ERNESTO B. FRANCISCO, JR. AND JOSE MA. O. HIZON, PETITIONERS, VS. TOLL REGULATORY BOARD, PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, MANILA NORTH TOLLWAYS CORPORATION, BENPRES...

G.R. No. 166910. October 19, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before us are four petitions; the first three are special civil actions under Rule 65, assailing and seeking to nullify certain statutory provisions, presidential actions and implementing orders, toll operation-related contracts and issuances on the construction, maintenance and operation of the major tollway systems in Luzon. The petitions likewise seek to restrain and permanently prohibit the implementation of the allegedly illegal toll fee rate hikes for the use of the North Luzon Expressway ("NLEX"), South Luzon Expressway ("SLEX") and the South Metro Manila Skyway ("SMMS"). The fourth, a petition for review under Rule 45, seeks to annul and set aside the decision dated June 23, 2008 of the Regional Trial Court ("RTC") of Pasig, in SCA No. 3138-PSG, enjoining the original toll operating franchisee from collecting toll fees in the SLEX.

By Resolution of March 20, 2007, the Court ordered the consolidation of the first three petitions, docketed as G.R. Nos. 166910, 169917 and 173630, respectively. The fourth petition, G.R. No. 183599, would later be ordered consolidated with the earlier three petitions.

The Facts

The antecedent facts are as follows--

On March 31, 1977, then President Ferdinand E. Marcos issued Presidential Decree No. ("P.D.") 1112, authorizing the establishment of toll facilities on public improvements.[1] This issuance, in its preamble, explicitly acknowledged "the huge financial requirements" and the necessity of tapping "the resources of the private sector" to implement the government's infrastructure programs. In order to attract private sector involvement, P.D. 1112 allowed "the collection of toll fees for the use of certain public improvements that would allow a reasonable rate of return on investments." The same decree created the Toll Regulatory Board ("TRB") and invested it under Section 3 (a) (d) and (e) with the power to enter, for the Republic, into contracts for the construction, maintenance and operation of tollways, grant authority to operate a toll facility, issue therefor the necessary Toll Operation Certificate ("TOC") and fix initial toll rates, and, from time to time, adjust the same after due notice and hearing.

On the same date, P.D. 1113 was issued, granting to the Philippine National Construction Corporation ("PNCC"), then known as the Construction and Development Corporation of the Philippines ("CDCP"), for a period of thirty years from May 1977 - or up to May 2007 - a franchise to construct, maintain and operate toll facilities in the North Luzon and South Luzon Expressways, with the right to collect toll fees at such rates as the TRB may fix

and/or authorize. Particularly, Section 1 of P.D. 1113 delineates the coverage of the expressways from Balintawak, Caloocan City to Carmen, Rosales, Pangasinan and from Nichols, Pasay City to Lucena, Quezon. And because the franchise is not self-executing, as it was in fact made subject, under Section 3 of P.D. 1113, to "such conditions as may be imposed by the Board in an appropriate contract to be executed for such purpose," TRB and PNCC signed in October 1977, a Toll Operation Agreement ("TOA") on the North Luzon and South Luzon Tollways, providing for the detailed terms and conditions for the construction, maintenance and operation of the expressway.[2]

On December 22, 1983, P.D. 1894 was issued therein further granting PNCC a franchise over the Metro Manila Expressway ("MMEX"), and the expanded and delineated NLEX and SLEX. Particularly, PNCC was granted the "right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the North Luzon Expressway and/or South Luzon Expressway as may be approved by the [TRB]."[3] Under Section 2 of P.D. 1894, "the franchise granted the [MMEX] and all extensions, linkages, stretches and diversions after the approval of the decree that may be constructed after the approval of this decree [on December 22, 1983] shall likewise have a term of thirty (30) years, commencing from the date of completion of the project."

As expressly set out in P.D. 1113 and reiterated in P.D. 1894, PNCC may sell or assign its franchise thereunder granted or cede the usufruct[4] thereof upon the President's approval.[5] This same provision on franchise transfer and cession of usufruct is likewise found in P.D. 1112.[6]

Then came the 1987 Constitution with its franchise provision.[7]

In 1993, the Government Corporate Counsel ("GCC"), acting on PNCC's request, issued Opinion No. 224, s. 1993,[8] later affirmed by the Secretary of Justice,[9] holding that PNCC may, subject to certain clearance and approval requirements, enter into a joint venture ("JV") agreement ("JVA") with private entities without going into public bidding in the selection of its JV partners. PNCC's query was evidently prompted by the need to seek out alternative sources of financing for expanding and improving existing expressways, and to link them to economic zones in the north and to the CALABARZON area in the south.

MOU FOR THE CONSTRUCTION, REHABILITATION
AND EXPANSION OF EXPRESSWAYS

On February 8, 1994, the Department of Public Works and Highways ("DPWH"), TRB, PNCC, Benpres Holdings Corporation ("Benpres") and First Philippine Holdings Corporation ("FPHC"), among other private and government entities/agencies, executed a Memorandum of Understanding ("MOU") envisaged to open the door for the entry of private capital in the rehabilitation, expansion (to Subic and Clark) and extension, as flagship projects, of the expressways north of Manila, over which PNCC has a franchise. To carry out their undertakings under the MOU, Benpres and FPHC formed, as their infrastructure holding arm, the First Philippine Infrastructure and Development Corporation ("FPIDC").

Consequent to the MOU execution, PNCC entered into financial and/or technical JVAs with private entities/investors for the toll operation of its franchised areas following what may be considered as a standard pattern, viz.: (a) after a JVA is concluded and the usual government approval of the assignment by PNCC of the usufruct in the franchise under P.D. 1113, as amended, secured, a new JV company is specifically formed to undertake a defined toll road project; (b) the Republic of the Philippines, through the TRB, as grantor, PNCC, as operator, and the new corporation, as investor/concessionaire, with its lender, as the case may be, then execute a

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Supplemental Toll Operation Agreement ("STOA") to implement the TOA previously issued; and (c) once the requisite STOA approval is given, project prosecution starts and upon the completion of the toll road project or of a divisible phase thereof, the TRB fixes or approves the initial toll rate after which, it passes a board resolution prescribing the periodic toll rate adjustment.

The STOA defines the scope of the road project coverage, the terminal date of the concession, and includes provisions on initial toll rate and a built-in formula for adjustment of toll rates, investment recovery clauses and contract termination in the event of the concessionaire's, PNCC's or TRB's default, as the case may be.

The following events or transactions, involving the personalities as indicated, transpired with respect to the following projects:

THE SOUTH METRO MANILA SKYWAY (SMMS)
(BUENDIA - BICUTAN ELEVATED STRETCH) PROJECT

PNCC entered into a JV partnership arrangement with P.T. Citra, an Indonesian company, and created, for the SMMS project, the Citra Metro Manila Tollways Corporation ("CMMTC").

On November 27, 1995, TRB, PNCC and CMMTC executed a STOA for the SMMS project ("CITRA STOA"). And on April 7, 1996, then President Fidel V. Ramos approved the CITRA STOA.

Phase I of the SMMS project - the Bicutan to Buendia elevated expressway stretch - was completed in December 1998, and the consequent initial toll rates for its use implemented a month after. On November 26, 2004, the TRB passed Resolution No. 2004-53, approving the periodic toll rate adjustment for the SMMS.

THE NLEX EXPANSION PROJECT (REHABILITATED AND WIDENED NLEX, SUBIC EXPRESSWAY, CIRCUMFERENTIAL ROAD C-5)

In reply to the query of the then TRB Chairman, the Department of Justice ("DOJ") issued DOJ Opinion No. 79, s. of 1994, echoing an earlier opinion of the GCC, that the TRB can implement the NLEX expansion project through a JV scheme with private investors possessing the requisite technical and financial capabilities.

On May 16, 1995, then President Ramos approved the assignment of PNCC's usufructuary rights as franchise holder to a JV company to be formed by PNCC and FPIDC. PNCC and FPIDC would later ink a JVA for the rehabilitation and modernization of the NLEX - referred in certain pleadings as the North Luzon Tollway project.[10] The Manila North Tollways Corporation ("MNTC") was formed for the purpose.

On April 30, 1998, the Republic, through the TRB, PNCC and MNTC, executed a STOA for the North Luzon Tollway project ("MNTC STOA") in which MNTC was authorized, inter alia, to subcontract the operation and maintenance of the project, provided that the majority of the outstanding shares of the contractor shall be owned by MNTC. The MNTC STOA covers three phases comprising of ten segments, including the rehabilitated and widened NLEX, the Subic Expressway and the circumferential Road C-5.[11] The STOA is to be effective for thirty years, reckoned from the issuance of the toll operation permit for the last completed phase or until December 31, 2030, whichever is earlier. The Office of the President ("OP") approved the STOA on June 15, 1998.

On August 2, 2000, pursuant to the MNTC STOA, the Tollways Management Corporation ("TMC")--formerly known as the Manila North Tollways Operation and Maintenance Corporation--was created to undertake the operation and maintenance of the NLEX tollway facilities, interchanges and related works.

On January 27, 2005, the TRB issued Resolution No. 2005-04 approving the initial authorized toll rates for the closed and flat toll systems applicable to the new NLEX.

THE SOUTH LUZON EXPRESSWAY PROJECT (NICHOLS TO LUCENA CITY)

For the SLEX expansion project, PNCC and Hopewell Holdings Limited ("HHL"), as JV partners, executed a Memorandum of Agreement ("MOA"),[12] which eventually led to the formation of a JV company - Hopewell Crown Infrastructure, Inc. ("HCII"), now MTD Manila Expressways, Inc., ("MTDME"). And pursuant to the PNCC-MTDME JVA, the South Luzon Tollway Corporation ("SLTC") and the Manila Toll Expressway Systems, Inc. ("MATES") were incorporated to undertake the financing, construction, operation and maintenance of the resulting Project Toll Roads forming part of the SLEX. The toll road projects are divisible toll sections or segments, each segment defined as to its starting and end points and each with the corresponding distance coverage. The proposed JVA, as later amended, between PNCC and MTDME was approved by the OP on June 30, 2000.

Eventually, or on February 1, 2006, a STOA[13] for the financing, design, construction, lane expansion and maintenance of the Project Toll Roads (PTR) of the rehabilitated and improved SLEX was executed by and among the Republic, PNCC, SLTC, as investor, and MATES, as operator. To be precise, the PTRs, under the STOA, comprise and contemplated the full rehabilitation and/or roadway widening of the following existing toll roads or facilities: PTR 1 - that portion of the tollway commencing at the end of South MM Skyway to the Filinvest exit at Alabang (1-242 km); PTR 2 - the tollway from Alabang to Calamba, Laguna (27.28 km); PTR 3 - the tollway from Calamba to Sto. Tomas, Batangas (7.6 km) and PTR 4 - the tollway from Sto. Tomas to Lucena City (54.27 km).[14]

Under Clause 6.03 of the STOA, the Operator, after substantially completing a TPR, shall file an application for a Toll Operation Permit over the relevant completed TPR or segment, which shall include a request for a review and approval by the TRB of the calculation of the new current authorized toll rate.

G.R. No. 166910

Petitioners Francisco and Hizon, as taxpayers and expressway users, seek to nullify the various STOAs adverted to above and the corresponding TRB resolutions, i.e. Res. Nos. 2004-53 and 2005-04, fixing initial rates and/or approving periodic toll rate adjustments therefor. To the petitioners, the STOAs and the toll rate-fixing resolutions violate the Constitution in that they veritably impose on the public the burden of financing tollways by way of exorbitant fees and thus depriving the public of property without due process. These STOAs are also alleged to be infirm as they effectively awarded purported "build-operate-transfer" ("BOT") projects without public bidding in violation of the BOT Law (R.A. 6957, as amended by R.A. 7718).

Petitioners likewise assail the constitutionality of Sections 3 (a) and (d) of P.D. 1112 in relation to Section 8 (b) of P.D. 1894 insofar as they vested the TRB, on one hand, toll operation awarding power while, on the other hand, granting it also the power to issue, modify and promulgate toll rate charges. The TRB, so petitioners bemoan, cannot be an awarding party of a TOA and, at the same time, be the regulator of the tollway industry and an adjudicator of rate exactions disputes.

