sales >70% of totally annual production.
4. Sale goods, supplies, equipment, fuel to international carriers – provided, used in international shipping or air transport operations.

#### (2) Sales to exempt persons (effectively zero-rated)

1. Sales to persons whose exemption under special laws, international agreements effectively subject the sale to zero-rate.
2. **Sales to EPZA-registered enterprises operating within economic processing zones were effectively zero-rated. – No prior application** for the effective zero-rating is required, provided: (i) VAT-registered; (ii) satisfactory compliant with requisites for claiming tax refund/credit.

#### (3) Sales to offshore gaming licensees

1. Offshore gaming operator duly licensed and authorized to conduct gaming operations, including acceptance of bets from offshore customers.
2. Gaming tax of 5% of gross gaming revenue or receipt is imposed in lieu of all direct and indirect IR taxes and local taxes.
3. Sales by suppliers and SVC providers of OGL – (i) zero-rated, if attributable to gaming operations; (ii) 12%, if attributable to non-gaming operations.
4. OGL taxation

From gaming operations	Income tax	Gaming tax – 5% of gross gaming receipts; in lieu of all direct and indirect internal revenue taxes and local taxes
From non-gaming operations	Income tax	Ph-based (DC) – 25% RCIT sources within and without
	VAT	Foreign-based (RFC) – 25% RCIT sources within
		Subject

### (b) On sale of services/lease of property PO EIE CFO

#### (1) Services to persons ETB abroad

1. For processing, manufacturing, repacking PMR of goods, which are subsequently exported.
2. Paid in FC, accounted for according to BSP RR.

#### (2) Other services (than PMR)

1. (i) To person ETB conducted abroad or (ii) to a non-resident NETB who is abroad when the services are performed; (iii) paid in FC, accounted for according to BSP RR.
2. Elements – (i) SVC were rendered for a **non-resident**; (ii) NR is either (a) doing business outside Ph, or (b) not doing business in Ph.
3. E.g., (i) Services rendered by Ph branch of a foreign corporation to another foreign branch in HK; (ii) Services rendered by ROHQ of a foreign corporation to affiliates-clients which are NRFCs doing business outside Ph.

#### (3) Services to exempt persons

1. Services rendered to persons whose exemption under special laws, international agreements effectively subject the supply of service to zero-rate.
2. E.g., (i) sale of electricity to NPC which is a tax-exempt entity is effectively zero-rated; (ii) lease of hotel premises to PAGCOR (when it was still tax-exempt); (iii) Construction of building for WHO, which under the "Host Agreement" is exempt from all direct and indirect taxes. In the relevant case, the SC held indirect tax to include contractor's tax.

#### (4) Services to international carriers

1. Provided, exclusively for international shipping or air transport operations, including lease of property.
2. The non-imprintment of the word "zero-rated" in the receipt will not deem the TXN subject to 12% VAT since this is not a requirement under NIRC. c.f.: for the purpose of claiming input tax credit, the VAT-registered TP must comply with all VAT invoicing requirements, including the printing of the word "zero-rated" on the invoice covering zero-rated sale.

(5) Services to export-oriented enterprise performed by sub/contractors for enterprise whose export sales >70% of totally annual production.

(6) Transport of passengers or cargoes by **domestic** air or sea vessels from Ph to foreign country.

(7) Sale of power or fuel generated through renewable sources and other emerging energy sources using technologies.

(8) Services to off-shore gaming licensees attributable to gaming operations – OGLs are imposed gaming tax of 5% of gross gaming revenue or receipt is imposed in lieu of all direct and indirect IR taxes and local taxes.

## 7. VAT-Exempt Transactions

(a) Not subject to VAT only at a particular stage of the transaction as provided under the law. Beyond such stage, the transaction is already subject to VAT.

1. It **does not result** in any output VAT.

2.	However, the related <b>input tax</b> is not available as credit/refund (partial relief). XPN: If the VAT-exempt person opted to register as VAT taxpayer, unutilized input tax may be claimed as refund or credit.
3.	Optional VAT-registration – (i) waiver of tax-exempt status; (ii) irrevocable for 3y counted from the quarter when the election was made.
4.	c.f.: zero-rating

Exemption	Zero-rating
Partial relief from the tax burden. The purchaser is not allowed any tax refund/credit on input taxes paid which forms part of cost of sales.	Total relief for purchaser from the tax burden.

(b) VAT exempt items

S/I in original state	Agricultural, marine food products; livestock, poultry; breeding materials – generally for human consumption
Original state	Still considered as such even if the products have undergone simple process of preparation and preservation for market – e.g., freezing, drying, salting, broiling, roasting, smoking, or stripping <b>BRFD SSS</b>
S/I of fertilizer, feeds	Includes raw materials for making feeds to animals for human consumption, but not for specialty feeds for racehorses, fighting cocks, finished feeds
I of household effects	(i) Belonging to Ph residents returning from abroad; (ii) NRC coming to settle in Ph
I of professional instruments	(i) Belonging to persons coming to settle in Ph or overseas Filipinos; (ii) class and quantity must be suitable to profession; (iii) for own use, and not for barter or sale, (iv) accompanying the person or arriving after reasonable time
	Excluding: vehicles, vessels, aircrafts, machineries for manufacture
SVC subject to percentage tax	
Agricultural SVC	By agricultural contract growers; millers of palay to rice, corn to grits, sugar cane to raw sugar
Medical, dental, hospital, vet SVC	<b>XPN: those rendered by professionals</b>
Educational SVC	(a) Duly accredited private educational institutions; (b) Government EI
SVC under ER-EE	
SVC by R/A HQ	Not earning income from Ph
Exempt TNXs	Under international agreements or special laws, except under P.D. No. 529
S/I by agricultural cooperatives	Must be duly registered with CDA – (i) To members; (ii) Of their produce (whether original form or processed) to non-members; (iii) Importation of farm inputs, machineries, spare parts used directly and exclusive for production/processing of produce
Gross receipts from lending	By credit or multi-purpose cooperatives duly registered with CDA
S by other cooperatives	Must be duly registered with CDA – (i) share capital contribution of each member ≤15k, regardless of aggregate; (ii) net surplus ratably distributed to members
Export S	If made by non-VAT registered persons. c.f.: if made by VAT-registered person, zero-rated
S of RP	(a) Not primarily HFS or lease ICTB; (b) Utilized for low cost or socialized housing under UDHA
	Up to Dec. 31, 2020 Residential lot valued at ≤1.5M (1,919,500) Residential house and lot, other residential dwelling (including condominium) valued at ≤2.5M (3,199,200)
	Starting Jan. 1, 2021 (c) House and lot and other residential dwelling ≤2M (3,199,200)

Lease of residential unit	If monthly rental ≤15k per unit, regardless of the aggregate rentals. N.B.: if commercial unit, regardless of rent amount, the same is VATable
S/I, printing, publication	Books, other educational reading materials covered by UNESCO Agreement, including digital format, provided not devoted principally to publication of paid advertisements
Transportation of passengers	By international carriers
S/I, lease of vessels and aircraft	Passenger or cargo vessels, aircrafts, including engine, equipment, spare parts for domestic and international transport operations
I of fuel, goods, supplies	By international carrier, used for international shipping or transport operations
SVC of banks, NBFIs	
S, lease of goods SVC to SC, PWD	*Senior Citizens, Persons with Disabilities
Tax-free exchanges	
Assessments	By homeowner's associations, condominium corporations – includes associations dues, membership fees, other charges
	It has no benefit to the condominium corporation who merely holds the amount collected in trust for the members, and exclusive for use in the management, maintenance, preservation of common areas for their benefit; it is not a SELB TXN
S of gold to BSP	
S/I of prescription drugs	For diabetes, high cholesterol, and hypertension, cancer, mental illness, tuberculosis, and kidney diseases
COVID-related	S/I of: - (a) equipment for production of PPE; (b) drugs, vaccines; (c) drugs for clinical trials – Jan. 1, 2021, to Dec. 31, 2023
Catch-all provision	Sale, lease of goods/properties, performance of SVC with gross annual sales and/or receipts ≤3M. N.B.: same threshold for availing 8% optional rate in lieu of NIT

## 8. Input and Output Tax

### OS IP

#### (a) Input tax

- VAT paid by VAT-registered person **ICTB** on purchase, importation of goods, SVC, including lease of property.
- Includes – (i) transitional input tax; (ii) presumptive input tax.
- Transitional – 2% of value of beginning inventory<sup>62</sup> or actual VAT paid on such inventory whichever is higher, available to a person (i) who becomes liable to VAT or (ii) who elects VAT-registration.
- Presumptive – 4% of gross value of purchases of **primary agricultural products** used in production, available to persons engaged in **processing** (pasteurization, canning) of sardines, mackerel, milk; **manufacturing** of refined sugar, cooking oil, packed noodle-based instant meal.

#### (b) Output tax

- VAT due on sale, lease of goods, properties SVC by persons registered or required to register as VAT person.
- Recognized – (i) For sale of goods, upon issuance of SI; (ii) For sale of SVC, upon actual receipt of payment.

