



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

**PNOC - EXPLORATION
CORPORATION,**

G.R. No. 244461

Petitioner,

Present:

- versus -

GESMUNDO, C.J.,
PERLAS-BERNABE, S.A.J.,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.Y., and
DIMAAMPAO, JJ.

COMMISSION ON AUDIT,

Respondent.

Promulgated:

September 28, 2021

Antonio Gueo

X-----X

DECISION

M. LOPEZ, J.:

The propriety of Commission on Audit's (COA) denial of PNOC – Exploration Corporation's (PNOC-EC) *post facto* request for written concurrence in the engagement of a private counsel is the focal issue in this Petition for *Certiorari* with Application for Temporary Restraining Order

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and Writ of Preliminary Injunction,¹ filed under Rule 64, in relation to Rule 65, of the Revised Rules of Court. The petition seeks to annul, reverse, and set aside Decision No. 2015-281² dated November 23, 2015 and Resolution³ dated November 26, 2018 of the COA Proper, which affirmed Legal Retainer Review (LRR) No. 2012-091⁴ dated July 26, 2012.

ANTECEDENTS

In 2009, PNOC-EC purchased steam coal from Wilson International Trading Private Limited (Wilson). A dispute later on arose between the contracting parties with Wilson claiming demurrage charges and losses against PNOC-EC amounting to US\$1,392,064.53. As provided in their contract, Wilson referred the dispute to arbitration in Singapore. On February 1, 2010, PNOC-EC received the notice of request for arbitration dated January 18, 2010, which gave PNOC-EC 30 days from receipt of the notice, or until March 2, 2010, to either file an answer or apply for extension of time to file an answer in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration. In either case, PNOC-EC was required to comment on Wilson's nomination of Mr. Neal Gregson as arbitrator within the same 30-day period.⁵

Faced with the urgent need to be represented by an international legal counsel who is: (a) highly experienced in arbitration before the ICC; (b) qualified to advise on English Law; and (c) qualified to practice law in Singapore, PNOC-EC immediately drafted the Terms of Reference for the selection of its counsel and sent invitations to different law firms for proposals.⁶

On February 15, 2010, the Office of the Government Corporate Counsel (OGCC) gave its "authority in principle" for the PNOC-EC to engage private representation in the arbitration proceedings, subject to its review of the terms and conditions of the agreement, and its exercise of control and supervision over the case. On February 23, 2010, PNOC-EC informed the OGCC that among those law firms which responded to the invitation, it chose Baker Botts LLP (Baker Botts) to represent it before the ICC International Court of Arbitration (ICA) as it passed the required competence and offered the lowest fee for its services. On March 12, 2010, the OGCC approved, ratified, and confirmed Baker Botts' engagement. The arbitration then proceeded, and thereafter, resulted in an Award dated October 4, 2011 in favor of PNOC-EC.⁷

¹ *Rollo*, pp. 3-23.

² *Id.* at 30-37; Signed by Chairperson Michael G. Aguinaldo with Commissioners Heidi L. Mendoza and Jose A. Fabia.

³ See Notice No. 2019-018 dated February 6, 2019; *id.* at 38.

⁴ *Id.* at 96-98.

⁵ *Id.* at 8-9.

⁶ *Id.* at 9.

⁷ *Id.* at 106-201.

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Meanwhile, the COA auditor found that PNOC-EC failed to secure the COA's written concurrence in the engagement of Baker Botts' legal services in violation of COA Circular No. 86-255⁸ dated April 2, 1986 and COA Circular No. 95-011⁹ dated December 4, 1995. Consequently, Notice of Suspension (NS) No. PNOC-EC 2011-001¹⁰ dated June 2, 2011 was issued, suspending the legal fees paid to Baker Botts in the total amount of ₱42,717,188.41. PNOC-EC was required to settle the NS by submitting the required written concurrence.¹¹ The NS further stated that the failure to settle the suspended amount within 90 days from notice will result in its disallowance pursuant to Section 82¹² of Presidential Decree (PD) No. 1445.¹³ This prompted PNOC-EC to file a *post facto* Letter-Request¹⁴ dated June 7, 2011 for the COA's concurrence in the hiring of Baker Botts. The request was supported by a certificate of availability of funds,¹⁵ but was nonetheless denied in LRR No. 2012-091¹⁶ dated July 26, 2012 in this wise:

After evaluation, the Commission is not inclined to grant PNOC-EC's request for written concurrence of COA as **the said request was made more than a year after and not prior to the hiring of the private lawyer** as required under the afore-cited COA Circular No. 86-255, as amended, and Memorandum Circular No. 9 dated August 27, 1998 of the Office of the President. The proposal of Baker Botts was made in a letter dated February 19, 2010, yet the request for COA concurrence was received by this Commission only on June 20, 2011.

In the case of *Phividec Industrial Authority vs. Capitol Steel Corporation*, G.R. No. 155692, October 23, 2003, the Supreme Court (SC) cited the requirement of written concurrence of COA as an indispensable condition before any hiring of private lawyer could be made. COA's mandate to audit the disbursement of public funds carries with it the determination of compliance of transaction with laws and regulations. In the herein case, there is non-compliance with COA Circular

⁸ Entitled "INHIBITION AGAINST EMPLOYMENT BY GOVERNMENT AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, OF PRIVATE LAWYERS TO HANDLE THEIR LEGAL CASES" dated April 2, 1986.

⁹ Entitled "PROHIBITION AGAINST EMPLOYMENT BY GOVERNMENT AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, OF PRIVATE LAWYERS TO HANDLE THEIR LEGAL CASES" dated December 4, 1995.

¹⁰ Id. at 56-57.

¹¹ The following approving officers were named liable in the NS: (1) Leocadio M. Ostrea, Vice President (VP) for Petroleum Division; (2) Candido M. Magsombol, Manager for Trading and Marketing Department; (3) Lionel Q. Calo, Jr., VP for Finance; (4) Lourdes S. Gelacio, VP for Corporate Services, Information Communications Technology, and Accounting Division; and (5) Raymundo B. Savella, VP for Petroleum and Coal Operations Division; *rollo*, pp. 56-57.