Additionally, petitioners also seek to nullify certain provisions of P.D. 1113 and P.D. 1894, which uniformly grant the President the power to approve the transfer or assignment of usufruct or the rights and privileges thereunder by the tollway operator to third parties, particularly the transfer effected by PNCC to MNTC. As argued, the authority to approve partakes of an exercise of legislative power under Article VI, Section 1 of the Constitution.[15]

In the meantime, or on April 8, 2010, the TRB issued a Certificate of Substantial Completion[16] with respect to PTR 1 (Alabang-Filinvest stretch) and PTR 2 (Alabang-Calamba segments) of SLEX, signifying the completion

of the full rehabilitation/expansion of both segments and the linkages/interchanges in between pursuant to the requirements of the corresponding STOA. TRB on even date issued a Toll Operation Permit in favor of MATES over said PTRs 1 and 2.[17] Accordingly, upon due application, the TRB approved the publication of the toll rate matrix for PTRs 1 and 2, the rate to take effect on June 30, 2010.[18] The implementation of the published rate would, however, be postponed to August 2010.

On July 5, 2010, petitioner Francisco filed a Supplemental Petition with prayer for the issuance of a temporary restraining order ("TRO") and/or status quo order focused on the impending collection of what was perceived to be toll rate increases in the SLEX. The assailed adjustments were made public in a TRB notice of toll rate increases for the SLEX from Alabang to Calamba on June 6, 2010, and were supposed to have been implemented on June 30, 2010. On August 13, 2010, the Court granted the desired TRO, enjoining the respondents in the consolidated cases from implementing the toll rate increases in the SLEX.

In their Consolidated Comment/Opposition to the Supplemental Petition, respondents SLTC et al., aver that the disputed rates are actually initial and opening rates, not an increase or adjustment of the prevailing rate, for the new expanded and rehabilitated SLEX. In fine, the new toll rates are, per SLTC, for a new and upgraded facility, i.e. the aforementioned Project Toll Roads 1 and 2 put up pursuant to the 2006 Republic-PNCC-SLTC-MATES STOA adverted to.

G.R. No. 169917

While they raise, for the most part, the same issues articulated in G.R. No. 166910, such as the public bidding requirement, the power of the President to approve the assignment of PNCC's usufructuary rights to cover (as petitioners Imee R. Marcos, et al., would stress) even the assignment of the expressway from Balintawak to Tabang, the virtual amendment and extension of a statutory franchise by way of administrative action (e.g., the execution of a STOA or issuance of a TOC), petitioners in G.R. No. 169917 - some of them then and still are members of the House of Representatives - have, as their main focus, the North Luzon Tollway project and the agreements and devices entered in relation therewith.

Petitioners also assail the MNTC STOA on the ground that it granted the lenders (Asian Development Bank/World Bank) of MNTC, as project concessionaire, the unrestricted rights to appoint a substitute entity to replace MNTC in case of an MNTC Default before prepayment of the loans, while also granting said lenders, in appropriate cases, the option to extend the "concession or franchise" for a period not exceeding fifty years coinciding with the full payment of the loans.

G.R. No. 173630

Apart from those taken up in the other petitions for certiorari and prohibition, petitioners, in G.R. No. 173630, whose members and constituents allegedly traverse SLEX daily, aver that TRB ought to have applied the provisions of R.A. 6957 [BOT Law] and R.A. 9184 [Government Procurement Reform Act], which require public bidding for the prosecution of the SLEX project.

G.R. No. 183599

Civil Case - SCA No. 3138-PSG before the RTC

On September 14, 2007, the Young Professionals and Entrepreneurs of San Pedro, Laguna ("YPES"), one of the petitioners in G.R. No. 173630, filed before the RTC, Branch 155, in Pasig City, a special civil action for certiorari, etc., against the TRB, docketed as SCA No. 3138-PSG, containing practically identical issues raised in G.R. No. 173630. Like its petition in G.R. No. 173630, YPES, before the RTC, assailed and sought to nullify the

April 27, 2007 TOC, which TRB issued to PNCC inasmuch as the TOC worked to extend PNCC's tollway operation franchise for the SLEX. As YPES argued, only the Congress can extend the term of PNCC's franchise which expired on May 1, 2007.

Ruling of the RTC in SCA No. 3138-PSG

By Decision[19] dated June 23, 2008, the RTC, for the main stated reason that the authority to grant or renew franchises belongs only to Congress, granted YPES' petition, disposing as follows:

> ACCORDINGLY, the instant Petition for Certiorari, Prohibition and Mandamus is hereby GRANTED and the questioned Toll Operation Certificate (TOC) covering the [SLEX] issued by respondent TRB in April, 2007, is hereby ordered ANNULLED and SET ASIDE.
>
> FURTHER, respondent PNCC is hereby immediately PROHIBITED from collecting toll fess along the SLEX facilities as it no longer has the power and authority to do so.
>
> FINALLY, as mandated under Section 9 of PD No. 1113, respondent PNCC is hereby COMMANDED to turn over without further delay the physical assets and facilities of the SLEX including improvements thereon, together with the equipment and appurtenances directly related to their operations, without any cost, to the Government through the Toll Regulatory Board x x x.[20]

Thus, the instant petition for review on certiorari under Rule 45, filed by the TRB on pure questions of law, docketed as G.R. No. 183599.

In their separate comments, public and private respondents uniformly seek the dismissal of the three special civil actions on the threshold issue of the absence of a justiciable case and lack of locus standi on the part of the petitioners therein. Other grounds raised range from the impropriety of certiorari to nullify toll operation agreements; the inapplicability of the public bidding rules in the selection by PNCC of its JV partners and the authority of the President to approve TOAs and the transfer of usufructuary rights. PNCC argues, in esse, that its continuous toll operations did not constitute an extension of its franchise, its authority to operate after the expiry date thereof in May 2007 being based on the valid authority of TRB to issue TOC.

The Issues

The principal consolidated but interrelated issues tendered before the Court, most of which with constitutional undertones, may be reduced into six (6) and formulated in the following wise: first, whether or not an actual case or controversy exists and, relevantly, whether petitioners in the first three petitions have locus standi; second, whether the TRB is vested with the power and authority to grant what amounts to a franchise over tollway facilities; third, corollary to the second, whether the TRB can enter into TOAs and, at the same time, promulgate toll rates and rule on petitions for toll rate adjustments; fourth, whether the President is duly authorized to approve contracts, inclusive of assignment of contracts, entered into by the TRB relative to tollway operations; fifth, whether the subject STOAs covering the NLEX, SLEX and SMMS and their respective extensions, linkages, etc. are valid; sixth, whether a public bidding is required or mandatory for these tollway projects.

Expressly prayed, if not subsumed, in the first three petitions, is to prohibit TRB and its concessionaires from collecting toll fees along the Skyway and Luzon Tollways.

Preliminary Issues
Existence of an Actual Controversy, its Ripeness and
the Locus Standi to Sue

The power of judicial review can only be exercised in connection with a bona fide controversy involving a statute,

its implementation or a government action.[21] Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.[22] The limitation on the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.[23]

In The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), the Court has expounded anew on the concept of actual case or controversy and the requirement of ripeness for judicial review, thus:

> An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights x x x. The Court can decide the constitutionality of an act x x x only when a proper case between opposing parties is submitted for judicial determination.
>
> Related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. x x x [I]t is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[24]

But even with the presence of an actual case or controversy, the Court may refuse judicial review unless the constitutional question or the assailed illegal government act is brought before it by a party who possesses what in Latin is technically called locus standi or the standing to challenge it.[25] To have standing, one must establish that he has a "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[26] Particularly, he must show that (1) he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[27]

Petitions for certiorari and prohibition are, as here, appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials.[28] The present petitions allege that then President Ramos had exercised vis-à-vis an assignment of franchise, a function legislative in character. As alleged, too, the TRB, in the guise of entering into contracts or agreements with PNCC and other juridical entities, virtually enlarged, modified to the core and/or extended the statutory franchise of PNCC, thereby usurping a legislative prerogative. The usurpation came in the form of executing the assailed STOAs and the issuance of TOCs. Grave abuse of discretion is also laid on the doorstep of the TRB for its act of entering into these same contracts or agreements without the required public bidding mandated by law, specifically the BOT Law (R.A. 6957, as amended) and the Government Procurement Reform Act (R.A. 9184).

In fine, the certiorari petitions impute on then President Ramos and the TRB, the commission of acts that translate inter alia into usurpation of the congressional authority to grant franchises and violation of extant statutes. The petitions make a prima facie case for certiorari and prohibition; an actual case or controversy ripe for judicial review exists. Verily, when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In doing so, the judiciary merely defends the sanctity of its duties and powers under the Constitution.[29]

In any case, the rule on standing is a matter of procedural technicality, which may be relaxed when the subject in issue or the legal question to be resolved is of transcendental importance to the public.[30] Hence, even absent any direct injury to the suitor, the Court can relax the application of legal standing or altogether set it aside for

non-traditional plaintiffs, like ordinary citizens, when the public interest so requires.[31] There is no doubt that individual petitioners, Marcos, et al., in G.R. No. 169917, as then members of the House of Representatives, possess the requisite legal standing since they assail acts of the executive they perceive to injure the institution of Congress. On the other hand, petitioners Francisco, Hizon, and the other petitioning associations, as taxpayers and/or mere users of the tollways or representatives of such users, would ordinarily not be clothed with the requisite standing. While this is so, the Court is wont to presently relax the rule on locus standi owing primarily to the transcendental importance and the paramount public interest involved in the implementation of the laws on the Luzon tollways, a roadway complex used daily by hundreds of thousands of motorists. What we said a century ago in Severino v. Governor General is just as apropos today:

> When the relief is sought merely for the protection of private rights, x x x [the relator's] right must clearly appear. On the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.[32] (Words in bracket and emphasis added.)

Accordingly, We take cognizance of the present case on account of its transcendental importance to the public.

Second Issue: TRB Empowered to Grant Authority to Operate
Toll Facility /System

It is abundantly clear that Sections 3 (a) and (e) of P.D. 1112 in relation to Section 4 of P.D. 1894 have invested the TRB with sufficient power to grant a qualified person or entity with authority to construct, maintain, and operate a toll facility and to issue the corresponding toll operating permit or TOC.

> Sections 3 (a) and (e) of P.D. 1112 and Section 4 of P.D. 1894 amply provide the power to grant authority to operate toll facilities:
>
> Section 3. Powers and Duties of the Board. The Board shall have in addition to its general powers of administration the following powers and duties:
>
> (a) Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporations or associations qualified under the Constitution and authorized by law to engage in toll operations;
>
> x x x x
>
> (e) To grant authority to operate a toll facility and to issue therefore the necessary "Toll Operation Certificate" subject to such conditions as shall be imposed by the Board including inter alia the following:
>
> (1) That the Operator shall desist from collecting toll upon the expiration of the Toll Operation Certificate.
>
> (2) That the entire facility operated as a toll system including all operation and maintenance equipment directly related thereto shall be turned over to the government immediately upon the expiration of the Toll Operation Certificate.
>
> (3) That the toll operator shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the Toll Operation Certificate to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the President of the Philippines. In the event of any valid transfer of the Toll Operation

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> Certificate, the Transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extent as if the Toll Operation Certificate has been granted to the same person, firm, company, corporation or other commercial or legal entity.
>
> (4) That in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace and order, the President of the Philippines may cause the total or partial closing of the toll facility or order to take over thereof by the Government without prejudice to the payment of just compensation.
>
> (5) That no guarantee, Certificate of Indebtedness, collateral, securities, or bonds shall be issued by any government agency or government-owned or controlled corporation on any financing program of the toll operator in connection with his undertaking under the Toll Operation Certificate.
>
> (6) The Toll Operation Certificate may be amended, modified or revoked whenever the public interest so requires.
>
> (a) The Board shall promulgate rules and regulations governing the procedures for the grant of Toll Certificates. The rights and privileges of a grantee under a Toll Operation Certificate shall be defined by the Board.
>
> (b) To issue rules and regulations to carry out the purposes of this Decree.
>
> SECTION 4. The Toll Regulatory Board is hereby given jurisdiction and supervision over the GRANTEE with respect to the Expressways, the toll facilities necessarily appurtenant thereto and, subject to the provisions of Section 8 and 9 hereof, the toll that the GRANTEE will charge the users thereof.