#### (c) Output Less Input = VAT Payable/Excess Input VAT

- VAT payable – Payable to BIR by VAT-registered person.
- Excess Input VAT – (i) Carry-over to succeeding quarter, otherwise, no longer creditable; (ii) XPN: **Option to (a) refund or (b) credit against other**

<sup>62</sup> Inventory must be filed

**IR taxes for input tax attributable to zero-rated sales by VAT-registered person**

**(d) Crediting of input tax**

**Creditable input tax**

1. Purchase or importation of goods for use in T/B
2. Purchase of SVC on which VAT was actually paid
3. For VAT-registered person also engaged in non-VAT TXNs – (i) Input tax directly attributable to VAT TXNs; (ii) Ratable portion of input tax not directly attributable to either activity.

**Conditions for creditability**

1. Must be evidenced by VAT invoice (goods) or OR (service)
2. VAT-invoice requires, among others, the printing of the word “zero-rated” imprinted on the invoice covering zero-rated sales. A VAT-registered taxpayer is required to comply with ALL the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. **All purchases covered by invoices other than a VAT invoice shall not give rise to any input tax.**
3. c.f.: but in assessment cases, non-compliance with invoicing requirements is not fatal; failure to imprint the word “zero-rated” will not deem the transaction subject to 12% VAT if it is otherwise qualified as a zero-rated sale.

**Who may claim**

1. **purchaser**, upon consummation of sale and on importation
2. (non-exempt) **importer**, upon payment of VAT prior to release from customs custody
3. **purchaser, lessee, licensee**, upon payment of compensation, rent, royalty for purchase of SVC, lease/use of property.
4. for depreciable (capital) goods with VAT exclusive cost >1M – spread over 60 months or EUL, whichever is shorter, starting month of acquisition.

**\*\* Input tax credit is available only to VAT-registered persons ETB. If the person is required to register as a VAT person, he will still be subject to output tax, but he cannot claim input tax as credit.**

**If Non-VAT person issues VAT receipt**

1. He shall be liable for VAT, without the corresponding right to credit input taxes on his purchases.
2. The purchaser shall be entitled to credit the input tax on the purchase.

**9. Tax Refund or Tax Credit**

**(a) Who may claim**

**(1) VAT-registered persons with zero-rates sales**

1. Only input taxes **attributable to zero-rated** or effectively zero-rated TXNs, subject to ratable allocation, to the extent not applied against output tax (except transitional input tax).
2. Remedies – (i) claim for issuance of tax credit certificate which may be applied to other IR taxes; (ii) claim for refund of creditable input tax due or paid.

**Procedure**

1. Administrative claim (only) must be filed within 2y after close of taxable quarter when the sales were made.
2. CIR must act within **90 days** from receipt of ORs/invoices, **complete documents supporting application** for credit/refund.
3. Appeal to CTA division within 30 days from: (i) receipt of decision denying claim; (ii) **lapse of 90-day period for CIR to act** – N.B.: remedy in case of inaction is provided for under RROC of CTA

since NIRC did not provide that such inaction shall be deemed denial of the claim.

**Notes**

1. The 90+30 day-period is **jurisdictional**, although it need not fall within the 2y prescriptive period (there is no option to wait for the decision of CIR).
2. XPN: From Dec. 10, 2003, up to October 6, 2010 (Aichi) when DA-489-03 was in effect, TPs who relied in the RR are exempted from the mandatory requirement.
3. The TP who determines the completeness of documents submitted, not BIR.
4. The 90-day period may extend beyond the 2-year period for filing the administrative claim.
5. There must be compliance with the **invoicing requirements** as the printing of the words “zero-rated sale” on the VAT receipt. However, submission of subsidiary journals, VAT declarations are not part of the substantiation requirements under NIRC or RR, CIR's denial of the claim on ground of failure to produce such documents is not proper.

**Who may file**

1. Seller in zero-rated TXN – statutory TP
2. Purchaser who is exempt from both direct and indirect taxes – may claim for refund

**(2) Person whose VAT-registration was cancelled**

1. May be due to retirement, change of status (e.g., sales do no breach 3M threshold, engaging in VAT-exempt TXNs only), with respect to **unused** input tax.
2. TP may apply for issuance of tax credit certificate only (not refund) which may be used to pay other IR taxes.
3. Must be filed within 2y from the date of cancellation of registration – i.e., date of issuance of tax clearance by BIR after full settlement of all tax liabilities + completion of mandatory audit of all IR liabilities for the immediately preceding year.

**10. Filing of Returns and Payment**

1. Quarterly VAT returns must be filed within 25 days following end of quarter.
2. Payment shall be on monthly basis.
3. Starting Jan. 1, 2023, filing and payment shall be made quarterly within 25 days following end of quarter.
4. Only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
5. Venue – to authorized agent bank, revenue collection officer, duly authorized city/municipal treasurer in the revenue district where TP is registered.

**D. Tax Remedies Under the National Internal Revenue**

**1. Assessment of Internal Revenue Taxes**

Assessment is the **final** determination of the tax liability, with a **demand** for payment, and stating the factual and legal **bases** thereof FDB.

**a) Procedural Due Process in Tax Assessments**

1. Filing of tax return
2. Revenue officer secures LOA
3. Issuance of notice of discrepancy/ notice of informal conference
4. PAN
5. FLD/FAN
6. TP Protest
7. BIR Decision on Protest
8. Judicial Review

**Filing of tax return**



	<ol style="list-style-type: none"> <li>TP may: (i) file return in GF, (ii) file fraudulent return, (iii) omits to file a return. The TP is presumed to have prepared and filed the return in GF.</li> <li>Self-assessment; pay-as-you-file system.</li> <li>Return may be amended within 3y from filing, provided no LOA or notice of audit/investigation was actually served to the TP.</li> </ol>
<b>LOA</b>	<ol style="list-style-type: none"> <li>Issued by CIR or duly authorized representative authorizing a revenue officer to make an assessment.</li> <li>Mandatory requirement before commencement of the audit. A Letter Notice is not the same as LOA.</li> <li>Requisites for validity – (i) issued by CIR or DAR; (ii) received by TP or DAR; (iii) indicates the period covered; (iv) designates the revenue officer to conduct the examination; (v) indicates the tax types subject to audit indicated.</li> <li>The assessment is void if: (i) it is beyond the covered period stated in LOA; (ii) the examination was done by a revenue officer other than the person named. In case of reassignment, a new LOA shall be secured; mere memorandum of reassignment is insufficient.</li> </ol>
<b>Notice of discrepancy/informal conference</b>	<ol style="list-style-type: none"> <li>Issued by revenue officer stating the law and facts on which the findings are based.</li> <li>TP and RO must discuss within 30d. If no resolution, RO shall endorse the case to assessment division for issuance of deficiency tax assessment.</li> <li>The TP may waive participation BUT mandatory on part of the government.</li> </ol>
<b>PAN</b>	<ol style="list-style-type: none"> <li>Issued by BIR assessment division. (i) in writing; (ii) stating the facts and law on which the assessment is based; (iii) Must be duly received by TP. If TP denies receipt, BIR has burden to prove otherwise.</li> <li>TP may respond within 15d. (i) BIR must strictly observe the 15d, (ii) but discretionary for TP to respond. If TP failed to respond, he is considered in default and the CIR will be authorized to issue the FLD/FAN but such failure will not render the assessment final.</li> <li>The issuance of PAN and the 15d period for the TP to respond are mandatory. The FLD/FAN is void for violating TP's right to due process if: (i) issued without PAN, (ii) issued in the same day as PAN, (iii) issued within the 15d period for the TP to respond; (d) it failed to address the arguments raised by TP in the response.</li> <li>PAN may be dispensed if: (i) assessment is based on a <b>mathematical</b> error apparent on the face of the tax return MAF; (ii) assessment is based on the <b>variance</b> between the taxes withheld and remitted; (iii) TP is found to have <b>automatically</b> applied and carried over in the estimated tax of subsequent quarters the amounts claimed as refund or credit; (iv) non-payment of <b>excise</b> tax on excisable goods; (v) exempt <b>importer</b> transfers, sells, exchanges the imported goods to a non-exempt person or entity <b>MAVIE</b></li> </ol>
<b>FLD/FAN</b>	<ol style="list-style-type: none"> <li>Issued by the Regional Director.</li> <li>GR: Must be issued within 3y from the deadline of filing of return, the date of actual filing if filed later, or the date of filing of amended return if applicable (unless the amendment is merely formal and tax deficiency is already determinable from the original return)</li> <li>XPN: May be filed within 10y from date of discovery of fraudulent or omission of filing.</li> </ol>