¹² SEC. 82. **Auditor's notice to accountable officer of balance shown upon settlement.** — The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

¹³ *Rollo*, p. 57; Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES," approved on June 11, 1978.

¹⁴ Id. at 40-49.

¹⁵ Id. at 32-33.

¹⁶ Id. at 96-98.

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No. 86-255, the governing regulation in the hiring of private lawyer by government agencies. **Therefore, NS No. PNOC-EC 2011-001, which required the submission of the requisite written concurrence of COA, was correctly issued by the [Audit Team Leader] and [Supervising Auditor] of PNOC-EC.**

Moreover, our **initial review** of the retainer agreement shows that advance payment for filing fees, messenger services and other charges are provided therein which is contrary to Section 88(1) of [PD] No. 1445, proscribing advance payments on government contracts. Likewise, the proposed time-based payment scheme (hourly rate of US\$450 for the two private lawyers) is also against the policy of this Commission requiring retainer fees to be in fixed monetary amount.

In view of the foregoing, the instant request of PNOC-EC for written concurrence of COA in the hiring of Baker Botts LLP cannot be granted.¹⁷ (Citation omitted and emphasis supplied.)

PNOC-EC, through the OGCC, questioned the denial of the request, but the COA Proper affirmed LRR No. 2012-091 in its Decision No. 2015-281¹⁸ dated November 23, 2015 solely on the ground that the required written concurrence of the COA was not obtained before the engagement of the private counsel:

WHEREFORE, premises considered, this Commission hereby **DENIES** the instant motion for reconsideration of the [OGCC], legal counsel for [PNOC-EC], of [LRR] No. 2012-091 dated July 26, 2012 for lack of merit.¹⁹ (Emphases in the original.)

Significantly, COA Chairperson Michael G. Aguinaldo (COA Chairperson Aguinaldo) inscribed with his signature that the COA Proper's Decision was still "**subject to [the] rule on *quantum meruit*.**"²⁰

PNOC-EC sought reconsideration, but was again denied in a Resolution dated November 26, 2018 as stated in COA *En Banc* Notice No. 2019-018²¹ dated February 6, 2019. Hence, this petition.

PNOC-EC begs for liberality in the application of the rules on the engagement of a private counsel under COA Circular No. 86-255 and COA Circular No. 95-011, citing the urgency to secure proper representation in the international arbitration as justification for its admitted failure to obtain the COA's written concurrence. PNOC-EC also argues that the government already benefitted from the services rendered by Baker Botts, and thus will be unjustly enriched if the payment of the legal fees remains suspended, and eventually disallowed at the expense of the PNOC-EC officers.²²

¹⁷ Id.

¹⁸ Id. at 30-37.

¹⁹ Id. at 36.

²⁰ Id. at 34-55.

²¹ Id. at 38.

²² Id. at 16.

For its part, the COA Proper, through the Office of the Solicitor General (OSG), acknowledges the urgency, as well as the exceptional or extraordinary nature of the matter, but maintains that compliance with the requirement of first securing the COA's written concurrence cannot be disregarded, nor was it difficult to observe.²³

ISSUE

Whether the COA Proper gravely abused its discretion in affirming LRR No. 2012-091, which denied PNOC-EC's belatedly filed request for the COA's written concurrence in the engagement of Baker Botts, and affirmed the suspension of the legal fees paid.

RULING

Since the early 1960s, a general prohibition against the hiring of private counsels by government-owned or controlled corporations (GOCC) has been in place as the law has designated the Government Corporate Counsel to be the principal law officer of all GOCCs.²⁴ The prohibition was primarily aimed to curtail unnecessary expenditures of public funds on legal services of private practitioners, which may readily be provided by statutorily-mandated agencies like the OGCC.²⁵ The rule, however, is not ironclad. The government has recognized exceptional situations, which unavoidably demand consultations from and representations by private counsels. Thus, over the years, the government has allowed GOCCs to hire private lawyers subject to certain conditions. For one, pursuant to its constitutional mandate to be the guardian of public funds,²⁶ the COA issued Circular No. 86-255²⁷ dated April 2, 1986 to regulate the hiring of private counsels. This was, later on, amended by Circular No. 95-011 dated December 4, 1995 as follows:

x x x [W]here a government agency is provided by law with a legal officer or office who or which can handle its legal requirements or cases in courts, it (agency) may not be allowed to hire the services of private lawyers for a

²³ See Comment; *id.* at 521-550.

²⁴ See Republic Act No. 3838, entitled "AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO THOUSAND THREE HUNDRED TWENTY-SEVEN, ENTITLED "AN ACT TO DECLARE THE POSITION OF GOVERNMENT CORPORATE COUNSEL DISTINCT AND SEPARATE FROM THAT OF THE SOLICITOR GENERAL, PROVIDE FOR HIS APPOINTMENT AND SALARY AND APPROPRIATE THE NECESSARY FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 22, 1963, SEC. 1. x x x x "SEC. 1. x x x He shall be the principal law officer of all government-owned or controlled corporations. To enable him to discharge, his functions as such, it shall be the duty of all said corporations to refer to him all important legal questions for opinion, advice and determination, all proposed contracts and all important court cases for his services. He shall, moreover, exercise control and supervision over all legal divisions maintained separately by said corporations. No government-owned or controlled corporation shall hire a private law practitioner to handle any of its legal cases without the written consent of the Government Corporate Counsel or of the Secretary of Justice." (Emphasis supplied.); See also *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493 (2003).

²⁵ See *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, *id.*; and *Aleandrino v. Commission on Audit*, G.R. No. 245400, November 12, 2019.