By explicit provision of law, the TRB was given the power to grant administrative franchise for toll facility projects.

The concerned petitioners would argue, however, that PNCC's [then CDCP's] franchise, as toll operator, was granted via P.D. 1113, on the same day P.D. 1112, creating the TRB, was issued. It is thus pointed out that P.D. 1112 could not have plausibly granted the TRB with the power and jurisdiction to issue a similar franchise. Pushing the point, they maintain that only Congress has, under the 1987 Constitution, the exclusive prerogative to grant franchise to operate public utilities.

We are unable to agree with petitioners' stance and their undue reliance on Article XII, Section 11 of the Constitution, which states that:

> SEC. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires x x x.

The limiting thrust of the foregoing constitutional provision on the grant of franchise or other forms of authorization to operate public utilities may, in context, be stated as follows: (a) the grant shall be made only in favor of qualified Filipino citizens or corporations; (b) Congress can impair the obligation of franchises, as contracts; and (c) no such authorization shall be exclusive or exceed fifty years.

A franchise is basically a legislative grant of a special privilege to a person.[33] Particularly, the term, franchise, "includes not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchise has been delegated by Congress."[34] The power to authorize and control a public utility is admittedly a prerogative that stems from the Legislature. Any suggestion,

however, that only Congress has the authority to grant a public utility franchise is less than accurate. As stressed in Albano v. Reyes--a case decided under the aegis of the 1987 Constitution--there is nothing in the Constitution remotely indicating the necessity of a congressional franchise before "each and every public utility may operate," thus:

> That the Constitution provides x x x that the issuance of a franchise, certificate or other form of authorization for the operation of a public utility shall be subject to amendment, alteration or repeal by Congress does not necessarily imply x x x that only Congress has the power to grant such authorization. Our statute books are replete with laws granting specified agencies in the Executive Branch the power to issue such authorization for certain classes of public utilities.[35] (Emphasis ours.)

In such a case, therefore, a special franchise directly emanating from Congress is not necessary if the law already specifically authorizes an administrative body to grant a franchise or to award a contract.[36] This is the same view espoused by the Secretary of Justice in his opinion dated January 9, 2006, when he stated:

> That the administrative agencies may be vested with the authority to grant administrative franchises or concessions over the operation of public utilities under their respective jurisdiction and regulation, without need of the grant of a separate legislative franchise, has been upheld by the Supreme Court x x x.[37]

Under the 1987 Constitution, Congress has an explicit authority to grant a public utility franchise. However, it may validly delegate its legislative authority, under the power of subordinate legislation,[38] to issue franchises of certain public utilities to some administrative agencies. In Kilusang Mayo Uno Labor Center v. Garcia, Jr., We explained the reason for the validity of subordinate legislation, thus:

> Such delegation of legislative power to an administrative agency is permitted in order to adapt to the increasing complexity of modern life. As subjects for governmental regulation multiply, so does the difficulty of administering the laws. Hence, specialization even in legislation has become necessary.[39] (Emphasis ours.)

As aptly pointed out by the TRB and other private respondents, the Land Transportation Franchising and Regulatory Board ("LTFRB"), the Civil Aeronautics Board ("CAB"), the National Telecommunications Commission ("NTC"), and the Philippine Ports Authority ("PPA"), to name a few, have been such delegates. The TRB may very well be added to the growing list, having been statutorily endowed, as earlier indicated, the power to grant to qualified persons, authority to construct road projects and operate thereon toll facilities. Such grant, as evidenced by the corresponding TOC or set out in a TOA, "may be amended, modified, or revoked [by the TRB] whenever the public interest so requires."[40]

In Philippine Airlines, Inc. v. Civil Aeronautics Board,[41] the Court reiterated its holding in Albano that the CAB, like the PPA, has sufficient statutory powers under R.A. 776 to issue a Certificate of Public Convenience and Necessity, or Temporary Operating Permit to a domestic air transport operator who, although not possessing a legislative franchise, meets all the other requirements prescribed by law. We held therein that "there is nothing in the law nor in the Constitution which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator."[42] We further explicated:

> Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency towards the delegation of greater powers by the legislature, and towards the approval of the practice by the courts. It is generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, even the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative

franchise as though the grant had been made by an act of the Legislature.[43] (Emphasis ours.)

The validity of the delegation by Congress of its franchising prerogative is beyond cavil. So it was that in Tatad v. Secretary of the Department of Energy,[44] We again ruled that the delegation of legislative power to administrative agencies is valid. In the instant case, the certiorari petitioners assume and harp on the lack of authority of PNCC to continue with its NLEX, SLEX, MMEX operations, in joint venture with private investors, after the lapse of its P.D. 1113 franchise. None of these petitioners seemed to have taken due stock of and appreciated the valid delegation of the appropriate power to TRB under P.D. 1112, as enlarged in P.D. 1894. To be sure, a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature.[45] Consequently, it has been held that privileges conferred by grant by administrative agencies as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.[46]

While it may be, as held in Strategic Alliance Development Corporation v. Radstock Securities Limited,[47] that PNCC's P.D. 1113 franchise had already expired effective May 1, 2007, this fact of expiration did not, however, carry with it the cancellation of PNCC's authority and that of its JV partners granted under P.D. 1112 in relation to Section 1 of P.D. 1894 to construct, operate and maintain "any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the [NLEX]and/or [SLEX] as may be approved by the [TRB]. And to highlight the point, the succeeding Section 2 of P.D. 1894 specifically provides that the franchise for the extension and toll road projects constructed after the approval of P.D. 1894 shall be thirty years, counted from project completion. Indeed, prior to the expiration of PNCC's original franchise in May 2007, the TRB, in the exercise of its special powers under P.D. 1112, signed supplemental TOAs with PNCC and its JV partners. These STOAs covered the expansion and rehabilitation of NLEX and SLEX, as the case may be, and/or the construction, operation and maintenance of toll road projects contemplated in P.D.1894. And there can be no denying that the corresponding toll operation permits have been issued.

In fine, the STOAs[48] TRB entered with PNCC and its JV partners had the effect of granting authorities to construct, operate and maintain toll facilities, but with the injection of additional private sector investments consistent with the intent of P.D. Nos. 1112, 1113 and 1894.[49] The execution of these STOAs came in 1995, 1998 and 2006, or before the expiration of PNCC's original franchise on May 1, 2007. In accordance with applicable laws, these transactions have actually been authorized and approved by the President of the Philippines.[50] And as a measure to ensure the legality of the said transactions and in line with due diligence requirements, a review thereof was secured from the GCC and the DOJ, prior to their execution.

Inasmuch as its charter empowered the TRB to authorize the PNCC and like entities to maintain and operate toll facilities, it may be stated as a corollary that the TRB, subject to certain qualifications, infra, can alter the conditions of such authorization. Well settled is the rule that a legislative franchise cannot be modified or amended by an administrative body with general delegated powers to grant authorities or franchises. However, in the instant case, the law granting a direct franchise to PNCC[51] evidently and specifically conferred upon the TRB the power to impose conditions in an appropriate contract.[52] And to reiterate, Section 3 of P.D. 1113 provides that "[t]his [PNCC] franchise is granted subject to such conditions as may be imposed by the [TRB] in an appropriate contract to be executed for this purpose, and with the understanding and upon the condition that it shall be subject to amendment, alteration or repeal when public interest so requires."[53] A similarly worded proviso is found in Section 6 of P.D. 1894. It is in this light that the TRB entered into the subject STOAs in order

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to allow the infusion of additional investments in the subject infrastructure projects. Prior to the expiration of PNCC's franchise on May 1, 2007, the STOAs merely imposed additional conditionalities, or as aptly pointed out by SLTC et al., obviously having in mind par. 16.06 of its STOA with TRB,[54] served as supplement, to the existing TOA of PNCC with TRB. We have carefully gone over the different STOAs and discovered that the tollway projects covered thereby were all undertaken under the P.D. 1113 franchise of PNCC. And it cannot be over-emphasized that the respective STOAs of MNTC and SLTC each contain provisions addressing the eventual expiration of PNCC's P.D. 1113 franchise and authorizing, thru the issuance by the TRB of a TOC, the implementation of a given toll project even after May 1, 2007. Thus:

> MNTC STOA
>
> 2.6 CONCESSION PERIOD. In order to sustain the financial viability and integrity of the Project, GRANTOR [TRB] hereby grants MNTC the CONCESSION for the PROJECT ROADS for a period commencing upon the date that this [STOA] comes into effect under Clause 4.1 until 31 December 2030 or thirty years after the issuance of the corresponding TOLL OPERATION PERMIT for the last completed phase.... Accordingly, unless the PNCC FRANCHISE is further extended beyond its expiry on 01 May 2007, GRANTOR undertakes to issue the necessary [TOC] for the rehabilitated and refurbished [NLEX] six months prior to the expiry of the PNCC FRANCHISE on 01 May 2007....
>
> SLTC STOA
>
> 2.03 Authority of Investor and Operator to Undertake the Project
>
> (1)
>
> The GRANTOR [TRB] has determined that the Project Toll Roads are within the existing SLEX and are thus covered by the PNCC Franchise that is due to expire on May 1, 2007. PNCC has committed to exert its best efforts to obtain an extension x x x It is understood and agreed that in the event the PNCC Franchise is not renewed beyond the said expiry date, this [STOA] and the Concession granted x x x will stand in place of the PNCC Franchise and serve as a new concession, or authority, pursuant to Section 3 (a) of the TRB Charter, for the Investor to undertake the Project and for the Operator to Operate and Maintain the Project Toll Roads immediately upon the expiration of the PNCC Franchise, without need of the execution x x x of any other document to effect the same.
>
> (2)
>
> x x x in the event it is subsequently decreed by competent authority that the issuance by the Grantor of a [TOC] is necessary x x x the Grantor shall x x x cause the TRB x x x to issue such [TOC] in favor of the Operator, embodying the terms and conditions of this Agreement.

The foregoing notwithstanding, there are to be sure certain aspects in PNCC's legislative franchise beyond the altering reach of TRB. We refer to the coverage area of the tollways and the expiry date of PNCC's original franchise, which is May 1, 2007, as expressly stated under Sections 1 and 2 of P.D. 1894, respectively. The fact that these two items were specifically and expressly defined by law, i.e. P.D. 1113, indicates an intention that any alteration, modification or repeal thereof should only be done through the same medium. We said as much in Radstock, thus: "[T]he term of the x x x franchise, `which is 30 years from 1 May 1977, shall remain the same,' as expressly provided in the first sentence of x x x Section 2 of P.D. 1894."[55] It is likewise worth noting what We further held in that case:

> The TRB does not have the power to give back to PNCC the toll assets and facilities which were automatically turned over to the Government, by operation of law, upon the expiration of the franchise of the PNCC on 1 May 2007. Whatever power the TRB may have to grant authority to operate a toll facility or to issue a

> "[TOC]," such power does not obviously include the authority to transfer back to PNCC ownership of National Government assets, like the toll assets and facilities, which have become National Government property upon the expiry of PNCC's franchise x x x.[56] (Emphasis in the original.)

Verily, upon the expiration of PNCC's legislative franchise on May 1, 2007, the new authorities to construct, maintain and operate the subject tollways and toll facilities granted by the TRB pursuant to the validly executed STOAs and TOCs, shall begin to operate and be treated as administrative franchises or authorities. Pursuant to Section 3 (e) P.D. 1112, TRB possesses the power and duty, inter alia to:

> x x x grant authority to operate a toll facility and to issue therefore the necessary "Toll Operation Certificate" subject to such conditions as shall be imposed by the [TRB] including inter alia x x x.