4. Requisites for valid assessment (see below)									
<table> <tr> <th>PAN</th><th>FAN</th></tr> <tr> <td>Must be preceded by Notice of Informal Conference</td><td>Must be preceded by PAN</td></tr> <tr> <td>Response within 15d from receipt</td><td>Protest must within 30d from receipt</td></tr> <tr> <td>No action required for TP upon denial</td><td>TP must appeal the adverse decision or inaction (180d) to the CTA D</td></tr> </table>	PAN	FAN	Must be preceded by Notice of Informal Conference	Must be preceded by PAN	Response within 15d from receipt	Protest must within 30d from receipt	No action required for TP upon denial	TP must appeal the adverse decision or inaction (180d) to the CTA D	
PAN	FAN								
Must be preceded by Notice of Informal Conference	Must be preceded by PAN								
Response within 15d from receipt	Protest must within 30d from receipt								
No action required for TP upon denial	TP must appeal the adverse decision or inaction (180d) to the CTA D								
<b>TP Protest</b> <ol style="list-style-type: none"> <li>Must be filed within 30 days from receipt of FLD/FAN.</li> <li>If filed, the assessment becomes <b>disputed assessment</b>. Otherwise, the assessment is rendered final.</li> <li>Condition precedent before filing an appeal with CTA. Otherwise, the appeal is premature and dismissible for lack of jurisdiction. CTA has jurisdiction to review the FDDA of the CIR but not the assessment itself.</li> <li>Types: (i) reconsideration, (ii) reinvestigation.</li> <li>The TP must indicate the nature of the protest.</li> <li>In case of reinvestigation, it is the TP who determines completeness of the supporting documents.</li> </ol>									
<table> <tr> <th>Reconsideration</th><th>Reinvestigation</th></tr> <tr> <td>Protest is based on the documents previously submitted</td><td>Protest is based on new evidence to be submitted within 60d from filing of protest</td></tr> <tr> <td>Does not suspend the running of reglementary period</td><td>If granted, it suspends the running of reglementary period up to 180d</td></tr> </table>	Reconsideration	Reinvestigation	Protest is based on the documents previously submitted	Protest is based on new evidence to be submitted within 60d from filing of protest	Does not suspend the running of reglementary period	If granted, it suspends the running of reglementary period up to 180d			
Reconsideration	Reinvestigation								
Protest is based on the documents previously submitted	Protest is based on new evidence to be submitted within 60d from filing of protest								
Does not suspend the running of reglementary period	If granted, it suspends the running of reglementary period up to 180d								
<b>BIR Decision on Protest</b> <ol style="list-style-type: none"> <li>BIR must decide within 180d from filing of MR, or from filing of documents in case of Motion for Reinvestigation.**</li> <li>If denied, TP may file: (i) judicial appeal with CTA D within 30d from notice, or (ii) administrative appeal with CIR. In case of administrative appeal, the decision of CIR must awaited which shall constitute the FDDA appealable to CTA.</li> <li>If BIR failed to act within the 180d, TP may: (i) await FDDA of CIR, and appeal the same within 30d from notice; (ii) appeal the inaction*** within 30d from lapse of 180 days** [deemed denial], without prejudice to the decision that may be rendered by CIR. The options are mutually exclusive.</li> <li>FDDA – (i) must state the facts and law upon which it is based. Failure to do so is tantamount to inaction; (ii) preliminary collection letter, WDL, FNBS are not FDDA; (iii) but final collection letter categorically demanding payment from the TP with warning that summary administrative remedies will be instituted in case of failure to pay is considered FDDA.</li> </ol>									
<b>Appeal</b> <ol style="list-style-type: none"> <li>To CTA Division via ~R42 Petition for Review within 30d from notice of adverse judgment or inaction***. In case of adverse judgment, file MR within 15d from notice. In case of denial of MR, appeal to CTA EB within 15d from notice. In case of adverse judgment, appeal to SC via R45 within 15d from notice.</li> <li>Appeal to CTA D is in the nature of actual trial on the merits (trial de novo).</li> <li>Interlocutory orders of CTA D may be questioned via R65 to SC, not CTA EB.</li> <li>Appeal to CTA is not suspend the payment, levy, distraint, sale of TP's property for the satisfaction of his tax liabilities, unless the CTA grants a motion</li> </ol>									



for suspension of collection upon motion of interested party.<sup>63</sup>

#### b) Requisites of a Valid Assessment

##### FLD/FAN

1. Addressed to TP
2. Must provide the period assessed, computation of the tax due (liability must be fixed, including type of tax), demand for payment of the tax, and fix the period for payment.
3. **Factual and legal bases for issuance of assessment**
4. Must indicate that the TP must file protest within 30d from receipt of FAN.
5. Signed by the BIR Commissioner or duly authorized representative.
6. Issued within the prescriptive period, even if received by the TP later. N.B.: the assessment is deemed issued when it is mailed to the TP in due form.
7. Sent to and received by TP. N.B.: if the TP denies receipt, the BIR has burden to prove otherwise

#### c) Tax Delinquency vs. Tax Deficiency

##### (a) Tax deficiency

1. Failure of the return to indicate the correct amount of tax due.
2. The amount by which the tax imposed by the Code exceeds the amount shown in the return, increased by previous assessments or collections without assessment, decreased by amounts previously abated, refunded, repaid.

##### (b) Tax delinquency

1. Failure to pay (i) the amount of tax due on any return filed, (ii) the amount of tax due which no return is required, or (iii) any deficiency tax, surcharge, or interest thereon on the due date appearing in the notice and demand of Commissioner.

#### d) Prescriptive Period for Assessment

GR: FAN/FLD must be issued within 3y from the deadline of filing of return, the date of actual filing if filed later, or the date of filing of amended return if applicable (unless the amendment is merely formal and tax deficiency is already determinable from the original return).

XPN: FAN/FLD may be issued within 10y from date of discovery of fraud or omission.

***\*\*An assessment is deemed made from the date of mailing of the FAN/FLD.***

##### Requirement of valid waiver

1. In writing
2. Agreed to by both Commissioner and TP – (i) TP or duly authorized representative must sign; (ii) CIR or RO authorized to sign must indicate acceptance by BIR, and the date of acceptance. The date of notarization cannot be presumed to be date of BIR's acceptance; (iii) Both the execution by TP of the waiver, and date of acceptance by the BIR must be before the expiration of the prescriptive period
3. Before expiration of the ordinary prescriptive period for **assessment and collection**
4. For **definite** period beyond the ordinary prescriptive period for assessment and collection
5. Must be **notarized**

Applicability of estoppel

1. GR: Estoppel cannot be invoked by BIR against the TP.
2. XPNs: (i) contributory negligence of TP in executing successive waivers and acquiescing to the BIR's extended investigation, and questioning the validity of waivers only on appeal to CTA; (ii) If the TP already paid, which is already an implied admission of the validity of the assessment, unless the TP continuously reserved right to question the assessment on ground of prescription; (iii) *Pari delicto*, the TP was benefited by the execution of waivers.

#### (1) False Returns vs. Fraudulent Returns vs. Non-Filing of Returns

(a) False return – Contains deviations from the truth which may be due to mistakes, carelessness, ignorance of the person preparing the return.

##### (b) Fraudulent return

1. Intentional wrongdoing for the sole purpose of avoiding tax, either by under-declaration of income or over declaration of deductions.
2. Fraud is never presumed and must be proven by positive evidence. A false return is not necessarily fraudulent. BIR has burden to prove fraud to avail of to the longer prescriptive period.
3. Mere understatement of tax is not itself proof of fraud for purposes of tax evasion.

(c) Non-filing of return – when report required is not forthcoming or incomplete.

BIR may prepare/amend the return using the best evidence available.

1. Best evidence may include those in the possession of 3p, testimony of persons, even those that are hearsay in character. E.g., assessment made based on the report of investigation jointly made by the DOF-BIR-NBI is valid.
2. Not best evidence – (i) Mere photocopies; (ii) Informant's report and sworn statement of disgruntled former EE, especially if there is evidence to the contrary.

#### (2) Suspension of the Running of Statute of Limitations

The period for (i) Making of **assessment**, or (ii) Beginning of distraint or levy a proceeding in court for **collection**, is suspended: **PORCS**

1. Period when CIR is (i) prohibited from **making** the assessment or beginning **distraint** or levy or a **proceeding** in court and (ii) for 60d thereafter
2. When the taxpayer requests for a **reinvestigation** which is **granted** by the Commissioner
3. When the taxpayer **cannot be located** in the address given by him in the return filed upon which a tax is being assessed or collected
4. When the **warrant** of distraint or levy is (i) duly **served** upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and (ii) no property could be located
5. When the taxpayer is out of the Philippines

#### 2. Taxpayer's Remedies

##### a) Protesting an Assessment

###### (1) Period to File Protest

30d from receipt of FAN/FLD

###### (2) Submission of Supporting Documents

1. Required only in motion for reinvestigation.
2. Must be made within 60d from filing of protest.
3. TP determines the completeness of documents.

<sup>63</sup> (i) If in its opinion, the collection may jeopardize the interest of the government and/or the TP; (ii) subject to the deposit by TP

of amount claimed, or file surety bond not more than double the amount claimed.

### (3) Effect of Failure to File Protest

Assessment becomes final and executory.

### (4) Action of the Commissioner on the Protest Filed

#### (a) Grant

(b) Full/partial denial – appealable to CTA D within 30d from notice of FDDA.

#### (c) Inaction

1. TP may appeal the inaction within 30d from lapse of the 180d period from filing of MR, or submission of supporting documents in motion for reinvestigation.
2. TP may wait CIR's FDDA, and appeal the same to CTA D, and appeal the same within 30d from notice of decision.

**\*\*The options are mutually exclusive.**

### b) Compromise and Abatement of Taxes

Power to compromise payment of IR taxes is vested to the commissioner.

1. GR: Not delegable. XPN: Delegation to regional evaluation board: (i) assessments issued by regional offices involving basic deficiency taxes of 500k or less; (ii) minor criminal violations discovered by regional and district officials.

#### Compromise

##### Grounds for compromise

1. Existence of reasonable doubt as to the claim against the TP RDCAT
2. Financial position of the TP which shows a clear inability to pay the assessed tax. N.B.: subject to waiver of secrecy of bank deposits.