²⁶ SEC. 2(1) and (2), Art. IX, 1987 Constitution; See also *Yap v. Commission on Audit*, 633 Phil. 174 (2010).

²⁷ *Supra* note 9.

fee, chargeable against public funds, unless exceptional or extraordinary circumstances obtain x x x.

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitution), public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. **In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.** (Emphasis supplied.)

Apropos, as well, is Office of the President Memorandum Circular No. 9²⁸ dated August 27, 1998, issued by the Chief Executive pursuant to its supervision and control over GOCCs:

SEC. 1. All legal matters pertaining to government-owned and controlled corporations (GOCCs), their subsidiaries, other corporate offsprings and government acquired asset corporations shall be exclusively referred to and handled by the Office of the Government Corporate Counsel (OGCC).

x x x x

SEC. 3. GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. **But in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.** (Emphasis supplied.)

Thus far, the following indispensable conditions must then be fulfilled before a GOCC can hire a private lawyer: (1) hiring is only in exceptional cases; (2) the written conformity and acquiescence of the OGCC must first be secured; and (3) the prior written concurrence of the COA must also be secured.²⁹ This Court has consistently sustained the application of these regulations,³⁰ and notably, an action directly attacking³¹ the validity or

²⁸ Entitled "PROHIBITING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCS) FROM REFERRING THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE SOLICITOR GENERAL, PRIVATE LEGAL COUNSEL OR LAW FIRMS AND DIRECTING THE GOCCS TO REFER THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL, UNLESS OTHERWISE AUTHORIZED UNDER EXCEPTIONAL CIRCUMSTANCES," dated August 27, 1998.

²⁹ *Alejandrino v. Commission on Audit*, supra note 24 citing *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, supra note 23.

³⁰ See *Polloso v. Gangan*, 390 Phil. 1101 (2000); *PHIVIDEC Industrial Authority v. Capitol Steel Corp.*, supra note 23; *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, 750 Phil. 258 (2015); *Oñate v. Commission on Audit*, 789 Phil. 260 (2016); and *Alejandrino v. Commission on Audit*, id.

³¹ See *Province of Camarines Sur v. Commission on Audit*, G.R. No. 227926, March 10, 2020.

constitutionality of these administrative and executive issuances in the proper forum is yet to be filed. Basic is the rule that administrative issuances have in their favor the presumption of legality; and as such, cannot be disregarded even by this Court, especially when their validity is not put in issue on review.³² Similarly, the case at bar does not question the validity or constitutionality of the regulatory measure requiring the written concurrence of the COA before engagement of a private counsel. Rather, to obviate disallowance, PNOC-EC merely pleads for the exercise of liberality in the application of the regulation given the exigencies that they faced relating to the arbitration proceedings. Opportunely, the COA has recently issued **Circular No. 2021-003**³³ dated July 16, 2021 to address such situation.

As a brief background, Circular No. 2021-003 explained that “the purpose for requiring the COA’s written concurrence [in the engagement of private counsels] is to ensure the reasonableness of the amount of [their] legal fees.”³⁴ The COA, however, found the need to revisit such requirement, cognizant of the fact that such purpose “may be guaranteed by safeguards other than the requisite COA’s written concurrence.”³⁵ The COA also acknowledged the inefficacy and impracticability of the rule’s rigid implementation in urgent and extraordinary or exceptional circumstances, wherein the legal services of private practitioners are necessary. Hence, “to avoid unnecessary delay[s] in the hiring of a private lawyer or legal retainer to address the urgent need for legal services in national government agencies and GOCCs under extraordinary or exceptional circumstances, and improve efficiency in government operations,”³⁶ the new Circular exempts GOCCs from the requirement of the COA’s prior written concurrence under COA Circular No. 86-255 and COA Circular No. 95-011 subject to the following conditions:

4.0 CONDITIONS

4.1 Lawyers under Contract of Service or Job Order Contract.

- a) The engagement is covered by a contract between the government agency and the lawyer, under a Contract of Service or Job Order Contract arrangement, not to exceed one (1) year, renewable at the option of the head of the national government agency or GOCC, but in no case to exceed the term of the head;

³² *Land Bank of the Philippines v. Celada*, 515 Phil. 467 (2006); See also *Yap v. Commission on Audit*, supra note 25.

³³ Entitled “EXEMPTING GOVERNMENT AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS FROM THE REQUIREMENT OF WRITTEN CONCURRENCE FROM THE COMMISSION ON AUDIT ON THE ENGAGEMENT OF: (1) LAWYERS UNDER CONTRACTS OF SERVICE OR JOB ORDER CONTRACTS; AND (2) LEGAL CONSULTANTS, SUBJECT TO SPECIFIC CONDITIONS,” dated July 16, 2021; Item 8.0 thereof states that the “Circular shall take effect after 15 days from publication in a newspaper of general circulation.” A copy of the Circular was published July 28, 2021 in “The Philippine Star,” hence, Circular No. 2021-003 became effective on August 12, 2021.

³⁴ Circular No. 2021-003, Item 1.0, Par. 4.

³⁵ Circular No. 2021-003, Item 1.0, Par. 6.

³⁶ Circular No. 2021-003, Item 2.0.

- b) The engagement shall have the written approval of the OSG, in the case of national government agencies, or the OGCC in the case of GOCCs;
- c) The duties and responsibilities to be assigned to the lawyer are similar to those ordinarily performed by lawyers employed by the government agency or GOCC and holding attorney, legal officer, or other lawyer positions in the *plantilla*;
- d) The government agency or GOCC does not have any *plantilla* positions or does not have sufficient *plantilla* positions to support its current requirement for legal services;
- e) The lawyer meets the minimum eligibility and qualification standards imposed by the Civil Service Commission (CSC) for comparable positions in the government;
- f) The compensation of the lawyer shall be the same as the salary of the comparable position in the government agency or GOCC, with no other entitlements except for a premium of up to twenty percent (20%) which may be paid monthly, lump sum, or in tranches (i.e. mid-year and end of the year) as may be stated in the contract. Comparable position is determined based not solely on salary grade but also on the duties and responsibilities of the positions and level of position in the organizational structure or *plantilla* of the agency. Positions may be considered to be comparable if they belong to the same occupational grouping and the duties and responsibilities of the positions are similar and/or related to each other (CSC Memorandum Circular No. 03, s. 2014); and
- g) The lawyer is not employed nor engaged by any private entity or other government agency or GOCC for the duration of the contract.