This is likewise consistent with the position of the Secretary of Justice in Opinion No. 122 on November 24, 1995,[57] thus:

> TRB has no authority to extend the legislative franchise of PNCC over the existing NSLE (North and South Luzon Expressways). However, TRB is not precluded under Section 3 (e) of P.D. No. 1112 (TRB Charter) to grant PNCC and its joint venture partner the authority to operate the existing toll facility of the NSLE and to issue therefore the necessary "Toll Operation Certificate x x x.
>
> It should be noted that the existing franchise of PNCC over the NSLE, which will expire on May 1, 2007, gives it the "right, privilege and authority to construct, maintain and operate" the NSLE. The Toll Operation Certificate which TRB may issue to the PNCC and its joint venture partner after the expiration of its franchise on May 1, 2007 is an entirely new authorization, this time for the operation and maintenance of the NSLE x x x. In other words, the right of PNCC and its joint venture partner, after May 7, 2007 [sic] to operate and maintain the existing NSLE will no longer be founded on its legislative franchise which is not thereby extended, but on the new authorization to be granted by the TRB pursuant to Section 3 (e), above quoted, of P.D. No. 1112. (Emphasis ours.)

The same opinion was thereafter made by the Secretary of Justice on January 9, 2006, in Opinion No. 1,[58] stating that:

> The existing franchise of PNCC over the NSLE, which will expire on May 1, 2007, gives it the "right, privilege and authority to construct, maintain and operate the NSLE." The Toll Operation Certificate which the TRB may issue to the PNCC and its joint venture partner after the expiration of its franchise on May 1, 2007 is an entirely new authorization, this time for the operation and maintenance of the NSLE.... [T]he right of PNCC and its joint venture partner, after May 1, 2007, to operate and maintain the existing NSLE will no longer be founded on its legislative franchise which is not thereby extended, but on the new authorization to be granted by the TRB pursuant to Section 3 (e) of PD No. 1112.
>
> It appears therefore, that the effect of the STOA is not to extend the Franchise of PNCC, but rather, to grant a new Concession over the SLEX Project and the OMCo., entities which are separate and distinct from PNCC. While initially, the authority of SLTC and OMCo. to enter into the STOA with the TRB and thereby become grantees of the Concession, will stem from and be based on the JVA and the assignment by PNCC to the OMCo. of the Usufruct in the Franchise, we submit that upon the execution by SLTC and the TRB of the STOA, the right to the Concession will emanate from the STOA itself and from the authority of the TRB under Section 3 (a) of the TRB Charter. Such being the case, the expiration of the Franchise on 1 May 2007, since such Concession is an entirely new and distinct concession from the Franchise and is, as stated, granted to entities other than PNCC.
>
> Finally, with regards (sic) the authority of the TRB this Office in Secretary of Justice Opinion No. 92, s. 2000, stated that:

> "Suffice it to say that official acts of the President enjoy full faith and confidence of the Government of the Republic of the Philippines which he represents. Furthermore, considering that the queries raised herein relates to the exercise by the TRB of its regulatory powers over toll road project, the same falls squarely within the exclusive jurisdiction of TRB pursuant to P.D. No. 1112. Consequently, it is, therefore, solely within TRB's prerogative and determination as to what rule shall govern and is made applicable to a specific toll road project proposal."
>
> The STOA is an explicit grant of the Concession by the Republic of the Philippines, through the TRB pursuant to P.D. (No.) 1112 and as approved by the President xxx. The foregoing grant is in full accord with the provisions of P.D. (No.) 1112 which authorizes TRB to enter into contracts on behalf of the Republic of the Philippines for the construction, operation and maintenance of toll facilities. Such being the case, we opine that no other legal requirement is necessary to make the STOA effective of to confirm MNTC's (In this case, SLTC and the OMCO) rights and privileges granted therein." (Emphasis in the original.)

Considering, however, that all toll assets and facilities pertaining to PNCC pursuant to its P.D. 1113 franchise are deemed to have already been turned over to the National Government on May 1, 2007,[59] whatever participation that PNCC may have in the new authorities to construct, maintain and operate the subject tollways, shall be limited to doing the same in trust for the National Government. In Radstock, the Court held that "[w]ith the expiration of PNCC's franchise, [its] assets and facilities ... were automatically turned over, by operation of law, to the government at no cost."[60] The Court went on further to state that the Government's ownership of PNCC's toll assets inevitably resulted in its owning too of the toll fees and the net income derived, after May 1, 2007, from the toll assets and facilities.[61] But as We have earlier discussed, the tollways and toll facilities should remain functioning in accordance with the validly executed STOAs and TOCs. However, PNCC's assets and facilities, or, in short, its very share/participation in the JVAs and the STOAs, inclusive of its percentage share in the toll fees collected by the JV companies currently operating the tollways shall likewise automatically accrue to the Government.

In fine, petitioners' claim about PNCC's franchise being amenable to an amendment only by an act of Congress, or, what practically amounts to the same thing, that the TRB is without authority at all to modify the terms and conditions of PNCC's franchise, i.e. by amending its TOA/TOC, has to be rejected. Their lament then that the TRB, through the instrumentality of mere contracts and an administrative operating certificate, or STOAs and TOC, to be precise, effectively, but invalidly amended PNCC legislative franchise, are untenable. For, the bottom line is, the TRB has, through the interplay of the pertinent provisions of P.D. Nos. 1112, 1113 and 1894, the power to grant the authority to construct and operate toll road projects and toll facilities by way of a TOA and the corresponding TOC. What is otherwise a legislative power to grant or renew a franchise is not usurped by the issuance by the TRB of a TOC. But to emphasize, the case of the TRB is quite peculiarly unique as the special law conferring the legislative franchise likewise vested the TRB with the power to impose conditions on the franchise, albeit in a limited sense, by excluding from the investiture the power to amend or modify the stated lifetime of the franchise, its coverage and the ownership arrangement of the toll assets following the expiration of the legislative franchise.[62]

At this juncture, the Court wishes to express the observation that P.D. Nos. 1112, 1113 and 1894, as couched and considered as a package, very well endowed the TRB with extraordinary powers. For, subject to well-defined limitations and approval requirements, the TRB can, by way of STOAs, allow and authorize, as it has allowed and authorized, a legislative franchisee, PNCC, to share its concession with another entity or JV partners, the authorization effectively covering periods beyond May 2007. However, this unpalatable reality, a leftover of the martial law regime, presents issues on the merits and the wisdom of the economic programs, which properly belong to the legislature or the executive to address. The TRB is not precluded from granting PNCC and its joint

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venture partners authority, through a TOC for a period following the term of the proposed SMMS, with the said TOC serving as an entirely new authorization upon the expiration of PNCC's franchise on May 1, 2007. In short, after May 1, 2007, the operation and maintenance of the NLEX and the other subject tollways will no longer be founded on P.D. 1113 or portions of P.D. 1894 (PNCC's original franchise) but on an entirely new authorization, i.e. a TOC, granted by the TRB pursuant to its statutory authority under Sections 3 (a) and (e) of P.D. 1112.

Likewise needing no extended belaboring, in the light of the foregoing dispositions, is the untenable holding of the RTC in SCA No. 3138-PSG that the TRB is without power to issue a TOC to PNCC, amend or renew its authority over the SLEX tollways without separate legislative enactment. And lest it be overlooked, the TRB may validly issue an entirely new authorization to a JV company after the lapse of PNCC's franchise under P.D. 1113. Its thirty-year concession under P.D. 1894, however, does not have the quality of definiteness as to its start, as by the terms of the issuance, it commences and is to be counted "from the date of approval of the project," the term project obviously referring to "Metro Manila Expressways and all extensions, linkages, stretches and diversions refurbishing and rehabilitation of the existing NLEX and SLEX constructed after the approval of the decree in December 1983." The suggestion, therefore, of the petitioners in G.R. No. 169917, citing a 1989 Court of Appeals ("CA") decision in CA-G.R. 13235 (Republic v. Guerrero, et al.), that the Balintawak to Tabang portion of the expressway no longer forms part of PNCC's franchise and, therefore, PNCC is without any right to assign the same to MNTC via a JVA, is specious. Firstly, in its Decision[63] in G.R. No. 89557, a certiorari proceeding commenced by PNCC to nullify the CA decision adverted to, the Court approved a compromise agreement, which referred to (1) the PNCC's authority to collect toll and maintenance fees; and (2) the supervision, approval and control by the DPWH[64] of the construction of additional facilities, on the questioned portion of the NLEX.[65] And still in another Decision,[66] the Court ruled that the Balintawak to Tabang stretch was recognized as "part of the franchise of, or otherwise restored as toll facilities to be operated by x x x PNCC."[67] Once stamped with judicial imprimatur, and unless amended, modified or revoked by the parties, a compromise agreement becomes more than a mere binding contract; as thus sanctioned, the agreement constitutes the court's determination of the controversy, enjoining the parties to faithfully comply thereto.[68] Verily, like any other judgment, it has the effect and authority of res judicata.[69]

At any rate, the PNCC was likewise granted temporary or interim authority by the TRB to operate the SLEX,[70] to ensure the continued development, operations and progress of the projects. We have ruled in Oroport Cargohandling Services, Inc. v. Phividec Industrial Authority that an administrative agency vested by law with the power to grant franchises or authority to operate can validly grant the same in the interim when it is necessary, temporary and beneficial to the public.[71] The grant by the TRB to PNCC as interim operator of the SLEX was certainly intended to guarantee the continued operation of the said tollway facility, and to ensure the want of any delay and inconvenience to the motoring public.

All given, the cited CA holding is not a binding precedent. The time limitation on PNCC's franchise under either P.D. 1113 or P.D. 1894 does not detract from or diminish the TRB's delegated authority under P.D. 1112 to enter into separate toll concessions apart and distinct from PNCC's original legislative franchise.

THIRD ISSUE: TRB'S POWER TO ENTER INTO CONTRACTS; ISSUE,
MODIFY AND PROMULGATE TOLL RATES; AND TO RULE ON PETITIONS
RELATIVE TO TOLL RATES LEVEL AND INCREASES VALID

The petitioners in the special civil actions cases would have the Court declare as invalid (a) Section 3 (a) and (d) of P.D. 1112 (which accord the TRB, on one hand, the power to enter into contracts for the construction, and operation of toll facilities, while, on the other hand, granting it the power to issue and promulgate toll rates) and (b) Section 8 (b) of P.D. 1894 (granting TRB adjudicatory jurisdiction over matters involving toll rate

movements). As submitted, granting the TRB the power to award toll contracts is inconsistent with its quasi-judicial function of adjudicating petitions for initial toll and periodic toll rate adjustments. There cannot, so petitioners would postulate, be impartiality in such a situation.