##### Minimum amounts

1. Based on RDCAT: 40% of basic assessed tax
2. Based on financial incapacity: 10% of basic assessed tax

##### Evaluation Board Approval requirement

1. If the basic tax involved exceeds P1M
2. If the settlement offered is less than the prescribed minimum rates

##### Cannot be compromised

1. Unremitted withholding taxes – (i) but non-withholding may be compromised; (ii) also excluded from issuance of PAN.
2. Criminal cases – (i) already filed in court; (ii) involving fraud. N.B.: as a GR, criminal tax cases may be compromised.

#### Abatement

##### Grounds

1. Tax appears to be unjustly of excessively assessed UEA.
2. Administration and collection costs involved do not justify the collection of amount due.

### c) Recovery of Tax Erroneously or Illegally Collected

Ordinary claim of refund of any internal revenue tax erroneously or illegally assessed or collected **EIAC**.

1. Excludes claim for refund excess input VAT.
2. Written claim for credit or refund must be filed. A return filed showing an overpayment shall be considered a written claim for credit or refund.
3. Both administrative and judicial claims must be filed within 2y after payment of the tax or penalty, regardless of any supervening event that may arise after payment.
4. Provided that the administrative must be filed prior to the judicial claim.
5. "Date of payment" – (i) from the filing of final adjusted return with respect to ITR and CWT; (ii)

from date of remittance with respect to FWT; (iii) from the filing of final return even if covering shorter period with respect to dissolved corporation.

6. Must be filed by the statutory TP XPNs: (i) The **withholding agent** may file the claim – (a) he is personally liable for deficiency withholding taxes; (b) he acts as agent of TP in remitting the tax, and filing the return, which includes the authority to file the claim for credit or refund. BUT the withholding agent has the duty to return whatever he may collect to the principal; (ii) The purchaser may also file a claim for a refund of input VAT, when it is exempt from both direct and indirect taxes.
7. Proof of actual remittance of taxes withheld is not required. However, the TP must show that the related income was reflected in AITR.
8. Recovery may be in form of tax refund or tax credit.
9. CTA has no authority to make an assessment. Tax liability cannot be determined in a refund case for purposes of applying set-off.

Distinctions	EIAC tax §229	Excess input tax §112
Prescriptive period	2y from payment or filing of final adjusted return for both administrative and judicial claims, provided administrative claim is filed prior to the judicial claim	2y from the close of the quarter when the zero-rated sale was made for the administrative claim only
Period for BIR to act	None specified	90d from receipt of complete supporting documents
Appeal on inaction	Period of inaction is immaterial	Upon lapse of 90d period

##### Other instances of claims for refund

1. Excess CWT, excess quarterly income tax payments – (i) may be carry-over; or (ii) claimed as refund/credit. If carry-over option is elected, it is irrevocable for the taxable year. If refund option is elected, it is not irrevocable; if the TP subsequently carried over the excess taxes, the claim is deemed automatically denied.
2. Excess input VAT attributable to zero-rated sales
3. Excess DST
4. EIAC Taxes

### 3. Government Remedies for Collection of Delinquent Taxes

#### a) Requisites

1. Collection must be preceded by valid assessment made within the prescriptive period.
2. Such assessment (FLD/FAN) had become F&E, or the TP's protest thereon was denied. N.B.: appeal to CTA will not enjoin the collection of tax, unless CTA grants a motion to suspend the collection of taxes.
3. Collection was made within the prescriptive periods.

No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.

1. The prohibition applies only to IR taxes under NIRC, but not to local taxes.
2. The only XPN is CTA's authority to grant a motion to suspend the collection of taxes.

#### b) Prescriptive Periods

BIR may collect tax at any stage of the proceedings. An appeal to CTA will not suspend the payment, levy/distrain of TP's property in satisfaction of the tax due, unless the CTA grants a motion for suspension of collection of tax.

##### (a) Ordinary prescriptive period

1. 3y from date of assessment, i.e., the date of release, sending or mailing of FAN issued within the ordinary prescriptive period for assessment [3y from deadline/ filing]
(b) Extraordinary prescriptive period
1. 5y from date of assessment, i.e., the date of release, sending or mailing of FAN issued within the extraordinary prescriptive period for assessment [10y from discovery of fraud or omission] – collection may be administrative or judicial.
2. 10y from date of discovery of fraud or omission, without prior assessment – collection may be judicial only, civil or criminal.
<i>Collection is commenced upon:</i>
1. Issuance of WDL and service to TP to commence the distraint/levy proceedings.
2. Filing action for collection with proper court.
3. Filing an answer in the TP's petition for review with CTA, with prayer for collection of tax.

#### 4. Civil Penalties

##### a) Delinquency Interest and Deficiency Interest

(a) Delinquency interest: in case of failure to pay (i) the amount of tax due on any return filed, (ii) the amount of tax due which no return is required, or (iii) any deficiency tax, surcharge, or interest thereon on the due date appearing in the notice and demand of Commissioner.

(b) Deficiency interest: in case of failure of the return to indicate the correct amount of tax due.

Interest imposition:

1. Double the prevailing legal rate, i.e., 12%, shall be imposed on any unpaid tax amount.
2. From the date of prescribed payment up to full payment.
3. Provided that deficiency and delinquency interest shall not be imposed simultaneously.

##### b) Surcharge

###### (a) 25% Surcharge

1. Failure to **file** and pay
2. Filing with the **wrong** internal revenue officer
3. Failure to pay **deficiency** tax within the period prescribed in the assessment
4. Failure to **pay** the tax due in full **FWD P**

###### (b) 50% Surcharge

1. Willful neglect to file return
2. False or fraudulent return willfully made. There is prima facie evidence of false return in case of: (i) substantial under-declaration of income (>30% of income declared per return), or (ii) substantial overstatement of deductions (>30% of actual deductions), as determined by CIR.

##### c) Compromise Penalty

Violation	Criminal penalty	Amount of Compromise Penalty
Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation	Fine ≥ P10k; imprisonment ≥ 1y, ≤ 10y	1k-50k depending on amount of tax unpaid
Failure to make/ file/ submit any return or supply correct information at the time or times required by law or regulation	Same	1k-25k depending on amount of tax unpaid
Late filing of Statements/Reports	Fine ≤ P1k; imprisonment ≤ 6m, or both	Compromise penalty will be imposed upon

<sup>64</sup> Based on Sec. 275 which provides for the penalty for the violation of other provisions of the Code for which no specific penalty is provided by law.

required to be filed with NO Tax Due to be paid	filing of the Tax Return <sup>64</sup>
---	--

### III. Local Taxation

#### A. Local Government Taxation

##### 1. General Principles

Under the principle of local autonomy, the Constitution empowers LGUs to create their own sources of revenue.

1. Each local government shall have the power (i) to **create** its own sources of revenues, and (ii) to **levy** taxes, fees, charges, TFC (iii) **subject** to guidelines and limitations as the Congress may provide **CLS**. (Const.)
2. The power of LGCs to tax is a delegated power from Congress by virtue of LGC. – (i) not inherent, (ii) LGUs are subject to congressional control in its exercise.
3. The power of LGUs to tax is subject to the same limitation as that national taxation. In addition to limitations that may be imposed by Congress.

Fundamental principles U-BELP

1. **Uniformity** of taxation in each LGU
2. TFC shall be: EPUC (i) **Equitable**; (ii) for **public** purpose; (iii) not **unjust**, excessive, oppressive, confiscatory UE CO; and (iv) not **contrary** to law, pp, national economic policy, or in restraint of trade.
3. Collection of TFC shall not be **let** to any private person – WHT system cannot be allowed in LGUs.
4. For the exclusive **benefit** of LGU levying the same, unless otherwise provided by law.
5. LGUs must evolve a **progressive** system of taxation AFAP

##### 2. Nature and Source of Taxing Power

###### a) Grant of Local Taxing Power Under the Local Government Code

Each LGU shall exercise to create its own sources of revenue, and levy TFC, which shall exclusively accrue to them. §129

1. The power to impose TFC, generate revenue must be exercised (i) by **Sanggunian** of LGU, (ii) through appropriate and duly approved **ordinance**.
2. LGC limits the LGU's power to tax as to the kind of tax and the maximum rate.
3. Each LGU can impose a specific kind of local tax as granted to it by the LGC. However, the enumeration under LGC is not exclusive. LGUs have residual powers to impose and levy TFC not specifically granted to it by, provided there is no prohibition and subject to general principles and limitations.
4. The power to create revenues include the authority to prescribe penalties, adjust rates, grant exemptions.
5. Rate adjustments may be made only up to 10% and only once every 5 years.

###### b) Authority to Prescribe Penalties for Tax Violations

Sanggunian may prescribe fines, penalties for violation of tax ordinances.

1. Fine 1k to 5k; or 100 to 1,000 in case of Sanggunian Barangay.
2. Imprisonment 1 to 6m.

###### c) Authority to Grant Local Tax Exemptions

Local government units may, through ordinances duly approved, grant tax **exemptions**, **incentives**, or **reliefs** EIR under such terms and conditions as they may deem necessary.

#### Tax exemptions/ reliefs

1. May be granted in case of natural calamities, civil disturbance, general failure of crops, adverse economic situations.
2. Through ordinance.
3. Shall apply to all businesses similarly situated.
4. Effective the next CY not exceeding 12m.

#### Tax incentives

1. Only to new investments in the locality.
2. Definite period not exceeding 1y.
3. Through ordinance passed prior to Jan. 1 of any year.
4. Shall apply to all businesses similarly situated.

#### d) Withdrawal of Exemptions

In general, unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations are withdrawn.