4.2 Legal Consultants

- a) The engagement is covered by a contract between the government agency or GOCC and the lawyer, as a legal consultant, specifying the activity/project/program, the nature of the engagement (full time or part time), and for a term no to exceed one (1) year, renewable at the option of the head of the government agency or GOCC if the activity/project/program has not yet been completed, but in no case to exceed the term of the head;
- b) The engagement shall have written approval of the OSG, in the case of national government agencies, or the OGCC in the case of GOCCs;



- c) The lawyer possesses the relevant expertise in the matter to which he has been engaged, and such expertise cannot be found among the lawyers employed by the government agency or GOCC, or if comparable expertise does exist, is unavailable;
- d) The procurement process for the engagement of the lawyer as legal consultant has been complied with;
- e) The lawyer is not employed or engaged as a contract of service or job order contract by any other government agency or GOCC, although the lawyer may be engaged as a part-time consultant in up to two (2) government agencies or GOCCs; and
- f) The consultancy fee of the lawyer, including other remunerations and allowances, does not exceed Fifty Thousand Pesos ([P]50,000.00) per month.

If any of the conditions listed above are not met, the COA's written concurrence shall be required for such engagement.

x x x x

In this case, We note that aside from the fact that Baker Botts' engagement was with the written approval of the OGCC, nothing more of the relevant factual conditions above-enumerated is established at this juncture. In fact, LRR No. 2012-091 states that the COA was still in its "initial review"³⁷ of the retainer agreement when the request for concurrence was denied. With the advent of this procedural development, thus, it is only proper to **REMAND** the case to the COA for the determination of the propriety of exempting PNOC-EC from the written concurrence requirement, especially so because such determination entails the evaluation of purely factual and evidentiary matters, not available on record and beyond the purview of this judicial review.³⁸ Moreover, the application of this fairly new COA issuance should be entrusted to COA itself, especially so because COA Circular No. 2021-003 expressly states that:

All pending requests written concurrence and appeals from or reconsideration of Legal Retainer Review or petitions for review of Notice of Disallowances issued on the ground of lack of COA's written concurrence shall be granted **after a finding by this Commission of the existence of the abovementioned conditions.**³⁹

Clearly, it is not for the Court to make such determinations. In this *certiorari* proceedings, we are merely tasked to review if the COA's actions are tainted with grave abuse of discretion. As we have consistently held, the Court's general policy is to give due deference to the COA's constitutional

³⁷ *Rollo*, p. 98.

³⁸ "[T]he Constitution and the Rules of Court limit the permissible scope of inquiry Rules 64 and 65 *certiorari* petitions only to *errors of jurisdiction* or *grave abuse of discretion*." See *Fontanilla v. Commission Proper*, 787 Phil. 713 (2016).

³⁹ COA Circular No. 2021-003, Item 4.0, last paragraph.

prerogatives in the absence of grave abuse of discretion,⁴⁰ not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. No less than the fundamental law of the land expressly made the COA the guardian of public funds; endowed it with wide latitude to determine, prevent, and disallow irregular, excessive, extravagant, or unconscionable expenditures of government funds; and vested it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.⁴¹

Proceeding further, We find it unnecessary, if not irrelevant and premature, to belabor on PNOC-EC's argument that the government will be unjustly enriched if its request for concurrence remains denied, and consequently, the suspension of the legal fees paid to Baker Botts ripens into a disallowance. PNOC-EC's fear that its officers will be held liable to return the entire amount of legal fees paid to Baker Botts is more apparent than real. As can be gleaned from the assailed COA Proper Decision, the denial of the request for the COA's written concurrence was not made the sole basis of the civil liability in the disallowance that was supposedly underway. Consistent with prevailing jurisprudence,⁴² despite the COA Proper's affirmance of the denial of the request for concurrence, COA Chairperson Aguinaldo required the conduct of a further post-audit to determine the proper amount of disallowance and corresponding liabilities in accordance with the rule on *quantum meruit*.⁴³ In the same vein, the new Circular instructs:

Notwithstanding the exemption from the requirement of COA's written concurrence, any disbursements made to the private lawyer engaged by the national government agency or GOCC, **shall still be subject to post-audit based on existing rules and regulations of the Commission and to applicable rules and regulations issued by the CSC and other government agencies.**⁴⁴ (Emphasis supplied.)

Verily, Circular No. 2021-003 made it clear that compliance or non-compliance with the requirement of the COA's written concurrence is not the only factor to be considered in assessing whether a disbursement for legal fees should be disallowed, and in imposing liabilities arising from a disallowance. For one, the hiring of private lawyers or law firms is allowed under extraordinary or exceptional circumstances, and there is no hard and fast rule to justify it. As in this case, which involves international arbitration, the totality of all the circumstances cognizant of the parties' contract and existing laws flexibly determines whether the expenses incurred were illegal,

⁴⁰ *Espinas v. Commission on Audit*, 731 Phil. 67 (2014).

⁴¹ *Yap v. Commission on Audit*, supra note 25.

⁴² See *Melchor v. Commission on Audit*, 277 Phil. 801 (1991); *Alejandrino v. Commission on Audit*, supra note 24; *Torreta v. Commission on Audit*, G.R. No. 242925, November 10, 2020.