The assailed provisions of P.D. 1112 and P.D. 1894 read:

> P.D. 1112
>
> Section 3. Powers and Duties of the Board. The Board shall have in addition to its general powers of administration the following powers and duties:
>
> (a) Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporations or associations qualified under the Constitution and authorized by law to engage in toll operations;
>
> (d) Issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof. Decisions of the Board on petitions for the increase of toll rate shall be appealable to the Office of the President within ten (10) days from the promulgation thereof. Such appeal shall not suspend the imposition of the new rates, provided however, that pending the resolution of the appeal, the petitioner for increased rates in such case shall deposit in a trust fund such amounts as may be necessary to reimburse toll payers affected in case a reversal of the decision. (Emphasis ours.)
>
> P.D. 1894
>
> SECTION 8. x x x
>
> (b) For the Metro Manila Expressway and such extensions, linkages, stretches and diversions of the Expressways which may henceforth be constructed, maintained and operated by the GRANTEE, the GRANTEE shall collect toll at such rates as shall initially be approved by the Toll Regulatory Board. The Toll Regulatory Board shall have the authority to approve such initial toll rates without the necessity of any notice and hearing, except as provided in the immediately succeeding paragraph of this Section. For such purpose, the GRANTEE shall submit for the approval of the Toll Regulatory Board the toll proposed to be charged the users. After approval of the toll rate(s) by the Toll Regulatory Board and publication thereof by the GRANTEE once in a newspaper of general circulation, the toll shall immediately be enforceable and collectible upon opening of the expressway to traffic use.
>
> Any interested Expressways users shall have the right to file, within a period of ninety (90) days after the date of publication of the initial toll rate, a petition with the Toll Regulatory Board for a review of the initial toll rate; provided, however, that the filing of such petition and the pendency of the resolution thereof shall not suspend the enforceability and collection of the toll in question. The Toll Regulatory Board, at a public hearing called for the purpose after due notice, shall then conduct a review of the initial toll shall be appealable (sic) to the Office of the President within ten (10) days from the promulgation thereof. The GRANTEE may be required to post a bond in such amount and from such surety or sureties and under such terms and conditions as the Toll Regulatory Board shall fix in case of any petition for review of, or appeal from, decisions of the Toll Regulatory Board.
>
> In case it is finally determined, after a review by the Toll Regulatory Board or appeal therefrom, that the GRANTEE is not entitled, in whole or in part, to the initial toll, the GRANTEE shall deposit in the escrow account the amount collected under the approved initial toll fee and such amount shall be refunded to Expressways users who had paid said toll in accordance with the procedure as may be prescribed or

promulgated by the Toll Regulatory Board. (Emphasis ours.)

The petitioners are indulging in gratuitous, if not unfair, conclusion as to the capacity of the TRB to act as a fair and objective tribunal on matters of toll fee fixing.

Administrative bodies have expertise in specific matters within the purview of their respective jurisdictions. Accordingly, the law concedes to them the power to promulgate implementing rules and regulations ("IRR") to carry out declared statutory policies - provided that the IRR conforms to the terms and standards prescribed by that statute.[72]

The Court does not perceive an irreconcilable clash in the enumerated TRB's statutory powers, such that the exercise of one negates another. The ascription of impartiality on the part of the TRB cannot, under the premises, be accorded cogency. Petitioners have not shown that the TRB lacks the expertise, competence and capacity to implement its mandate of balancing the interests of the toll-paying motoring public and the imperative of allowing the concessionaires to recoup their investment with reasonable profits. As it were, Section 9 of P.D. 1894 provides a parametric formula for adjustment of toll rates that takes into account the Peso-US Dollar exchange rate, interest rate and construction materials price index, among other verifiable and quantifiable variables.

While not determinative of the issue immediately at hand, the grant to and the exercise by an administrative agency of regulating and allowing the operation of public utilities and, at the same time, fixing the fees that they may charge their customers is now commonplace. It must be presumed that the Congress, in creating said agencies and clothing them with both adjudicative powers and contract-making prerogatives, must have carefully studied such dual authority and found the same not breaching any constitutional principle or concept.[73] So must it be for P.D. Nos. 1112 and 1894.

The Court can take judicial cognizance of the exercise by the LTFRB and NTC - both spin-off agencies of the now defunct Public Service Commission - of similar concurrent powers. The LTFRB, under Executive Order No. ("E.O.") 202,[74] series of 1987, is empowered,[75] among others, to regulate the operation of public utilities or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC"); and to fix rates or fares, to approve petitions for fare rate increases and to resolve oppositions to such petitions.

The NTC, on the other hand, has been granted similar powers of granting franchises, allocating areas of operations, rate-fixing and to rule on petitions for rate increases under E.O. 546,[76] s. of 1979.

The Energy Regulatory Commission ("ERC") likewise enjoys on the one hand, the power (a) to grant, modify or revoke an authority to operate facilities used in the generation of electricity, and on the other, (b) to determine, fix and approve rates and tariffs of transmission, and distribution retail wheeling charges and tariffs of franchise electric utilities and all electric power rates including that which is charged to end-users.[77] In Chamber of Real Estate and Builders' Association, Inc. v. ERC, We even categorically stated that the ERC is a "quasi-judicial and quasi-legislative regulatory body created under Section 38 of the EPIRA, [and] x x x an administrative agency vested with broad regulatory and monitoring functions over the Philippine electric industry to ensure its successful restructuring and modernization x x x."[78]

To summarize, the fact that an administrative agency is exercising its administrative or executive functions (such as the granting of franchises or awarding of contracts) and at the same time exercising its quasi-legislative (e.g. rule-making) and/or quasi-judicial functions (e.g. rate-fixing), does not support a finding of a violation of due process or the Constitution. In C.T. Torres Enterprises, Inc. v. Hibionada,[79] We explained the rationale, thus:

> It is by now commonplace learning that many administrative agencies exercise and perform adjudicatory powers and functions, though to a limited extent only. Limited delegation of judicial or quasi-judicial authority

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> to administrative agencies (e.g. the Securities and Exchange Commission and the National Labor Relations Commission) is well recognized in our jurisdiction, basically because the need for special competence and experience has been recognized as essential in the resolution of questions of complex or specialized character and because of a companion recognition that the dockets of our regular courts have remained crowded and clogged.
>
> x x x x
>
> As a result of the growing complexity of the modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. Specialized in the particular fields assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unquestionably called the fourth department of the government.
>
> x x x x
>
> There is no question that a statute may vest exclusive original jurisdiction in an administrative agency over certain disputes and controversies falling within the agency's special expertise. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. (Emphasis ours.)

FOURTH ISSUE: PRESIDENT AMPLY VESTED WITH STATUTORY POWER TO APPROVE TRB CONTRACTS

Just like their parallel stance on the grant to TRB of the power to enter into toll agreements, e.g., TOAs or STOAs, the petitioners in the first three petitions would assert that the grant to the President of the power to peremptorily authorize the assignment by PNCC, as franchise holder, of its franchise or the usufruct in its franchise is unconstitutional. It is unconstitutional, so petitioners would claim, for being an encroachment of legislative power.

As earlier indicated, Section 3 (a) of P.D. 1112 requires approval by the President of any contract TRB may have entered into or effected for the construction and operation of toll facilities. Complementing Section 3 (a) is 3 (e) (3) of P.D. 1112 enjoining the transfer of the usufruct of PNCC's franchise without the President's prior approval. For perspective, Section 3 (e) (3) of P.D. 1112 provides:

> That the toll operator shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the [TOC] to any person x x x or legal entity nor merge with any other company or corporation organized for the same purpose without the prior approval of the President of the Philippines. In the event of any valid transfer of the TOC, the Transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree x x x.[80]

The President's approving authority is of statutory origin. To us, there is nothing illegal, let alone unconstitutional, with the delegation to the President of the authority to approve the assignment by PNCC of its rights and interest in its franchise, the assignment and delegation being circumscribed by restrictions in the delegating law itself. As the Court stressed in Kilosbayan v. Guingona, Jr.,[81] the rights and privileges conferred under a franchise may be assigned if authorized by a statute, subject to such restrictions as may be provided by law, such as the prior approval of the grantor or a government agency.[82]

There can, therefore, be no serious challenge to this presidential- approving prerogative. Should grave abuse of

discretion in some way infect the exercise of the prerogative, then the approval action may be nullified for that reason, but not on the ground that the underlying authority is constitutionally doubtful. If the TRB may validly be empowered to grant private entities the authority to operate toll facilities, would a delegation of a lesser authority to approve the grant to the head of the administrative machinery of the government be objectionable?

The fact that P.D. 1112 partakes of a martial law issuance does not per se provide an objectionable feature to the decree, albeit it may be argued with some plausibility that then President Marcos intended to have the final say as to who shall act as the toll operators of the Luzon expressways. Be that as it may, "all proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the former President (Ferdinand E. Marcos) are part of the law of the land, and shall remain valid, legal, binding, and effective, unless modified, revoked or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the President."[83] To emphasize, Padua v. Ranada cited Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, quoting that:

> The Court wryly observes that during the past dictatorship, every presidential issuance, by whatever name it was called, had the force and effect of law because it came from President Marcos. Such are the ways of despots. Hence, it is futile to argue ... that LOI 474 could not have repealed P.D. No. 27 because the former was only a letter of instruction. The important thing is that it was issued by President Marcos, whose word was law during that time.[84]

FIFTH ISSUE: ASSAILED STOAS VALIDLY ENTERED

This brings us to the issue of the validity of certain provisions of the STOAs and related agreements entered into by the TRB, as duly approved by the President.

Relying on Clause 17.4.1[85] of the MNTC STOA that the lenders have the unrestricted right to appoint a substitute entity in case of default of MNTC or of the occurrence of an event of default in respect of the loans, petitioners argue that since MNTC is the assignee or transferee of PNCC's franchise, then it steps into the shoes of PNCC. They contend that the act of replacing MNTC as grantee is tantamount to an amendment or alteration of the PNCC's original franchise and hence unconstitutional, considering that the constitutional power to appoint a new franchise holder is reserved to Congress.[86]

This contention is bereft of merit.

Petitioners' presupposition that only Congress has the power to directly grant franchises is misplaced. Time and again, We have held that administrative agencies may be empowered by the Legislature by means of a law to grant franchises or similar authorizations.[87] And this, We have sufficiently addressed in the present case.[88] To reiterate, We discussed in Albano that our statute books are replete with laws granting administrative agencies the power to issue authorizations.[89] This delegation of legislative power to administrative agencies is allowed "in order to adapt to the increasing complexity of modern life."[90] Consequently, We have held that the "privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature."[91]

In this case, the TRB's charter itself, or Section 3 (e) of P.D. 1112, specifically empowers it to "grant authority to operate a toll facility and to issue therefore the necessary `Toll Operation Certificate' subject to such conditions as shall be imposed by the [TRB]x x x."[92] Section 3 (a) of the same law permits the TRB to enter into contracts for the construction, operation and maintenance of toll facilities. Clearly, there is no question that the TRB is vested by the Legislature, through P.D. 1112, with the power not only to grant an authority to operate a toll facility, but also to enter into contracts for the construction, operation and maintenance thereof.

Petitioners also contend that substituting MNTC as the grantee in case of its default with respect to its loans is tantamount to an amendment of PNCC's original franchise and is hence, unconstitutional. We also find this assertion to be without merit. Besides holding that the Legislature may properly empower administrative agencies to grant franchises pursuant to a law, We have also earlier explained in this case that P.D. 1113 and the amendatory P.D. 1894 both vested the TRB with the power to impose conditions on PNCC's franchise in an appropriate contract and may therefore amend or alter the same when public interest so requires;[93] save for the conditions stated in Sections 1 and 2 of P.D. 1894, which relates to the coverage area of the tollways and the expiration of PNCC's original franchise.[94] P.D. 1112 provided further that the TRB has the power to amend or modify a Toll Operation Certificate that it issued when public interest so requires.[95] Accordingly, to Our mind, there is nothing infirm much less questionable about the provision in the STOA, allowing the substitution of MNTC in case it defaults in its loans.

Furthermore, in the subject provision (Clause 17.4.1[96]), the "unrestricted right" of the lender to appoint a substituted entity is never intended to afford such lender a plenary power to do so. The subject clause states:

> 17.4.1 The PARTIES acknowledge that following a Notice of Substitution under clauses 17.2 or 17.3 the LENDERS have, subject to the provisions of Clause 17.4.3, the unrestricted right to appoint a SUBSTITUTED ENTITY in place of MNTC following the declaration of the occurrence of a MNTC DEFAULT prior to full repayment of the LOANS or of an event of default in respect of the LOANS. GRANTOR shall extend all reasonable assistance to the AGENT to put in place a SUBSTITUTED ENTITY. MNTC shall make available all necessary information to potential SUBSTITUTED ENTITY to enable such entity to evaluate the Project. (Emphasis ours.)