#### XPNS:

1. LWDs
2. Cooperatives registered with CDA.
3. NS NP hospitals, educational institutions.

On RPT, all exemption from RPT previously enjoyed, granted to, or presently enjoyed by any person, including GOCCs, are withdrawn upon effectivity of LGC.

### 3. Scope of Taxing Power

#### (a) Provinces ToP FS PAD

On <b>transfer</b> of RP ownership (local transfer tax) <sup>65</sup>	≤50% of 1% of total consideration or FMV, whichever is higher
On <b>printing</b> and publication business	≤50% of 1% of PY gross annual receipts
<b>Franchise</b> tax	≤50% of 1% of PY gross annual receipts realized within LGU's territory
On <b>sand, gravel, other quarry resources</b>	10% of FMV per cubic meter
<b>Professional</b> tax	Not exceeding 300.00
<b>Amusement</b> tax	≤30% of gross receipts from admission fees
For every <b>delivery</b> vehicle	Not exceeding 500.00

#### Franchise

1. Exemption from local taxes found in the franchise grants enacted prior to the effectivity of LGC are deemed withdrawn upon its enactment.
2. If the franchise grant containing exemption is a later enactment, the latter prevails.

#### On sand, gravel, other quarry resources

1. Must be extracted from **public** lands within the province's territory. Mineral extraction on private lands is subject to tax under NIRC and cannot be levied by LGU under its residual taxing powers.
2. Not a business tax but an excise tax, which may be imposed separately from the business tax pertaining to the entity's mining operations.

#### Professional tax

1. Annual tax on each person engaged in the exercise of profession requiring **government examination**. XPN: professionals exclusively employed by government.
2. To be paid **once** only in the: (i) place where profession is exercised, or (ii) principal place of business, and will entitle person to exercise profession nationwide.

3. PTR No. must be indicated in all deed, receipts, other documents in exercise of profession.

#### Amusement tax

1. Exempt: Holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts.
2. Note places of amusement: (i) resorts, swimming pools, bath houses, hot springs and tourist spots; (ii) **PBA games**, golf courses. Tax on professional basketball games can be imposed only by the NG.
3. Power to tax **cinema operators** is exclusively vested to local governments to the exclusion of national governments.

#### For every delivery vehicle

1. Annual fixed tax for every vehicle used by manufacturers, producers, wholesalers, dealers or retailers in the delivery or distribution of distilled spirits, fermented liquors, soft drinks, cigars and cigarettes, and other products as may be determined by the sangguniang panlalawigan, to sales outlets, or consumers within the province.
2. Proprietors are no longer subject to tax on peddlers.

#### (b) Municipalities B OFF

Business tax	PY gross sales or <b>receipts</b>
Occupation tax	Covers only those not yet covered by Professional tax, i.e., professions not requiring government examination
Fees for sealing and licensing of weights and measures	
Fishery rentals, fees, charges	Municipalities shall have the <b>exclusive authority</b> to grant <b>fishery privileges</b> in the <b>municipal waters</b> and impose rentals, fees, or charges

#### Local business tax

1. Not subject to LBT: (i) Condominium association dues; (ii) Holding corporations: they are not banks or other financial intermediaries.
2. Cannot be based on gross revenues, which includes accrued revenue not yet received. Also, cannot be based on output or production level. But it may be based on net income (lower base).
3. Residual power §143(h): Sanggunian may impose tax on any other business not specifically provided, even those already taxed under NIRC. In case of the latter, the rate ≤2% of the PY GS/R. Limit: if LBT was already imposed under any provision of §143, it may no longer be subject to §143(h).
4. Municipalities in Metropolitan Manila Area may levy at rates not exceeding by 50% the maximum rates prescribed.

Manufacturers; Wholesalers, distributors, dealers; Contractors; Exporters	Graduated based on PY GS/R
Dealers of basic commodities	½ of that prescribed for other goods
Retailers	1% (>400k); 2% (≤400k)
Banks, other financial institutions	≤50% of 1%
Peddlers	≤50.00

#### Situs of LBT

1. With branch/sales outlet: tax accrues in city/municipality where transacting branch is located. The city where sales were made may impose LBT, even if the goods are delivered to a buyer outside the city. Sales were made in the city if **booked and paid for** in the city, and the goods

<sup>65</sup> On sale, donation, barter, other mode of transferring ownership of RP, except transfers pursuant to CARP.



were delivered to the carrier in the city (deemed delivery to the buyer).	
2. Without branch/ sales outlet: tax accrues in city/municipality where principal office is located.	
With factory, plant/ation, project office <sup>66</sup>	30% to principal office 70% to factory, plant/ation, project office
Factory and plantation in different places	30% to principal office 70% divided 60% where factory is located 40% where plantation is located
Multiple factory, plant/ation, project office	30% to principal office 70% divided Proportionate allocation based on volume of production for the tax period, w/n sales were actually made
3. In case of <b>boundary dispute</b> between LGUs – (i) TP may rely on the location indicated in the certificate of title of the property; (ii) boundary dispute is not a prejudicial question to LBT cases, and tax collection may proceed notwithstanding; (iii) BUT the same is prejudicial to RPT cases.	
<b>(c) Cities</b>	
1. They may impose taxes which provinces and municipalities may impose.	
2. GR: Not exceeding by 50% the maximum rates prescribed for provinces or cities. XPN: In case of professional, amusement tax.	
<b>(d) Barangays ROBS</b>	
Stores or retailers	≤1% of PY GS/R of ≤50k in cities and ≤30k in municipalities
Service fees, charges	Reasonable amount for regulation or use of barangay-owned properties or service facilities
Barangay clearance	Reasonable fee for issuance; condition for issuance of business license or permit by city or municipality
Other fees, charges	
<b>(f) Residual taxation powers §186</b>	
1. LGUs may levy TFC based on any base or subject not specifically enumerated in LGC or taxed under NIRC.	
2. Limitations: (i) Must not be unjust, excessive, oppressive, confiscatory, UE CO or contrary to declared national policy; (ii) Ordinance levying the TFC shall not be enacted without <b>prior public hearing</b> conducted for the purpose.	

#### 4. Specific Taxing Power of Local Government Units

Province: ToP FS PAD – Local transfer tax; Tax on printing and publication; Franchise Tax; Tax on sand, gravel, quarry resources; Professional tax; Amusement tax; Tax on delivery vehicles.

Municipality: B OFF – LBT; Occupation tax; Fees for sealing and licensing of weights and measures; Fishery rentals, fees, charges.

City: Taxes imposable by Province and Municipality.

Barangay: ROBS – Stores or retailers; Other fees, charges; Barangay clearance; Service fees, charges

Common revenue raising power: SPuRT – Service fees, charges; Public utility charges; Residual powers; Toll fees, charges

#### 5. Common Revenue Raising Powers

##### SPuRT

1. Service fees, charges
2. Public utility charges

3. Toll fees, charges: For use of public roads, pier, wharf, waterway bridge, ferry or telecommunication system funded and constructed by the LGU. XPNs: (i) AFP, PNP members on mission; (ii) post office personnel delivering mail; (iii) PWDs; (iv) disabled citizens ≥65y.

#### 6. Community Tax

May be levied by cities or municipalities.

1. Accrues every Jan. 1, shall be paid on or before last day of Feb.
2. Subject to interest of 24% p.a. from due date until paid.

##### Individuals

##### Persons Liable – Ph inhabitant YE BPI

1. At least **18 years**
2. Has been regularly **employed** on wage or salary basis for at least 30 consecutive working days in any CY
3. Engaged in **business**.
4. Owns real **property** with assessed value of at least 1,000.
5. Required by law to file **ITR**

##### Amount

1. 5.00 annual
2. + 1.00 for every 1,000.00 of income
3. ≤5k

##### Exempted

1. Diplomatic and consular representatives due to international comity
2. Transient visitors: stay in Ph ≤ 3m

##### Juridical persons

1. Every corporation ETB (DC, RFC)
2. 500.00 annual
3. + 2.00 per 5k worth of RP owned in PY
4. + 5.00 per 5k PY GS/R
5. ≤5k

##### Community tax certificate

May be issued to:

1. Persons paying community tax
2. Persons not subject, upon payment of 1.00

##### When presented (individual)

1. When acknowledging any document before a notary public.
2. When taking the oath of office upon election or appointment to any position in the government service.
3. When receiving any license, certificate, or permit from any public authority.
4. When paying any tax or fee.
5. When receiving any money from any public fund.
6. When transacting other official business.
7. When receiving any salary or wage from any person or corporation with whom such transaction is made, or business done or from whom any salary or wage is received to require such individual. If not presented, the private business cannot collect the community tax due along with penalties. The collection of taxes cannot be let upon private persons.

**\*\*Cannot be required in the registration of voters.**

##### When presented (juridical person)

1. When receiving any license, certificate, or permit from any public authority.
2. When paying any tax or fee.

<sup>66</sup> Pertains to officers directly involved in production or operations; W/N sales are made in the different localities where

factory, plant/ation, project office was located. N.B.: a mere administrative office is not entitled to any share in LBT

3. When receiving money from public funds.
4. When transacting other official business.

**\*\*Public official with whom the transaction is done shall require the corporation to exhibit CTC issued for the CY.**

## 7. Common Limitations on the Taxing Powers of Local Government Units

### (a) Already subject to national tax

1. Income tax, except if levied on banks and other financial institutions.
2. DST
3. Estate/donor's tax, except local transfer taxes imposable by municipalities.
4. Customs duties, wharfage, tonnage dues, other customs fees, charges, dues, except wharfage on wharves constructed and maintained by LGUs.
5. Excise taxes under NIRC, TFC on petroleum products. N.B.: The prohibition on the imposition of TFC on petroleum products is **absolute** and does not qualify as to whether the tax is imposed on the business or the article. The distinction is immaterial.
6. VAT/OPT, (i) except those expressly granted, e.g., amusement tax; (ii) LGU may impose LBT already subject to VAT/OPT, provided the rate is  $\leq 2\%$  of GS/R.
7. Taxes on common carriers – includes petroleum pipeline operators, international carriers.
8. TFC on export products
9. TFC on vehicle registration, all licenses, permits for driving (LTO), except tricycles.