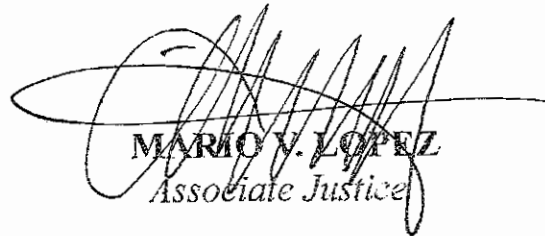
⁴³ *Rollo*, p. 36.

⁴⁴ Circular No. 2021-003, Item 4.0, Par. 2.

irregular, excessive, or unreasonable. Indeed, transactions or expenditures which are not in accordance with law,⁴⁵ or incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws⁴⁶ may result in a disallowance,⁴⁷ which renders the transaction participants (approving/certifying officers and payees) civilly liable. However, certain established statutory and equitable principles, as well as jurisprudential rules, must be considered in determining the disallowance liability such as the concepts of *solutio indebiti*⁴⁸ and unjust enrichment,⁴⁹ the rule on *quantum meruit*,⁵⁰ the good faith and diligence of the approving and certifying officers,⁵¹ and the solidary nature of the officers' liability in a disallowance.⁵²

ACCORDINGLY, the petition is **DISMISSED** without prejudice to the Commission on Audit's determination of the propriety of exempting PNOC – Exploration Corporation from the written concurrence requirement in the engagement of Baker Botts LLP and the conduct of a post-audit in accordance with Item No. 4.0 of the Commission on Audit Circular No. 2021-003 dated July 16, 2021.

SO ORDERED.



MARIO V. LOPEZ
Associate Justice

⁴⁵ "Illegal Expenditures," see *Miralles v. Commission on Audit*, 318 Phil. 380, 405 (2017); and *National Transmission Corporation v. Commission on Audit*, G.R. No. 232199, December 1, 2020.

⁴⁶ "Irregular Expenditures;" See COA Circular No. 2012-003 entitled "UPDATED GUIDELINES FOR THE PREVENTION AND DISALLOWANCE OF IRREGULAR, UNNECESSARY, EXCESSIVE, EXTRAVAGANT AND UNCONSCIONABLE EXPENDITURES" dated October 29, 2012, Section 3.1.

⁴⁷ See *Miralles v. Commission on Audit*, supra note 44; and *National Transmission Corporation v. Commission on Audit*, supra note 44.

⁴⁸ Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

⁴⁹ Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

⁵⁰ *Aleandrino v. Commission on Audit*, supra note 24; *Madera v. Commission on Audit*; G.R. No. 244128, September 8, 2020; and *Toretta v. Commission on Audit*, supra note 41.


⁵¹ *Madera v. Commission on Audit*, id.; and *Toretta v. Commission on Audit*, supra note 41.

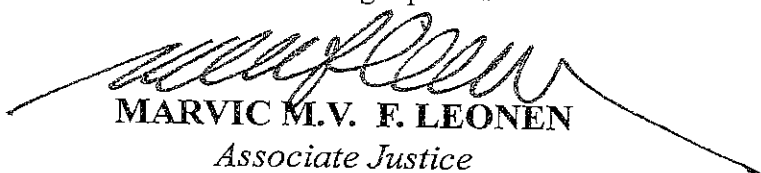
⁵² Id.

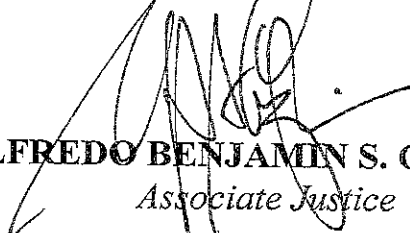
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

See Concurring Opinion


ESTELA M. PERLAS-BERNABE
Senior Associate Justice


MARVIC M.V. F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice



ROSMAR D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 244461 – PHILIPPINE NATIONAL OIL COMPANY-EXPLORATION CORPORATION, *petitioner* v. COMMISSION ON AUDIT, *respondent*.

Promulgated:

September 28, 2021

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CONCURRING OPINION

LEONEN, J.:

This case involves a Petition for Certiorari under Rule 64 which raised the issue of whether or not the Commission on Audit committed grave abuse of discretion by denying petitioner Philippine National Oil Company-Exploration Corporation's (PNOC-EC) request for concurrence, on the sole ground that it was done belatedly.

PNOC-EC executed two contracts for the purchase of steam coal with Wilson International Trading Private Limited (Wilson)—the “Sual Contract” covering the Sual Plant and the “Pagbilao Contract” for the Pagbilao plant.¹

Arbitration proceedings arose after PNOC-EC allegedly refused to accept Wilson's coal delivery at the Pagbilao plant despite due notice.² PNOC-EC countered that Wilson delivered the coal prematurely and that the National Power Corporation “had not confirmed the shipment window[.]”³ Further, it argued that Wilson's claim is “barred by a settlement agreement entered into by the Parties in or around October 2009, whereby the Parties agreed to cancel and/or terminate the Pagbilao contract and enter into a new contract for the re-sale of the cargo”⁴ at a lower price.

In the Petition for Certiorari, PNOC-EC summarized Wilson's claim: P

Wilson claimed for recovery of alleged demurrage charges amounting to One Million Three Hundred Ninety Two Thousand Sixty Four and 53/100 US Dollars (USD 1,392,064.53) and alleged losses for selling its coal to PNOC-EC at a lower price of Seven Hundred Nineteen Thousand Two Hundred Ninety Three and 25/100 US Dollars (USD719,293.25), or a total claim of Two Million One Hundred Eleven Thousand Three Hundred Fifty Seven and 78/100 US Dollars (USD2,111,357.78), plus interest and costs, relative to the purported shipment of Indonesian steam coal to the

¹ Petition, p. 121, ICC Arbitral Award.

² Id. at 130.

³ Id. at 112.

⁴ Id.