It is clear from the above-quoted provision that Clause 17.4.1 should always be construed and read in conjunction with Clauses 17.2, 17.3, 17.4.2, 17.4.3 and 20.12. Clauses 17.2 and 17.3 discuss the procedures that must be followed and undertaken in case of MNTC's default prior to the full repayment of the loans, and before the substitution under Clause 17.4.1 could take place. These clauses provide the following process:

> Prior to Full Repayment of the LOANS:
>
> 17.2 Upon occurrence of an MNTC DEFAULT under Clause 17.1(a) and (e) prior to full repayment of the LOANS, GRANTOR shall serve a written Notice of Default to MNTC with copy to the AGENT giving a reasonable period of time to cure the MNTC DEFAULT, such period being three (3) months from receipt of the notice or such longer period as may be approved by GRANTOR, taking due consideration of the nature of the default and of the repair works required. If MNTC fails to remedy such default during such three (3) month or [sic] curing period, GRANTOR may issue a Notice of Substitution on MNTC, copy furnished to the AGENT, which shall take effect upon the assumption and take over by the SUBSTITUTED ENTITY pursuant to the provisions of Clause 17.4 hereof; Provided, However, that prior to such assumption and take over by the SUBSTITUTED ENTITY, MNTC shall continue to operate and maintain the project roads and shall place in an escrow account the toll revenues, save such amounts as may be needed to primarily cover the operating costs and as may be owing and due to the lenders under the loans and, secondarily, to cover the PNCC Gross Toll Revenue Share, Provided, Further, that upon the assumption and take over by the SUBSTITUTED ENTITY, such assumption and take over shall have the effect of revoking the rights, privileges and obligations of MNTC under this AGREEMENT in favor of the SUBSTITUTED ENTITY and MNTC shall cease to be a PARTY to this AGREEMENT.
>
> 17.3 If prior to full repayment of the LOANS MNTC fails to remedy MNTC DEFAULT under Clause 17.1 (b) or an MNTC DEFAULT occurs under Clause 17.1 (c), (d) or (f) prior to full repayment of the LOANS, GRANTOR shall serve a Notice of Substitution on MNTC, copy furnished to the AGENT, as provided under Clause 17.4.[97] (Emphasis ours)

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It is apparent from the above-quoted provision that it is the TRB - representing the Republic of the Philippines as Grantor - which has control over the situation before Clause 17.4.1 could come into place. To stress, following the condition under Clause 17.4.1, it is only when Clauses 17.2 and 17.3 have been complied with that the entire Clause 17.4 could begin to materialize.

Clauses 17.4.2 and 17.4.3 also provide for certain parameters as to when a substituted entity could be considered acceptable, and enumerate the conditions that should be undertaken and complied with.[98] Particularly, the subject provisions state:

> 17.4.2 The SUBSTITUTED ENTITY shall be required to provide evidence to GRANTOR that at the time of substitution:
>
> (i) it is legally and validly nominated by the AGENT as MNTC's substitute to continue the implementation of the PROJECT.
>
> (ii) it is legally and validly constituted and has the capability to enter into such agreement as may be required to give effect to the substitution;
>
> 17.4.3 The AGENT shall have one (1) year to effect a substitution under Clause 17.4; Provided, However, that during this time the AGENT shall not take any action which may jeopardize the continuity of the service and shall take the necessary action to ensure its continuation. To effect such substitution, the AGENT shall notify its intention to GRANTOR and shall, at the same time, give all necessary information to GRANTOR. GRANTOR shall, within one (1) month following such notification, inform the AGENT of its acceptance of the substitution, if the conditions set forth in Clause 17.4.2 have been satisfied. The SUBSTITUTED ENTITY shall be permitted a reasonable period to cure any MNTC DEFAULT under Clause 17.1 (a), (b) or (e).

From the foregoing, it is clear that the lenders do not actually have an absolute or "unrestricted" right to appoint the SUBSTITUTED ENTITY in view of TRB's right to accept or reject the substitution within one (1) month from notice and such right to appoint comes into force only if and when the TRB decides to effectuate the substitution of MNTC as allowed in Clause 17.2 of the MNTC STOA.

At the same time, Clause 17.4.4 particularizes the conditions upon which the substitution shall become effective, to wit:

> 17.4.4 The Substitution shall be effective upon:
>
> (a) the appointment of a SUBSTITUTED ENTITY in accordance with the provisions of this Clause 17.4; and,
>
> (b) assumption by the SUBSTITUTED ENTITY of all of the rights and obligations of MNTC under this AGREEMENT, including the payment of PNCC's Gross Toll Revenue Share under the JOINT VENTURE AGREEMENT dated 29 August 1995 and all other agreements in connection with this agreement signed and executed by and between PNCC and MNTC.

The afore-quoted Section (a) of Clause 17.4.4 reiterates the necessity of compliance by the substituted entity with all the conditions provided under Clause 17.4. Furthermore, following the above-quoted conditions veritably protects the interests of the Government. As previously discussed supra, PNCC's assets with respect to its legislative franchise under P.D. 1113, as amended, has already been automatically turned over to the Government. And whatever share PNCC has in relation to the currently implemented administrative authority granted by the TRB is merely being held in trust by it in favor of the Government. Accordingly, the fact that Section "b" of Clause 17.4.4 ensures that the obligation to pay PNCC's Gross Toll Revenue Share is assumed by the substituted entity, necessarily means that the Government's Gross Toll Revenue Share is safeguarded and kept intact.

The MNTC STOA also states that only in case no substituted entity is established in accordance with Clause 17.4

that Clause 17.5 shall be applied. Clause 17.5 grants the lenders the power to extend the concession in case the Grantor (Republic of the Philippines) takes over the same, for a period not exceeding fifty years, until full payment of the loans.[99] Petitioners contend that the option to extend the concession for that stated period is, however, unconstitutional.

This assertion is impressed with merit. At the outset, Clause 17.5 does not actually grant the lenders of the defaulting concessionaire, the power to unilaterally extend the concession for a period not exceeding fifty years. For reference, the pertinent provision states:

> 17.5 Only if no SUBSTITUTE ENTITY is established ... shall the GRANTOR [TRB] be entitled to take-over the CONCESSION with no commitment on the LOANS in which case the OPERATION AND MAINTENANCE CONTRACT shall be assigned to any entity that the AGENT[100] may designate provided such entity has a sufficient legal and technical capacity to perform and assume the obligations of the OPERATION AND MAINTENANCE CONTRACT under this AGREEMENT. The LENDERS shall receive all TOLL, excepting PNCC's revenue share provided for under the JOINT INVESTMENT PROPOSAL (vide: Annex "C" hereof), for as long as required until full repayment of the LOANS including if necessary an extension of the CONCESSION PERIOD which in no case shall exceed fifty (50) years; Provided that the LENDERS support all amounts payable under the OPERATION AND MAINTENANCE CONTRACT. For avoidance of doubt, the GRANTOR will have no obligation in relation to liabilities incurred by MNTC prior to such take-over.[101] (Emphasis supplied)

The afore-quoted provision should be read in conjunction with Clause 20.12, which expressly provides that the MNTC STOA is "made under and shall be governed by and construed in accordance with" the laws of the Philippines, and particularly, by the provisions of P.D. Nos. 1112, 1113 and 1894. Under the applicable laws, the TRB may very well amend, modify, alter or revoke the authority/franchise "whenever the public interest so requires."[102] In a word, the power to determine whether or not to continue or extend the authority granted to a concessionaire to operate and maintain a tollway is vested to the TRB by the applicable laws. The necessity of whether or not to extend the concession or the authority to construct, operate and maintain a tollway rests, by operation of law, with the TRB. As such, the lenders cannot unilaterally extend the concession period, or, with like effect, impose upon or demand that the TRB agree to extend such concession.

Be that as it may, it must be noted, however, that while the TRB is vested by law with the power to extend the administrative franchise or authority that it granted, nevertheless, it cannot do so for an accumulated period exceeding fifty years. Otherwise, it would violate the proscription under Article XII, Section 11 of the 1987 Constitution, which states that:[103]

> Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or associations must be citizens of the Philippines. (Emphasis Ours)

In this case, the MNTC STOA already has an original stipulated period of thirty years.[104] Clause 17.5 allows the extension of this period if necessary to fully repay the loans made by MNTC to the lenders, thus:

> x x x The LENDERS shall receive all TOLL, excepting PNCC's revenue share provided for under the JOINT INVESTMENT PROPOSAL (vide: Annex "C" hereof), for as long as required until full repayment of the

> LOANS including if necessary an extension of the CONCESSION PERIOD which in no case shall exceed a maximum period of fifty (50) years; x x x (Emphasis ours.)

If the maximum extension as provided for in Clause 17.5, i.e. fifty years, shall be utilized, the accumulated concession period that would be granted in this case would effectively be eighty years. To Us, this is a clear violation of the fifty-year franchise threshold set by the Constitution. It is in this regard that we strike down the above-quoted clause, "including if necessary an extension of the CONCESSION PERIOD which in no case shall exceed a maximum period of fifty (50) years" in Clause 17.5 as void for being violative of the Constitution.[105] It must be made abundantly clear, however, that the nullity shall be limited to such extension beyond the 50-year constitutional limit.

All told, petitioners' allegations that the TRB acted with grave abuse of discretion and with gross disadvantage to the Government with respect to Clauses 17.4.1 and 17.5 of the MNTC STOA are unfounded and speculative.

Petitioners also allege that the MNTC STOA is grossly disadvantageous to the Government since under Clause 11.7 thereof, the Government, through the TRB, guarantees the viability of the financing program of a toll operator. Under Clause 11.7 of the MNTC STOA, the TRB agreed to pay monthly, the difference in the toll fees actually collected by MNTC and that which it could have realized under the STOA. The pertinent provisions states:

> 11.7 To insure the viability and integrity of the Project, the Parties recognize the necessity for adjustments of the AUTHORIZED TOLL RATE .... In the event that said adjustment are not effected as provided under this Agreement for reasons not attributable to MNTC, the GRANTOR [TRB] warrants and so undertakes to compensate, on a monthly basis, the resulting loss of revenue due to the difference between the AUTHORIZED TOLL RATE actually collected and the AUTHORIZED TOLL RATE which MNTC would have been able to collect had the ... adjustments been implemented. (Emphasis ours)

As set out in the preamble of P.D. 1112, the need to encourage the infusion of private capital in tollway projects is the underlying rationale behind the enactment of said decree. Owing to the scarce capital available to bankroll a huge capital-intensive project, such as the North Luzon Tollway project, it is well-nigh inevitable that the financing of these types of projects is sourced from private investors. Quite naturally, the investors expect the regularity of the cash flow. It is perhaps in this broad context that the obligation of the Grantor under Clause 11.7 of the MNTC STOA was included in the STOA. To Us, Clause 11.7 is not only grossly disadvantageous to the Government but a manifest violation of the Constitution.

Section 3 (e) (5) of P.D. 1112 explicitly states:

> [t]hat no guarantee, Certificate of Indebtedness, collateral securities, or bonds shall be issued by any government agency or government-owned or controlled corporation on any financing program of the toll operator in connection with his undertaking under the Toll Operation Certificate.

What the law seeks to prevent in this situation is the eventuality that the Government, through any of its agencies, could be obligated to pay or secure, whether directly or indirectly, the financing by the private investor of the project. In this case, under Clause 11.7 of the MNTC STOA, the Republic of the Philippines (through the TRB) guaranteed the security of the project against revenue losses that could result, in case the TRB, based on its determination of a just and reasonable toll fee, decides not to effect a toll fee adjustment under the STOA's periodic/interim adjustment formula. The OSG, in its Comment, admitted that "the amounts the government undertook to pay in case of Clause 11.7 violation ... is ... an undertaking to pay compensatory damage for something akin to a breach of contract."[106] As P.D. 1112 itself expressly prohibits the guarantee of a security in the financing of the toll operator pursuant to its tollway project, Clause 11.7 cannot be a valid stipulation in the

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STOA.