### (b) Public policy considerations

1. TFC on passing goods, i.e., carried in and out territorial jurisdiction of the LGU.
2. TFC on agricultural and aquatic products sold by marginal farmers or fishermen.

### (c) Exemption under special laws

1. Taxes on pioneer or non-pioneer enterprises, certified by BOI for 6 and 4 years, respectively, from date of registration (not the date of actual operations).
2. Taxes on reinsurance or retrocession premiums.
3. TFC on BMBEs, duly registered cooperatives.

### (d) Inherent limitation

1. TFC on NG, agencies, instrumentalities, LGUs **NAIL**. XPN: where beneficial use of government property is granted to a taxable entity the property is not exempt from RPT and the beneficial user shall be liable for it.
2. **Principle of pre-emption or exclusion:** when the NG elects to tax a particular area, it impliedly withholds from the LGU the delegated power to tax the same field.

## 8. Requirements for a Valid Tax Ordinance

### (a) Formal test

1. Within the corporate powers of the LGU to enact.
2. Conduct of mandatory **public hearings** for the purpose prior to enactment.
3. Publication of TO RM – (i) 10 days from approval; (ii) 3 consecutive days in NPGC or conspicuous public places.
4. Copies shall be furnished to respective treasurers for public dissemination.

### (b) Substantive test CUPGUP

1. Must not contravene the Constitution or any statute.
2. Must not be unjust, excessive, oppressive, confiscatory, UE CO or contrary to declared national policy.
3. Must not be partial or discriminatory.
4. Must be general and consistent with public policy.

5. Must not be unreasonable.
6. Must not prohibit but may regulate trade.

**\*\*Applies to Tax Ordinances TO and Revenue Measures RM.**

## 9. Taxpayer's Remedies

1. Before assessment/payment – Action before SOJ.
2. After assessment/payment – (i) Written protest; (ii) Claim for refund.

### a) Protest

60-60-30-30

1. Local treasurer or DAR issues **notice of assessment**.
2. TP must file written protest within 60d from receipt of notice. Otherwise, it will become F&E.
3. LT must decide within 60 days from filing of protest, either to: (i) grant protest, and cancel notice of assessment, or (ii) deny protest with notice to TP.
4. TP may appeal to MTC/RTC: within 30d (i) from notice of LT's decision, or (ii) from lapse of 60d period for LT to act.
5. Decisions of RTC appealable to CTA within 30d from notice – (i) if RTC (O) to CTA D ~R42, (ii) if RTC (A) to CTA D ~R43.

### b) Refund

1. Available after payment in case of EIC TFC where **no assessment** was issued.
2. TO must file written claim for refund or credit filed with LT within 2 years (i) from payment, or (ii) from the date TP is entitled to refund/ credit.
3. Must be filed with MTC/RTC.

If an assessment was issued, the TP must protest the same within 60d from notice.

1. The 2y-period is not available when an assessment was issued.
2. Assessment = billing statement with demand to pay, and imposing interest or surcharges.

### c) Action before the Secretary of Justice

30-60-30

1. Available before assessment to questions on constitutionality or legality of TO RM (in the nature of declaratory relief).
2. Appeal to SOJ within 30d from effectivity. The appeal shall not suspend: (i) the effectivity of TO RM, and (ii) the accrual and payment of TFC.
3. SOJ must decide within 60 days from receipt of appeal. The period is merely directory the SOJ may still decide on the matter even after the lapse of the 60d period.
4. Decision/inaction of SOJ may be elevated to CA via R43 or R65 within 30d (i) from receipt of SOJ decision, or (ii) from lapse of the 60d period for SOJ to decide.
5. Prior resort to the SOJ is mandatory. XPNs: (i) if what is being questioned is the legality of an ordinance imposing a regulatory fee, not TO RM; (ii) when the issue involves a pure question of law.
6. The validity of a tax ordinance cannot be subject to a collateral attack in a protest case against assessment of local taxes.

## 10. Assessment and Collection of Local Taxes

### a) Remedies of Local Government Units

(a) Surcharges and penalties: 25% of TFC not paid on time

(b) Interest: 2% per month for a maximum of 36 months

(c) Creation of LG's lien

1. Local TFC constitutes a lien over the TP's property, which is superior to all liens, charges, encumbrances in favor of any person, enforceable via proper administrative or judicial action.

2. It attaches not only to the property/rights subject of the lien but also on property used in business, occupation, practice of profession or calling, exercise of privilege with respect to which the lien was imposed.
3. May be extinguished only upon full payment of delinquent local TFC, surcharge, interest.

(d) Civil remedies – (i) By distraint and levy; (ii) By judicial action, which may be pursued concurrently or simultaneously, or independently.

#### *Distraint*

1. Seizure of TP's personal property upon written notice.
2. For sale in public auction, proceeds to be applied to satisfy tax liabilities.
3. TP may prevent the sale by paying the amount due prior to sale.
4. Goods shall be awarded to highest bidder. If none, forfeited in favor of the government.

#### *Levy*

1. Seizure of TP's real property upon written notice.
2. Same rules with distraint. Except: (i) in case there is no highest bidder, LGU may purchase the property; (ii) TP has 1y right of redemption from sale. Otherwise, Final Deed of Sale shall be executed in favor of purchaser; (iii) May be resold.

### b) Prescriptive Period

#### (a) Assessment

1. GR: 5y from due date.
2. XPN: 10y from discovery of fraud or intent to evade payment.

(b) Collection: 5 years from date of assessment by judicial or administrative action.

#### (c) Suspension of periods

1. Treasurer is legally **prevented** from making the assessment or collection.
2. TP **requests** for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect.
3. TP is **out** of the country or otherwise cannot be located.

## B. Real Property Taxation

### 1. Fundamental Principles

1. **Appraisal** of RP at current and FMV
2. Classification for assessment purposes based on **actual use**, i.e., purpose for which the property is principally or predominantly utilized by the person in possession thereof.
3. Assessment based on **uniform** classification within each LGU.
4. ApAs LC of RPT shall not be let to any private person.
5. Equitable ApAs.

### 2. Nature

1. Direct – imposed on the owner or beneficial user, without right to shift the burden.
2. Ad valorem – based on fixed proportion of the property.
3. Local tax
4. Progressive or proportionate
5. Lien on RP
6. Liability for tax delinquency – GR: owner at the time of accrual is liable. XPN: beneficial user at the time of accrual is liable if tax is imposed based on beneficial use.

### 3. Imposition

#### a) Power to Levy

May be imposed by:

1. Province ( $\leq 1\%$ )

2. City ( $\leq 2\%$ )
3. Municipality in Metro Manila ( $\leq 2\%$ )

May be imposed on:

1. Land, building, machinery, other improvements not specifically exempted.
2. Specific definition of RP in LGC prevails over NCC definition §415.
3. Machinery – (i) may or may not be attached, permanently or temporarily; (ii) if not permanently attached, may still be considered RP if ADE used to meet the needs of a particular industry, business, or activity; (iii) need not be placed by the owner of the land or building (NCC requirement). E.g., gas station equipment is considered RP for purposes of RPT even if placed by lessee, and despite provision in lease agreement that the same will revert to lessee after lease term.
4. Improvements are taxed independently of the main property where they are placed.
5. Taxable: (i) improvements on government property made by taxable persons are subject to RPT, e.g., LRT carriage ways, system; (ii) Meralco towers, wires, meter systems, transformers were considered taxable machineries; (iii) marine cables; (iv) special purpose equipment indispensable to the work or industry which are taxable, e.g., specialized tractors, power barges; (v) permanent fences.
6. Not taxable: (i) Roads introduced on public lands which the public can use without fee; (ii) tailings dam which are machineries for pollution control or environmental protection under the Ph Mining Act; (iii) general-purpose equipment, e.g., laptops, electric fans; (iv) temporary fences.

#### Tax base

1. Assessed value = FMV x Assessment level
2. Assessment level is the percentage applied to the FMV to determine the taxable/assessed value.

#### Taxpayer

1. GR: imposed on owner of RP, or person having legal interest at the time when the tax accrued.
2. XPN: Beneficial user of property belonging to the government.
3. Contractual assumption of taxes does not generally render the person assuming the liability liable for RPT, unless it also enjoys beneficial use of the property taxed. LGU is generally not bound by contractual stipulations.