National Power Corporation's (NPC) Pagbilao plant in 2009 pursuant to Wilson's Coal Supply Contract (CSA) No. S9068N dated 17 July 2009 with PNOC-EC.⁵

Clause XIV of Coal Supply Contract (CSA) No. S9068N between Wilson and PNOC-EC embodies the arbitration clause:

XIV ARBITRATION

- a. The parties agree that in the event that there is any dispute, controversy, claim, or difference between them arising out of or relating to this Agreement, or the breach thereof, or in the interpretation of any of the provisions hereof, they shall meet and endeavor to resolve such dispute by discussion between them. Failing such resolution, the Chief Executives or [the] representatives of BUYER [PNOC-EC] and SELLER [Wilson] shall meet to resolve such dispute or difference. If the Chief Executives or their representatives are unable to resolve the dispute or difference within fourteen (14) days from their initial meeting, any and all such disputes, claims and controversies shall be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC Rules).
- b. The arbitration shall be conducted by a single arbitrator to be selected in accordance with the ICC Rules.
- c. Unless otherwise agreed by the parties to the arbitration, the place of arbitration shall be in Singapore.
- d. The arbitration shall be in the English language.
- e. The arbitration award shall be final and binding upon the parties to the arbitration and Judgment thereon may be entered in any court having jurisdiction.
- f. The laws of England shall govern the terms and conditions of this Agreement.⁶

When the Request for Arbitration was filed in 2010 by Wilson, the prevailing International Chamber of Commerce (ICC) Arbitration Rules was the 1998 ICC Rules. Article 5 of the 1998 ICC Arbitration Rules provides:

Article 5 - Answer to the Request; Counterclaims

1. *Within 30 days from the receipt of the Request from the Secretariat, the Respondent shall file an Answer* (the "Answer") which shall, *inter alia*, contain the following information:
 - a) its name in full, description and address;
 - b) its comments as to the nature and circumstances of the dispute giving rise to the claim(s);
 - c) its response to the relief sought;
 - d) any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with

⁵ Id. at 6.

⁶ Id. at 6-7.

- the provisions of Articles 8, 9 and 10, and any nomination of an arbitrator required thereby; and
- e) any comments as to the place of arbitration, the applicable rules of law and the language of the arbitration.
2. The Secretariat may grant the Respondent an extension of the time for filing the Answer, provided the application for such an extension contains the Respondent's comments concerning the number of arbitrators and their choice and, where required by Articles 8, 9 and 10, the nomination of an arbitrator. If the Respondent fails to do so the Court shall proceed in accordance with these Rules.⁷ (Emphasis supplied)

PNOC-EC received a copy of the Request for Arbitration on February 1, 2010.⁸ Its deadline for filing an Answer was 30 days from receipt of the Request for Arbitration, or on March 2, 2010.

On June 2, 2011, while arbitration was ongoing, PNOC-EC received Notice of Suspension (NS) No. PNOC-EC 2011-011.⁹ The Notice states under the column "Particulars and/or Requirements" that PNOC-EC should "submit COA's written concurrence as prescribed in COA Circular 86-255, amended by COA Circular 95-011."¹⁰

Commission on Audit Circular No. 86-255, dated April 2, 1986, as amended by Commission on Audit Circular No. 95-011, states:

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitutional, public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them. In the event that such legal services cannot be avoided *or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case maybe, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.* (Emphasis supplied)

On June 7, 2011, PNOC-EC responded by submitting to the Commission a request for "*post-facto* concurrence to the engagement of Baker Botts LLP considering the exigent circumstances present in PNOC-EC's situation."¹¹ Attached to the request for concurrence was a certificate

⁷ 1998 Rules of Arbitration of the International Chamber of Commerce.

⁸ Petition, p. 6.

⁹ Id. at 8.

¹⁰ Id. at 54, COA Notice of Suspension.

¹¹ Id. at 9.

of availability of funds “for the settlement of legal fees of the arbitration case[.]”¹²

In its Request for Concurrence,¹³ PNOEC-EC stated:

At the onset, and by the very nature of arbitration proceedings, it was clear that PNOEC EC needed to immediately secure the services of a legal counsel who was highly experienced in arbitration before the International Court of Arbitration of the ICC, who was qualified to advise on English Law and qualified to practice law in Singapore. Even before PNOEC EC could file its answer, said legal counsel needed to advise PNOEC EC on Wilson’s choice of arbitration, specifically on whether said choice could be relied upon to render a just and impartial decision. Hence, PNOEC EC not only needed urgent advice from an experienced counsel on the possible choices of arbitrator but needed advice on what to expect from an arbitration under the ICC Rules where the governing law involved was not Philippine law but English law.

Within the tight thirty (30) day period given by the ICC, please note that PNOEC EC had to prepare the necessary documentation for selection of a suitable legal counsel, look for possible candidates for the engagement, secure all necessary internal approvals, discuss the matter with and likewise secure approval of the OGCC, look for and decide on suitable candidates for an arbitrator, brief the legal counsel and get him up to speed on the facts of the case and then, finally, prepare and file an Answer or an Extension (with comments on the choice of arbitrator) with the ICC.

....

As can be gleaned from the approval of the OGCC, the latter took into consideration the not so ordinary nature of arbitration proceedings, and the different kind of knowledge and experience required of a legal counsel to represent PNOEC EC. By the OGCC’s approval of the engagement of Baker Botts, it is therefore humbly submitted that PNOEC EC’s statutory counsel acknowledged and confirmed the necessity of hiring a private legal counsel because of the extraordinary nature and requirements of this arbitration proceeding in particular.

....

Being placed in a situation where the Company was constrained to hire private counsel, and where time was of the essence in the hiring of such counsel, PNOEC EC admittedly committed a misstep in not securing this Honorable Commission’s concurrence to the OGCC’s approval. However, and upon learning of this misstep, the Company immediately sought to rectify its error by writing this letter to the Honorable Commission.¹⁴

¹² Id. at 32, COA Decision No. 2015-281.