This is more so for being in violation of the Constitution. Article VI, Section 29 (1) of the Constitution mandates that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[107] We have held in Radstock that "government funds or property shall be spent or used solely for public purposes, as expressly mandated by Section 4 (2) of PD 1445 or the Government Auditing Code."[108] Particularly, We held in Radstock case that:

> [t]he power to appropriate money from the General Funds of the Government belongs exclusively to the Legislature. Any act in violation of this iron-clad rule is unconstitutional.
>
> Reinforcing this Constitutional mandate, Sections 84 and 85 of PD 1445 require that before a government agency can enter into a contract involving the expenditure of government funds, there must be an appropriation law for such expenditure, thus:
>
> Section 84. Disbursement of government funds.
>
> 1. Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.
>
> x x x x
>
> Section 85. Appropriation before entering into contract.
>
> No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
>
> x x x x

Section 86 of PD 1445, on the other hand, requires that the proper accounting official must certify that funds have been appropriated for the purpose. Section 87 of PD 1445 provides that any contract entered into contrary to the requirements of Sections 85 and 86 shall be void....[109] (Emphasis ours.)

In the instant case, the TRB, by warranting to compensate MNTC with the loss of revenue resulting from the non-implementation of the periodic and interim toll fee adjustments, violates the very constitutionally guaranteed power of the Legislature, to exclusively appropriate money for public purpose from the General Funds of the Government. The TRB veritably accorded unto itself the exclusive authority granted to Congress to appropriate money that comes from the General Funds, by making a warranty to compensate a revenue loss under Clause 11.7 of the MNTC STOA. There is not even a badge of indication that the aforementioned requisites under the Constitution and P.D. 1445 in respect of appropriation of money from the General Funds of the Government have been properly complied with. Worse, P.D. 1112 expressly prohibits the guarantee of security of the financing of a toll operator in connection with his undertaking under the Toll Operation Certificate. Accordingly, Clause 11.7 of the MNTC STOA, under which the TRB warrants and undertakes to compensate MNTC's loss of revenue resulting from the non-implementation of the periodic and interim toll fee adjustments, is illegal, unconstitutional and hence void.

Parenthetically, We also find a similar provision in the SLTC STOA under Clause 8.08 thereof, which states that:[110]

> (2) In the event the Authorized Toll Rate and adjustments thereto are not implemented or made effective in accordance with the provisions of this Agreement, for reasons not attributable to the fault of the Investor and/or the Operator, including the reversal by the TRB or by any competent court or authority of any such adjustment

> in the Authorized Toll Rate previously approved by the TRB, except where such reversal is by reason of a determination of the misapplication of the Authorized Toll Rates, the Grantor shall compensate the Operator, on a monthly basis and within thirty (30) days of submission by the Operator of a notice thereof, without interest, for the resulting loss of revenue computed as the difference between:
>
> (a) the actual traffic volume for the month in question multiplied by the Current Authorized Toll Rate as escalated and/or adjusted, that should be in effect; and
>
> (b) the Gross Toll Revenue for the month in question.
>
> (3) The obligation of the Grantor to compensate the Operator shall continue until the applicable Current Authorized Toll Rate is implemented.

Akin to what is contemplated in Clause 11.7 of the MNTC STOA, Clauses 8.08 (2) and (3) of the SLTC STOA, under which the TRB warrants or is obligated to compensate the Operator for its loss of revenue resulting from the non-implementation of the calculation/formula of authorized toll price and toll rate adjustments found in Clause 8 thereof, are illegal, unconstitutional and, hence, void. This ruling is consistent with the TRB's power to determine, without any influence or compulsion - direct or indirect - as to whether a change in the toll fee rates is warranted. We will discuss the same below.

Petitioners argue that the CITRA, SLTC and MNTC STOAs tie the hands of the TRB as it is bound by the stipulated periodic and interim toll rate adjustments provided therein. Petitioners contend that the SMMS (CITRA STOA), the SLTC and the MNTC STOA's provisions on initial toll rates and periodic/interim toll rate adjustments, by using a built-in automatic toll rate adjustment formula,[111] allegedly guaranteed fixed returns for the investors and negated the public hearing requirement.

This contention is erroneous. The requisite public hearings under Section 3 (d) of P.D. 1112 and Section 8 (b) of P.D. 1894 are not negated by the fixing of the initial toll rates and the periodic adjustments under the STOA.

Prefatorily, a clear distinction must be made between the statutory prescription on the fixing of initial toll rates, on the one hand, and of periodic/interim or subsequent toll rates, on the other. First, the hearing required under the said provisos refers to notice and hearing for the approval or denial of petitions for toll rate adjustments - or the subsequent toll rates, not to the fixing of initial toll rates. By express legal provision, the TRB is authorized to approve the initial toll rates without the necessity of a hearing. It is only when a challenge on the initial toll rates fixed ensues that public hearings are required. Section 8 of P.D. 1894 says so:

> x x x the GRANTEE shall collect toll at such rates as shall initially be approved by the [TRB]. The [TRB] shall have the authority to approve such initial toll rates without the necessity of any notice and hearing, except as provided in the immediately succeeding paragraph of this Section. For such purpose, the GRANTEE shall submit for the approval of the [TRB] the toll proposed to be charged the users. After approval of the toll rate(s) by the [TRB] and publication thereof by the GRANTEE once in a newspaper of general circulation, the toll shall immediately be enforceable and collectible upon opening of the expressway to traffic use.
>
> Any interested Expressways users shall have the right to file, within x x x (90) days after the date of publication of the initial toll rate, a petition with the [TRB] for a review of the initial toll rate; provided, however, that the filing of such petition and the pendency of the resolution thereof shall not suspend the enforceability and collection of the toll in question. The [TRB], at a public hearing called for the purpose ... shall then conduct a review of the initial toll (sic) shall be appealable to the [OP] within ten (10) days from the promulgation thereof. (Emphasis ours.)

Of the same tenor is Section 3 (d) of P.D. 1112 stating that the TRB has the power and duty to:

> [i]ssue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll

> facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof. Decisions of the [TRB] on petitions for the increase of toll rate shall be appealable to the [OP] within ten (10) days from the promulgation thereof. Such appeal shall not suspend the imposition of the new rates, provided however, that pending the resolution of the appeal, the petitioner for increased rates in such case shall deposit in a trust fund such amounts as may be necessary to reimburse toll payers affected in case a (sic) reversal of the decision.[112] (Emphasis Ours.)

Similarly in Padua v. Ranada, the fixing of provisional toll rates by the TRB without a public hearing was held to be valid, such procedure being expressly provided by law.[113] To be very clear, it is only the fixing of the initial and the provisional toll rates where a public hearing is not a vitiating requirement. Accordingly, subsequent toll rate adjustments are mandated by law to undergo both the requirements of public hearing and publication.

In Manila International Airport Authority ("MIAA") v. Blancaflor, the Court expounded on the necessity of a public hearing in rate fixing/increases scenario. There, the Court ruled that the MIAA, being an agency attached to the Department of Transportation and Communications ("DOTC"), is governed by Administrative Code of 1987,[114] Book VII, Section 9 of which specifically mandates the conduct of a public hearing.[115] Accordingly, the MIAA's resolutions, which increased the rates and charges for the use of its facilities without the required hearing, were struck down as void.[116] Similarly, as We do concede, the TRB, being likewise an agency attached to the DOTC,[117] is governed by the same Code and consequently requires public hearing in appropriate cases. It is, therefore, imperative that in implementing and imposing new, i.e. subsequent toll rates arrived at using the toll rate adjustment formula, the subject tollway operators and the TRB must necessarily comply not only with the requirement of publication but also with the equally important public hearing. Accordingly, any fixing of the toll rate, which did not or does not comply with the twin requirements of public hearing and publication, must therefore be struck down as void. In such case, the previously valid toll rate shall consequently apply, pending compliance with the twin requirements for the new toll rate.

In the instant consolidated cases, the fixing of the initial toll rates may have indeed come to pass without any public hearing.[118] Unfortunately for petitioners, and notwithstanding its presumptive validity, they did not assail the initial toll rates within the timeframe provided in P.D. 1112 and P.D. 1894.[119] Besides, as earlier explicated, the STOA provisions on periodic rate adjustments are not a bar to a public hearing as the formula set forth therein remains constant, serving only as a guide in the determination of the level of toll rates that may be allowed.

It is apropos to state at this juncture that, in determining the reasonableness of the subsequent toll rate increases, it behooves the TRB to seek out the Commission on Audit ("COA") for assistance in examining and auditing the financial books of the public utilities concerned. Section 22, Chapter 4, Subtitle B, Title 1, Book V of the Administrative Code of 1987 expressly authorizes the COA to examine the aforementioned documents in connection with the fixing of rates of every nature, including as in this case, the fixing of toll fees.[120] We have on certain occasions applied this provision. Manila Electric Company, Inc. v. Lualhati easily comes to mind where this Court tasked the Energy Regulatory Commission to seek the assistance of the COA in determining the reasonableness of the rate increases that MERALCO intended to implement.[121] We have consistently held that "the law is deemed written into every contract."[122] Being a provision of law, this authority of the COA under the Administrative Code should therefore be deemed written in the subject contracts i.e. the STOAs.

In this regard, during the examination and audit, the public utilities concerned are mandated to "produce all the reports, records, books of accounts and such other papers as may be required," and the COA is empowered to "examine under oath any official or employee of the said public utilit[ies]."[123] Any public utility unreasonably denying COA access to the aforementioned documents, unnecessarily obstructs the examination and audit and

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may be adjudged liable "of concealing any material information concerning its financial status, shall be subject to the penalties provided by law."[124] Finally, the TRB is further obliged to take the appropriate action on the COA Report with respect to its finding of reasonableness of the proposed rate increases.[125]

Furthermore, while the periodic, interim and other toll rate adjustment formulas are indicated in the STOAs,[126] it does not necessarily mean that the TRB should accept a rate adjustment predicated on the economic data, references or assumptions adopted by the toll operator. At the end of the day, the final figures should be those of the TRB based on its appreciation of the relevant rate-influencing data. In fine, the TRB should exercise its rate-fixing powers vested to it by law within the context of the agreed formula, but always having in mind that the rates should be just and reasonable. Conversely, it is very well within the power of the TRB under the law to approve the change in the current toll fees.[127] Section 3 (d) of P.D. 1112 grants the TRB the power to "[i]ssue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities." But the reasonableness of a possible increase in the fees must first be clearly and convincingly established by the petitioning entities, i.e. the toll operators. Otherwise, the same should not be granted by the approving authority concerned. In Philippine Communications Satellite Corporation v. Alcuaz,[128] the Court had the opportunity to explain what is meant by a just and reasonable fixing of rates, thus:

> Hence, the inherent power and authority of the State, or its authorized agent, to regulate the rates charged by public utilities should be subject always to the requirement that the rates so fixed shall be reasonable and just. A commission has no power to fix rates which are unreasonable or to regulate them arbitrarily. This basic requirement of reasonableness comprehends such rates which must not be so low as to be confiscatory, or too high as to be oppressive.
>
> What is a just and reasonable rate is not a question of formula but of sound business judgment based upon the evidence it is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment. In determining whether a rate is confiscatory, it is essential also to consider the given situation, requirements and opportunities of the utility. A method often employed in determining reasonableness is the fair return upon the value of the property to the public utility x x x. (Emphasis ours.)

If in case the TRB finds the change in the rates to be reasonable and therefore merited, the increase shall then be implemented after the formalities of public hearing and publication are complied with. In this case, it is clear that the change in the toll fees is immediately effective and implementable. This is notwithstanding that, in case of an increase in the toll fees, an appeal thereon is filed. The law is clear. Thus:

> x x x Decisions of the [TRB] on petitions for the increase of toll rate shall be appealable to the Office of the President within ten (10) days from the promulgation thereof. Such appeal shall not suspend the imposition of the new rates, provided however, that pending the resolution of the appeal, the petitioner for increased rates in such case shall deposit in a trust fund such amounts as may be necessary to reimburse toll payers affected in case a reversal of the decision.[129] (Emphasis ours.)