#### Other types of levy

1. SEF – 1% of assessed value, or lower at discretion of LGU (province, city, municipality in MMla)
2. Tax on idle lands – (i) imposed if: (a) at least  $\frac{1}{2}$  of land other than agricultural  $>1,000\text{sqm}$ . is uncultivated, or (b) at least  $\frac{1}{2}$  of agricultural land  $>1\text{ha}$ . is uncultivated. XPN: lands with at least 50 trees to a ha.; (ii)  $\leq 5\%$  of assessed value; (iii) XPN: Force majeure, civil disturbance, natural calamity, other causes (physical or legal) which prevents improvement of the land.
3. Special levy – (i) may be imposed by provinces, cities, municipalities (within and outside MMla) when lands are benefited by public works or improvements funded by LGU; (ii)  $\leq 60\%$  of actual cost of projects/improvement apportioned to owners of RP benefited.

### b) Exemption from Real Property Tax

#### (a) Government RP [O]

1. RP owned by RP, political subdivisions, including LGUs and GCEs. But GOCCs are generally liable.
2. XPN: When beneficial use was granted, for consideration or otherwise, to taxable person.

3. Tax is personal liability of the beneficial user. In case of non-payment, the remedy is not to execute on the public property but to file a personal action for collection against the beneficial user.

(b) RP of **charitable**, religious, educational institutions [C/U]

1. Charitable institutions, churches, parsonages, convents, appurtenant thereto, mosques, NP or religious cemeteries, all lands, buildings, improvements ADE (including incidental use) used for REC purposes.
2. Machineries, even if ADE for REC purposes is taxable since it is not included in the term "improvements". XPN: machineries of NS NP EI since "all assets" are exempt.

(c) RP of **water** districts and GOCCs [O/U]

1. Machineries, equipment ADE by LWD, GOCCs engaged in supply/distribution of water or generation/transmission of electric power.
2. Requirements – (i) Machineries, equipment owned and ADE by LWD, GOCCs; (ii) LWD, GOCCs engaged in supply/distribution of water or generation/transmission of electric power. Property under BOT scheme which will transfer to GOCC after 25y where GOCC assumes tax obligation is not exempt since its ownership remained with the taxable person. The contractual assumption of liability is not binding on the LGU.

(d) RP of duly registered **cooperatives** [O]

1. With CDA or NEA (electric cooperatives).
2. The exemption is based on ownership. It is not lost even if beneficial use is with a taxable person, e.g., roads constructed by lessee on property owned by duly registered cooperative is exempt from RPT.

(e) RP for **pollution** control and environmental protection [U] PCEP

*\*\*All exemption from RPT previously enjoyed, granted to, or presently enjoyed by any person, including GOCCs, are withdrawn upon effectivity of LGC (blanket withdrawal).*

#### 4. Appraisal and Assessment

All RP whether taxable or exempt shall be appraised as current and FMV prevailing in the locality where property is situated.

1. FMV is based on the declared value of the property owner or administrator.
2. The local assessor prepares the schedule of FMV, which is adopted through an ordinance.
3. The local assessor prepares the assessment rolls and notifies taxpayers of the assessment.
4. Assessment takes effect on Jan. 1 of the following year.
5. Undeclared RP discovered during general revision of RP assessment may be subject to back taxes up to 10y.

##### a) Classes of Real Property

###### RAMCIST

1. Residential – for habitation.
2. Agricultural – planting trees, raising crops, livestock, poultry, dairying, salt making, inland fishing, similar activities, other agricultural activities, not classified as RAMCIST.
3. Mineral – Land where metallic, non-metallic minerals exist in sufficient quantity or grade to justify necessary expenditure to extract or utilize such materials.
4. Commercial – devoted for object of profit and not classified as RAMCIST.
5. Industrial – devoted to industrial activity as capital investment, not classified as RAMCIST.

6. Special – Lands, buildings, other improvements actually and exclusively used for hospitals, cultural, scientific purposes, machineries, and equipment owned by LWD, GOCCs engaged in supply/distribution of water, generation/transmission of electricity.
7. Timberland – Identified as forest or reserved area by the government, may or may not be granted to a concessionaire, licensee, lessee, or permittee.

##### b) Assessment Based on Actual Use

RP shall be classified, valued, assessed on the basis of actual use, regardless of where it is located, or whoever owns or uses it.

1. Actual use is the purpose for which the property is principally and predominantly used. If the property is devoted to several purposes, the predominant use controls.
2. In case of destruction – (i) if total, assessment shall be cancelled by Notice of Cancellation of Assessment, (ii) if partial, tax declaration shall be revised, and tax declaration covering original assessment shall be cancelled.
3. E.g., A building for which houses the doctors of a hospital is considered an appurtenant of the hospital – its classification should be "special", instead of commercial, subject to a lower assessment level.

#### 5. Collection

##### a) Date of Accrual

RPT accrues on Jan. 1.

1. From date of accrual, the unpaid tax constitutes **lien** on the property, superior to other liens, mortgage, encumbrance which is extinguished only upon payment of delinquent tax.
2. XPNs: (i) Reassessed RP shall accrue on the quarter following reappraisal or reassessment, (ii) Special levy shall accrue on the quarter following effectivity of ordinance.

##### Payment

1. May be paid in 4 equal installments – Mar. 31, Jun. 30, Sep. 30, Dec. 31.
2. Interest on late payment may be imposed at 2% per month until fully paid, up to a maximum of 36 months.
3. Discount may be given in case of advance and prompt payment, not exceeding 20% (advance) or 10% (prompt).

##### b) Periods to Collect

GR: 5 years from due date.

XPN: 10 years from discovery of fraud or intent to evade payment.

##### Suspension of period

1. Treasurer is legally **prevented** from making the assessment or collection.
2. TP requests for a **reinvestigation** and executes a waiver in writing before expiration of the period within which to assess or collect.
3. TP is **out** of the country or otherwise cannot be located.

##### c) Remedies of Local Government Units

(a) LG's lien: The unpaid tax constitutes lien on the property, superior to other liens, charges and encumbrances, which attaches to the property, irrespective of who the owner or possessor is. The lien is enforceable by judicial or administrative action, and extinguished only upon full payment of the tax, related interests and expenses.

##### (b) Administrative (Levy of RP)

1. Publication and posting of Notice of delinquency.



2. Service of warrant of levy – (i) there is proper service if the notice of levy was served to the registered owner, even if the property had already been transferred pursuant to an unregistered sale; (ii) the LGU is not bound by such sale; (iii) the transferor cannot invoke lack of notice; (iv) levy and sale of RP at public auction is action in personam. Personal notice to TP is jurisdictional.
3. Written notice of levy – to assessor and RD.
4. Advertisement of sale – by treasurer.
5. Sale by public auction in capitol or city hall, or on property to be sold.
6. If no bidder, (i) Property forfeited in favor of government; (ii) right of redemption still available from time of forfeiture; (iii) Sanggunian may order resale.

#### Action to assail validity

1. May be entertained by court only upon deposit to court by TP of the amount of tax + 2% interest per month from date of sale up to institution of action (jurisdictional).
2. Required only if the TP is undisputedly delinquent. If the TP not delinquent but its property was sold at public auction, it may question the same even without making the above deposit.

#### Redemption

1. Equity of redemption – Right of TP to prevent sale by paying the delinquent taxes and interest prior to such sale.
2. Right of redemption – Within 1y from date of sale, only by the registered owner, subject to specific requirements of ordinance.
3. If no redemption, final deed shall be executed in favor of purchaser.

(c) Judicial – Collection case filed by LT in a court of competent jurisdiction.

*\*\*The remedies are cumulative, may be availed simultaneously or independently.*

## 6. Taxpayer's Remedies

### a) Contesting an Assessment

#### (1) Payment Under Protest; Exceptions

Available when: (i) There is specific imposition on the TP, (ii) Questions involve the **reasonableness or correctness** of amount imposed (question of fact).

1. Protest to LT – (i) in writing, (ii) within 30d from payment of tax, (iii) accompanied with proof of payment under protest, (iv) LT has 60d from receipt of protest to act thereon.
2. Appeal to LBAA – (i) Within 60d from receipt of denial of protest by LT, or lapse of 60d period for LT to decide, (ii) LBAA has 120 days from receipt of appeal to decide.
3. Appeal to CBAA – Within 30 days from receipt of adverse decision by LBAA.
4. Appeal to CTA En banc – Within 30 days from receipt of adverse decision by CBAA.
5. Appeal to SC – Within 15 days from receipt of adverse decision by CTA.

#### Payment under protest

1. "No protest shall be entertained unless the TP pays first the tax"
2. Proved by a receipt with a notation "paid under protest".
3. XPNs: (i) Posting of surety **bond** was considered substantial compliance; (ii) If assessment was **illegal**, TP may directly resort to judicial action without paying under protest and filing an appeal with LBAA and CBAA; (iii) When the LBAA proceeding is not **speedy** and adequate – e.g., where there is already an order for the sale of property (levy and auction) **BIS**

### b) Contesting a Valuation of Property

If TP questions action of assessor in the assessment of RP.

1. Appeal to LBAA – (i) Within 60d from receipt of written notice of assessment, (ii) LBAA has 120 days from receipt of appeal to decide.
2. Appeal to CBAA – Within 30 days from receipt of adverse decision by LBAA.
3. Appeal to CTA En banc – Within 30 days from receipt of adverse decision by CBAA.
4. Appeal to SC – Within 15 days from receipt of adverse decision by CTA.

### (1) Appeal to the Local Board of Assessment Appeals

Jurisdiction of LBAA

1. Appeals from denial or inaction of **LT** on written protest filed against deficiency RPT assessment (contesting assessment)
2. Appeal from notice of assessment of RP made by local **assessor** (contesting valuation)

*\*\* If what is being questioned is the very authority and power of the assessor to impose the assessment, and the treasurer to collect RPT, the proper recourse is judicial action (pure question of law as XPN to exhaustion of administrative remedies).*

LBAA has 120d to act on the appeal. Its decision is appealable to CBAA within 30d from notice.