¹³ Request for Concurrence to the Approval by Office of the Government Corporate Counsel of the Engagement by PNOEC Exploration Corporation of Private Counsel in Arbitration Proceedings before the ICC International Court of Arbitration (Singapore).

¹⁴ Petition, p. 44-46, Request for Concurrence.

On October 4, 2011, the arbitral tribunal rendered an Award¹⁵ dismissing Wilson's claim for damages and favoring PNOC-EC. However, the parties were adjudged to bear their own costs. They were also adjudged to pay the ICC administrative fees and the Tribunal's fees and expenses in equal proportions. The pertinent portion of the Award states:

16. AWARD AND FINDINGS

16.1 The Tribunal hereby Awards and Adjudges as follows:

- (a) that the Claimant's claim for damages for breach of contract be and is hereby dismissed;
- (b) that each party bear and pay its own legal fees in this arbitration;
- (c) that both Parties bear in equal proportions the ICC administrative expenses and the fees and expenses of the Tribunal amounting to US\$92,000; and
- (d) that all other claims are dismissed.¹⁶

On August 24, 2012, the Commission on Audit denied PNOC-EC's request for concurrence on the ground that "the request was made not prior to the hiring of the private counsel as required under COA Circular No. 86-255 as amended by COA Circular No. 95-011."¹⁷

On September 21, 2012, PNOC-EC filed a Motion for Reconsideration which was denied by the Commission in a November 23, 2015 Decision.¹⁸ The Decision stated that the Notice of Suspension was issued "for lack of the requisite written concurrence of the COA in the hiring of Baker Botts LLP as legal counsel of PNOC-EC as required under COA Circular Nos. 86-255 and 95-011 dated April 2, 1986 and December 4, 1995, respectively."¹⁹

On February 5, 2016, PNOC-EC filed another Motion for Reconsideration explaining why it inadvertently failed to obtain the Commission's concurrence "before engaging the services of Baker Botts LLP as private counsel."²⁰

On February 6, 2019, the Commission on Audit *En Banc* issued Notice No. 2019-018 denying PNOC-EC's second Motion for Reconsideration. A copy of the Notice was received by PNOC-EC on February 19, 2019²¹ prompting it to file a Petition for Certiorari under Rule 64 before this Court.

¹⁵ Id. at 102-200, ICC Award.

¹⁶ Id. at 200.

¹⁷ Id. at 9.

¹⁸ Id.

¹⁹ Id. at 31, COA Decision No. 2015-281 dated November 23, 2015.

²⁰ Id. at 9.

²¹ Id.

PNOC-EC's belated request for the Commission on Audit's written concurrence may have been a misstep but the circumstances of this case left PNOC-EC with no other choice but to act quickly to protect its interests and that of the government.

I

Through a February 10, 2010 letter, PNOC-EC informed the Office of the Government Corporate Counsel (OGCC) of the Request for Arbitration.²² In the same letter, it requested for assistance from the OGCC or in the alternative, to hire "the services of a private law firm with extensive experience in arbitration under the ICC Rules, qualified to practice law in Singapore and well versed in English law[.]"²³

Subsequently, PNOC-EC informed the OGCC²⁴ of proposals it received from various law firms and recommended Baker Botts LLP.²⁵ Through a February 23, 2010 letter, PNOC-EC submitted to the OGCC an engagement letter from Baker Botts LLP.²⁶

PNOC-EC received the OGCC's approval to engage Baker Botts LLP on March 12, 2010,²⁷ or after the deadline to submit an Answer to the Request for Arbitration.

Waiting for the concurrence of the OGCC and the Commission up until the deadline to submit an Answer to the Request for Arbitration would have been time-consuming and might have resulted in an unfavorable arbitral award against PNOC-EC.

While PNOC-EC may partly be at fault for not immediately requesting for a written concurrence, it should be noted that the Commission's denial of the request was issued more than a year after it was filed. Though it cannot be said with certainty how long it would have taken for the Commission to issue its concurrence had the request been filed prior to engaging the services of Baker Botts LLP, the number of months it took for the Commission to deny the request tells us of the possibility that the Commission itself might not have been able to give its written concurrence within the 30-day period for PNOC-EC to file its Answer.

²² Id. at 62.

²³ Id. at 64.

²⁴ Id. at 66, Letter dated February 16, 2010.

²⁵ Id. at 66-67.

²⁶ Id. at 68-69.

²⁷ Id. at 70-71.

II

I am aware of my *ponencia* in *Laguesma v. Commission on Audit*,²⁸ but there is a stark difference between labor cases and international arbitration. In *Laguesma*, Clark Development Corporation engaged the services of a private counsel to handle several labor cases, without the concurrence of the OGCC and the Commission on Audit. As held in *Laguesma*:

The labor cases petitioner handled were not of a complicated or peculiar nature that could justify the hiring of a known expert in the field. On the contrary, these appear to be standard labor cases of illegal dismissal and collective bargaining agreement negotiations, which Clark Development Corporation's lawyers or the Office of the Government Corporate Counsel could have handled.

....

The cases that the private counsel was asked to manage are not beyond the range of reasonable competence expected from the Office of the Government Corporate Counsel. Certainly, the issues do not appear to be complex or of substantial national interest to merit additional counsel. Even so, there was no showing that the delays in the approval also were due to circumstances not attributable to petitioner nor was there a clear showing that there was unreasonable delay in any action of the approving authorities. Rather, it appears that the procurement of the proper authorizations was mere afterthought.²⁹ (Citations omitted)

On the other hand, the arbitration clause between Wilson and PNOC-EC itself indicates the extraordinary circumstance that justifies the engagement of an external counsel. In this case, the place of arbitration was Singapore and the law of the contract was English law. Hence, counsel for the arbitration proceedings needed to be someone authorized to practice law in Singapore and knowledgeable on English law.

In addition, 30 days was a short period for PNOC-EC to request for concurrence, search for external counsel, and prepare for the submission of its Answer before the ICC.