### (2) Appeal to the Central Board of Assessment Appeals

1. CBAA has appellate jurisdiction over all assessment cases decided by LBAA.
2. LBAA has 12m to act on the appeal. Its decision is appealable to CTA En banc within 30d from notice.

### (3) Effect of Payment of Taxes

Appeal on assessments of RPT shall not suspend the collection of tax, without prejudice to subsequent adjustment depending on the final outcome of the appeal.

### c) Compromise of Real Property Tax Assessment

LGC did not vest LGUs with specific authority to compromise taxes. However, there is also no prohibition.

Compromise agreement may be resorted to in the settlement of a delinquent RPT which must be provided for in a RP tax **ordinance**, or its amendment, authorizing the local treasurer to MMla to enter into compromise agreement consistent with their statutory duty to collect RPT under LGC.

#### IV. Judicial Remedies

##### A. Court of Tax Appeals (CTA)

##### 1. Exclusive Original and Appellate Jurisdiction Over Civil Cases

Nature	Cases involving	Appealable	Rendered by	CTA Jurisdiction	
				Original	Appellate
Quasi-judicial	(1) Disputed assessments; (2) Refund of IR TFC, related penalties; (3) <b>Other matters</b> arising under NIRC LAB <b>DRO</b>	(1) Decision; (2) Inaction, where the NIRC provides for a specific period of action. N.B.: inaction = "deemed denial"	CIR	CTA D	CTA EB
	(1) Liability for customs duties, fees, other money charges; (2) Seizure, detention, release <b>SDR</b> of property affected; (3) Fines, forfeitures, related penalties; (4) other matters arising under Customs Law LAB <b>CSFO</b>	Decision	COC	CTA D	CTA EB
Judicial	Local tax cases	Decisions, orders, resolutions	RTC (O)	CTA D	CTA EB
	Local tax cases	Decisions, orders, resolutions	RTC (A)		CTA EB
Local government	Assessment and RPT	Decisions	CBAA (A) <sup>67</sup>		CTA EB
Executive	Customs cases elevated automatically for review	Decisions adverse to the government §235 TCC	SOF	CTA D	CTA EB
	<b>Dumping</b> and <b>countervailing</b> duties §301, 302 TCC; <b>safeguard</b> measures R.A. No. 8800. <sup>68</sup> <b>DCS</b> N.B.: DTI has jurisdiction re: non-agricultural product, commodity, article; DA over agricultural	Decision w/n to impose said duties, not the decision by Tariff Commission	DTI, DA Secretary	CTA D	CTA EB

##### 2. Exclusive Original and Appellate Jurisdiction Over Criminal Cases

Criminal Case	Amount claimed <sup>69</sup> / Qualification	Rendered by	CTA Jurisdiction	
			Original	Appellate
Arising from <b>violations</b> of NIRC, TCC and laws administered by BIR, BOC <sup>70</sup>	≥1M		CTA D	CTA EB
	<1M, or not specified	MTC (O); RTC (A)		CTA EB
		RTC (O)	CTA D	CTA EB
Over RTC judgments, resolutions, orders in <b>tax cases</b>		METC (O); RTC (A)		CTA EB
		RTC (O)	CTA D	CTA EB
<b>Tax collection</b> cases involving F&E assessments for TFC	≥1M		CTA D	CTA EB
	<1M	METC (O); RTC (A)		CTA EB
		RTC (O)	CTA D	CTA EB

##### Notes:

- SOJ has jurisdiction over inter-governmental disputes including disputed tax assessments under PD 242, except those involving Constitutional offices which were expressly excluded from the coverage of the Decree.
- Cases before CTA are litigated de novo. Evidence presented in the administrative proceeding does not bind the CTA, unless formally offered.
- Other matters jurisdiction of CTA include:
  - BIR rulings or opinions;
  - Decisions of SOF on review of such rulings or opinions;
  - Determination of the validity of WDL issued by BIR;**
  - Waivers of statutes of limitations.**
- CTA has certiorari jurisdiction over:
  - Tax cases decided by courts of general jurisdiction in aid of its appellate jurisdiction;
  - SOJ resolutions determining existence of PC in criminal tax cases.
- Decisions of CTA Division may be assailed via Petition for Certiorari before the SC, not the CA En banc.

##### 6. Petition for declaratory relief:

- Not proper to assail disputed assessments.
- Proper to assail validity of a tax ordinance or revenue measure, subject to prior appeal to SOJ. If the ordinance does not impose a tax but mere regulatory fee, direct resort to RTC is allowed.

#### B. Procedures

##### 1. Filing of an Action for Collection of Taxes

###### a) Internal Revenue Taxes

###### (a) Jurisdiction

- Regular courts if basic tax assessed <1M.
- CTA D if basic tax assessed ≥1M.

###### (b) Period for filing

- GR: 5y from assessment (judicial or administrative)
- XPN: 10y from discovery of fraud or omission, even without prior assessment (judicial only)

###### b) Local Taxes

- Jurisdiction – regular courts.
- Period – 5y from assessment.

<sup>67</sup> Originally decided by provincial or city BAA

<sup>68</sup> Special duties imposed on importation

<sup>69</sup> Principal amount of TF, exclusive of charges, penalties

<sup>70</sup> Rules: (1) Simultaneous institution of criminal and civil action (for recover of tax liabilities, penalties); (2) Joint determination in same proceeding by CTA; (3) No right to reserve civil action shall be recognized

**\*\* LGU cannot file criminal action for the collection of delinquent taxes, it is limited to filing of civil action.**

## 2. Civil Cases

### a) Who May Appeal, Mode of Appeal, and Effect of Appeal

#### (a) Who may appeal

- Any party adversely affected by a decision, ruling, inaction of CIR, COC, RTC, CBAA, STI, SA, SOF

#### (b) Mode of appeal

- ~R42 to **CTA D** – (i) MR/MNT within 15d from notice; (ii) appeal to CTA EB within 30d from notice of denial of MR/MNT.
- ~R43 to **CTA EB** – (i) D/R of CBAA in assessments and RPT disputes, (ii) D/R of RTC acting in appellate jurisdiction in local tax cases.
- Filed within 30d from notice of D/R or lapse of the period fixed by law for action.

#### (c) Effect of appeal

- Shall not suspend the payment, levy/distrain, sale of property of TP for the satisfaction of his tax liabilities.
- CTA is not barred from receiving, evaluating, appreciating new evidence submitted to it not submitted at the administrative appeal.

### b) Suspension of Collection of Taxes

GR: No appeal before CTA shall suspend the payment, levy/distrain, sale of property of TP for the satisfaction of his tax liabilities.

XPN: When CTA grants a **motion for suspension** of collection of tax liability.

- When in the opinion of CTA, the collection may jeopardize the interest of the government and/or TP.
- Upon motion by interested party, with the Petition for Review or answer, or in separate motion filed at any stage of the proceeding.
- TP may be required to deposit the amount claimed, or file surety bond not more than double the amount claimed.

### c) Injunction Not Available to Restrain Collection

GR: No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this NIRC.

XPN: CTA may issue injunctive writs to restrain the collection of tax, or even dispense with the deposit/bond requirement when the method employed by CIR in the collection of tax jeopardizes the interest of the TP for being patently in violation of law

## 3. Criminal Cases

### a) Institution and Prosecution of Criminal Action

Common criminal offenses under NIRC

- Attempt to evade or defeat tax §254 – N.B.: conviction or acquittal will not bar the filing of civil suit for collection of taxes.
- Failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation §255 – N.B.: In case the accused was found guilty, an assessment notice must still be served to the TP to inform him of what is being assessed in line with his procedural and substantive due process rights.

**\*\* An assessment is not a precondition for the filing of a criminal charge.**

All criminal actions before CTA D in exercise of OJ shall be instituted by filing an information in the name of the People of the Philippines

- Approved by CIR, in cases involving violations of NIRC, other laws enforced by BIR;
- Approved by COC, in cases involving violations of TCC, other laws enforced by BOC.

Prescriptive period: Violations of any penal provision in NIRC prescribes in 5 years.

### b) Institution of Civil Action in Criminal Action

The criminal action and civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding in the CTA.

- Reservation of filing of separate civil action shall not be allowed or recognized.
- The civil and criminal liabilities shall be jointly determined in the same proceedings.

### c) Period to Appeal

Decided by	Mode of appeal	Appellate body	Period
RTC (O)	NOA filed with the court that rendered the decision/final order, with service to adverse party	CTA D	15d from notice of D/FO
RTC (A)	Petition for Review under R43	CTA EB	Same
CTA D	Petition for Review under R43	CTA EB	Same

## 4. Appeal to the CTA En Banc

Matters appealable

- Decisions of CTA D – N.B.: MR/MNT is condition precedent
- Decisions of RTC (A)
- Decisions of CBAA

Mode of appeal ~R43 Petition for Review filed within 15d from notice of decision.

Prior MR is a condition precedent

- Applies to amended decision, which is considered a different decision.
- XPN: where the amendment is a mere clarification or correction of the previous decision

## 5. Petition for Review on Certiorari to the SC

- Decisions by CTA EB
- Petition for Review on Certiorari R45
- Within 15d from notice of D/R