III

There is no hard and fast rule as to what may constitute extraordinary or exceptional circumstances. A case may be considered extraordinary or exceptional under these rules if, for example, its prosecution requires specialized technical expertise to assist the government's lawyers. For this reason, the government has, from time to time, employed legal experts from the private sector to assist the country in various international litigations.

²⁸ 750 Phil. 258 (2015) [Per J. Leonen, En Banc].

²⁹ Id. at 280-281.

In *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*,³⁰ the country entered an application for permission to intervene with the International Court of Justice to assert its claim over North Borneo, now known as Sabah. In its application, the country's legal team was assisted by Professor W. Michael Reisman of Yale Law School and Professor Peter Payoyo of the University of the Philippines.

In *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*,³¹ involving a dispute over a service agreement before the International Centre for Settlement of Investment Disputes, the Office of the Solicitor General was assisted by the firm of Allen & Overy, London, and Professor Christopher Greenwood of London.

The country also employed private counsels in the arbitration proceedings over the construction of Ninoy Aquino International Airport Terminal 3. In *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*,³² the country employed the assistance of the law firm of Siguion Reyna, Montecillo & Ongsiako, former Justice Florentino P. Feliciano, and the Washington, D.C. firm of White & Case in the original proceedings, while the firm of Sycip Salazar Hernandez & Gatmaitan, former Justice Florentino P. Feliciano, and the Washington, D.C. firm of White & Case assisted in the annulment proceedings.³³

In *The Republic of the Philippines v. The People's Republic of China*,³⁴ the country hired Paul S. Reichler and Lawrence H. Martin of Foley Hoag LLP Washington DC, Professor Bernard H. Oxman of the University of Miami School of Law, Professor Philippe Sands QC of the Matrix Chambers, London, and Professor Alan Boyle of the Essex Court Chambers, London, as its legal team before the Permanent Court of Arbitration to assist in our territorial claims over the islands in the West Philippine Sea.

IV

Arbitration is a private dispute resolution process which is based on the contract between the parties. When PNOC-EC and Wilson executed the Pagbilao contract, both parties committed to resolve any dispute arising out of or in relation to the Pagbilao contract through arbitration. Unless and

³⁰ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application, for Permission to Intervene*, 2001 I. C. J. 575 (October 23, 2001).

³¹ *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6 (December 17, 2007).

³² *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*, ICSID Case No. ARB/03/25 (August 16, 2007).

³³ *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*, ICSID Case No. ARB/03/25 (August 16, 2007), Decision on the Application for Annulment dated December 23, 2010.

³⁴ *South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19 (July 12, 2016), <<https://pcacases.com/web/sendAttach/2086>> (Last accessed on September 28, 2021).

until the arbitration clause is declared void, PNOC-EC is bound by it and cannot opt out of it without the consent of the other party.

Arbitration has rigid timelines that must be observed by the parties. Non-compliance with the procedural timeline in an ongoing arbitration may lead one party who has a valid claim to lose the case. Unlike in regular courts, PNOC-EC could not have simply filed before the arbitral tribunal a motion for extension of time to file its Answer on the ground that it has to wait for the Commission on Audit's written concurrence before it can engage the services of a law firm.

There are times when an isolated and hermeneutically-sealed interpretation of an administrative period, devoid from the reality of the pace of arbitration, can become unreasonable and disadvantageous for the government. Without considering the totality of circumstances in this case, we exacerbate the injury suffered by our government by denying legal representation in international arbitration simply because of a time period.

Transnational private companies continue to have disproportionate advantage in terms of their managerial decisions. They have the flexibility to attend to the circumstances so that their strategies are executed with efficiency and with the least cost. Government, and even government-owned and controlled corporations, suffer the bane of rigidity and inflexibility of rules and regulations.

We should take cognizance of how arbitral proceedings work and consider such reality in the application and interpretation of existing laws. To rule otherwise would lead to an absurd situation where government officials are held liable for doing the best they can to protect the government's interests.

V

The issuance of Commission on Audit Circular No. 2021-003 shows that the Commission has recognized the existence of situations where time is not on the side of the government.

This is embodied in the circular's purpose "to avoid unnecessary delay in the hiring of a private lawyer or legal retainer to address the urgent need for legal services in national government agencies and GOCCs under extraordinary or exceptional circumstances, and improve efficiency in government operations."³⁵ The circular explains:

³⁵ Commission on Audit Circular No. 2021-003, dated July 16, 2021.




The purpose for requiring the written conformity of the OSG or the OGCC prior to the engagement of private lawyers or of legal consultants is to confirm the necessity of such engagement by the government agency or GOCC concerned, while the purpose for requiring COA's written concurrence is to ensure the reasonableness of the amount of legal fees.

In compliance with the abovementioned COA rules and regulations, this Commission has received numerous requests for written concurrence in the engagement of (1) lawyers under contracts of service or job order contracts; and (2) legal consultants from various government agencies and GOCCs due to absence or lack of *plantilla* positions to meet their legal requirements or the specific legal services not being covered by the provided by the OSG or the OGCC.

However, the reasonableness of the amount of legal fees in the engagement of lawyers under contract of service or job order contract and legal consultants may be guaranteed by safeguards other than the requisite COA's written concurrence; hence, there is a need to revisit such requirement.³⁶

In this case, it appears that the reason for the Notice of Suspension is the lack of written concurrence from the Commission on Audit. There was no definitive finding on the reasonableness of the legal fees paid, or in the alternative, whether the principle of *quantum meruit* can be applied. As recognized in the *ponencia*, it would be more prudent to remand this case for the Commission to determine "the propriety of exempting PNOC-EC from the written concurrence requirement[.]"³⁷

ACCORDINGLY, I concur.



MARVIC M.V.F. LEONEN
Senior Associate Justice

³⁶ Commission on Audit Circular No. 2021-003, dated July 16, 2021, sec. 1.0.

³⁷ Ponencia, p. 9.