Besides the settled rule under Section 3 (d) of P.D. 1112 that the power to issue, modify and promulgate toll fees rests with the TRB, it must also be underscored that the periodic and the interim adjustments found in Clauses 11.4 to 11.6 of the MNTC STOA do not necessarily guarantee an increase in the toll fees. To stress, the formula is based on many variable factors that could mean either an increase or a decrease in the toll fees, depending, inter alia, on how well certain economies are doing; and on the projections and figures published by the Bangko Sentral ng Pilipinas ("BSP").[130] It is therefore arduous to contemplate a grossness in a disadvantage that could only possibly arise in case of a non-implementation of a change - particularly, an increase - in the toll rates.

Petitioners have not incidentally shown that it is the traveling public, the users of the expressways, who shouldered or will shoulder the completion of the projects by way of exorbitant fees payment, with the investors

ending up with a "killing" therefrom. This conclusion, for all its factual dimension, is too simplistic for acceptance. And it does not consider the reality that the Court is not a trier of facts. Neither does it take stock of the nature and function of toll roads and toll fees paid by motorists, as aptly elucidated in North Negros Sugar Co., Inc. v. Hidalgo,[131] thus:

> "Toll" is the price of the privilege to travel over that particular highway, and it is a quid pro quo. It rests on the principle that he who, receives the toll does or has done something as an equivalent to him who pays it. Every traveler has the right to use the turnpike as any other highway, but he must pay the toll.[132]
>
> A toll road is a public highway, differing from the ordinary public highways chiefly in this: that the cost of its construction in the first instance is borne by individuals, or by a corporation, having authority from the state to build it, and, further, in the right of the public to use the road after completion, subject only to the payment of toll.[133]
>
> Toll roads are in a limited sense public roads, and are highways for travel, but we do not regard them as public roads in a just sense, since there is in them a private proprietary right x x x.[134] (Emphasis ours.)

Parenthetically, our review of Section 7 of the SMMS STOA readily yields the information that the level of the initial toll rates hinges on a mix of factors. Tax holidays that may be granted and the tax treatment of dividends may be mentioned. On the other hand, the subsequent periodic adjustments are provided to address factors that usually weigh on the financial condition of any business endeavor, such as currency devaluation, inflation and the usual increases in maintenance and operational costs incorporated into the formula provided therefor. Even with the existence of an automatic toll rate adjustment formula, compliance by the TRB and the other respondents with the twin requirements of public hearing and publication is still mandatory. To reiterate, laws always occupy a plane higher than mere contract provisions. In case the minimum statutory requirements are stiffer than that of a contract, or when the contract does not expressly stipulate the minimum requirements of the law, then We rule that compliance with such minimum legal requirements should be done. To summarize, any toll fee increase should comply with the legal twin requirements of publication and public hearing, the absence of which will nullify the imposition and collection of the new toll fees.

In all, the initial toll rates and periodic adjustments appear to Us as simply predicated on the basic rationale for investing in a toll project, which to repeat is: a reasonable rate of return for the investment. Section 2 (o) of the BOT Law, as amended, provides for a definition for a reasonable rate of return on investments and operating and maintenance cost.[135] Running through the gamut of our statutes providing for and encouraging partnership of the public and private sector is the paramount common good for infrastructure projects and the equally important factor of giving a reasonable rate of return to private sector's investments. The viability of any infrastructure project depends on the returns - which should be reasonable - of the investment coming from the private sector.

While the interests of the public are ideally to be accorded primacy in considering government contracts, the reality on the ground is that the tollway projects may not at all be possible or would be difficult to realize without the involvement of the investing private sector, which expects its usual share of profit. Thus, the Court is at a loss to understand how the level of the initial toll rates, which depended on several factors indicated above, and the subsequent adjustments resulted in the charging of exorbitant toll fees that, to petitioners, enabled the investors to shift the burden of financing the completion of the projects on the motoring public.

Neither does the alleged drastic--if we may characterize it as such--steep increase in the level of toll rates for NLEX constitute a "killing" for PNCC and its partner MNTC. Petitioners make much of the amount of the toll fees vis-à-vis the then prevailing minimum wage. These plays of figures detract from the essential concern on the propriety of the level of the toll rates vis-à-vis the investments sunk in the NLEX project with a view, on the part of private investors, to a reasonable return on their investment. Where no substantial figures were provided on the

investments, the projected operating and maintenance costs vis-à-vis the projected revenue from the toll fees, no substantial conclusions may reasonably be deduced therefrom. Besides, to be taken into account in relation to the costs of the construction and rehabilitation of the NLEX is the length of the tollway and for which motorists have to pay the corresponding toll. Certainly, the allegations and conclusions of petitioners as to the unreasonable increase of the toll rates are without adequate factual mooring.

The use of a tollway is a privilege that comes at a cost. The toll is a price paid for the use of a privilege. There are to be sure alternative roads and routes, which motorists may fall back on if they are unwilling to pay the toll. The toll, as might be expected, is pegged at a level that makes the developmental projects and their maintenance viable; otherwise, no investment can be expected for the furtherance of the projects.

Petitioners Francisco and Hizon alleged that, per the minutes of the TRB meetings, the Board deliberately refrained, particularly with respect to the Skyway project, from conducting public hearings for the grant of the initial toll rates and on the rate adjustment formula to be used in order to accelerate the implementation of the projects. The allegation is far from correct. A perusal of the pertinent minutes of the TRB meetings, particularly that held on August 17, 1995,[136] in fact would disclose a picture different from that depicted by said petitioners. Nothing in the minutes of said meeting tends to indicate that the TRB resolved to dispense with public hearings. We, therefore, find petitioners Francisco and Hizon's attempt to mislead the Court by falsely citing supposed portions[137] of the August 17, 1995 TRB meeting very unfortunate. They quoted a correction on the minutes of the Special Board Meeting No. 95-05 held on July 26, 1995, which was taken up in the August 17, 1995 meeting for the approval of the minutes of the previous meeting. In said special meeting of July 26, 1995,[138] the Board deliberated on the recommendation of ADG Santos for the conduct of a public hearing or soliciting the endorsement of the Metro Manila Development Authority ("MMDA").[139] But the TRB did not resolve to omit a public hearing with respect to the toll rates. In fact, the deliberations used the words "in the event the Board decides" and "if the Board conducts," clearly conveying the notion that the TRB had not decided or resolved the issue of public hearings. Be that as it may, We rule that the TRB is mandated to comply with the twin requirements of public hearing and publication.

Petitioners Francisco and Hizon's lament about the TRB merely relying on, if not yielding to, the recommendation and findings of the Technical Working Group ("TWG") of the DPWH on matters relative to STOA stipulations and toll-rate fixing cannot be accorded cogency. In the area involving big finance and complex project planning, banking on the data supplied by technicians and experts is at once practical as it is inevitable. The Court cannot see its way clear to understand why petitioners would begrudge the TRB for tapping the technical know-how of others. And it cannot be overemphasized that a recommendation is no more than an exhortation or an urging as to what is advisable or expedient, not binding on the person to which it is being made.[140] To recommend involves the idea that another has the final decision.[141] The ultimate decision still rests with the TRB whether or not to accept the findings of the TWG. The minutes of the TRB meetings show that its members went through the tedious process of deliberating on the formula to be used in computing the toll rates. The fact that the TRB might have adopted the TWG's recommendation would not, on that ground alone, vitiate the bona fides of the former's decision nor stain the proceedings leading to such decision. In any case, as earlier held, the toll rate adjustment formula does not and cannot contravene the legal twin requirements of public hearing and publication.

In another bid to nullify the STOAs in question, petitioners would foist on the Court the arguments that, firstly, President Ramos twisted the arms of the TRB towards entering into the agreements in question and, secondly, that the CITRA STOA contained restrictive confidentiality provisions barring the public from knowing their contents and the details of the negotiations related thereto.

We are not persuaded by the first ground, not necessarily because the pressure brought to bear on TRB rendered

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the STOAs infirm, but because the allegations on pressure-tactics allegedly employed by President Ramos are too speculative for acceptance.

On the second ground, We fail to see how the insertion of the alleged confidentiality clause in the CITRA STOA translates into grave abuse of discretion or a violation of the Constitution, particularly Article III, Section 7[142] thereof. First off, the Court can take judicial notice that most commercial contracts, including finance-related project agreements carry the standard confidentiality clause to protect proprietary data and/or intellectual property rights. This protection angle appears to be the intent of Clause 14.04(l)[143] of the CITRA STOA. And as may be noted, the succeeding Clause 14.04 (2)[144] removes from the ambit of the confidentiality restriction the following: disclosure of any information: (a) not otherwise done by the parties; (b) which is required by law to be disclosed to any person who is authorized by law to receive the same; (c) to a tribunal hearing pertinent proceedings relative to the contract or agreement; and (d) to confidential entities and persons relative to the disclosing party like its banks, consultants, financiers and advisors. The second (item b) exception provides a reasonable dimension to the assailed confidentiality clause.

Needless to stress, the obligation of the government to make information available cannot be exaggerated.[145] The constitutional right to information does not mean that every day and every hour is open house in government offices having custody of the desired documents.[146] Petitioners have not sufficiently shown, thus cannot really be heard to complain, that they had been unreasonably denied access to information with regard to the MNTC or SMMS STOA. Besides, the remedy for unreasonable denial of information that is a matter of public concern is by way of mandamus.[147]

Finally, as to petitioners' catch-all claim that the STOAs are disadvantageous to the government, as therein represented by the TRB, suffice it to state for the nonce that behind these agreements are the Board's expertise and policy determination on technical, financial and operational matters involving expressways and tollways. It is not for courts to look into the wisdom and practicalities behind the exercise by the TRB of its contract-making prerogatives under P.D. Nos. 1112, 1113 and 1894, absent proof of grave abuse of discretion which would justify judicial review. In this regard, the Court recalls what it wrote in G & S Transport Corporation v. Court of Appeals,[148] to wit:

> x x x courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter are usually involved in the decision.

SIXTH ISSUE: PUBLIC BIDDING NOT REQUIRED

Private petitioners would finally maintain that public bidding is required for the SMMS and the North Luzon/South Luzon Tollways, partaking as these projects allegedly do of the nature of a BOT infrastructure undertaking under the BOT Law. Prescinding from this premise, they would conclude that the STOAs in question and related preliminary and post-STOA agreements are null and void for want of the necessary public bidding required for government infrastructure projects.

The contention is patently flawed.

The BOT Law does not squarely apply to the peculiar case of PNCC, which exercised its prerogatives and obligations under its franchise to pursue the construction, rehabilitation and expansion of the tollways with chosen partners. The tollway projects may very well qualify as a build-operate-transfer undertaking. However, given that the projects in the instant case have been undertaken by PNCC in the exercise of its franchise under P.D. Nos.

1113 and 1894, in joint partnership with its chosen partners at the time when it was held valid to do so by the OGCC and the DOJ, the public bidding provisions under the BOT Law do not strictly apply. For, as aptly noted by the OSG, the subject STOAs are not ordinary contracts for the construction of government infrastructure projects, which requires under the Government Procurement Reform Act or the now-repealed P.D. 1594,[149] public bidding as the preferred mode of contract award. Neither are they contracts where financing or financial guarantees for the project are obtained from the government. Rather, the STOAs actually constitute a statutorily-authorized transfer or assignment of usufruct of PNCC's existing franchise to construct, maintain and operate expressways.[150]

The conclusion would perhaps be different if the tollway projects were to be prosecuted by an outfit completely different from, and not related to, PNCC. In such a scenario, the entity awarded the winning bid in a BOT-scheme infrastructure project will have to construct, operate and maintain the tollways through an automatic grant of a franchise or TOC, in which case, public bidding is required under the law.

Where, in the instant case, a franchisee undertakes the tollway projects of construction, rehabilitation and expansion of the tollways under its franchise, there is no need for a public bidding. In pursuing the projects with the vast resource requirements, the franchisee can partner with other investors, which it may choose in the exercise of its management prerogatives. In this case, no public bidding is required upon the franchisee in choosing its partners as such process was done in the exercise of management prerogatives and in pursuit of its right of delectus personae.[151] Thus, the subject tollway projects were undertaken by companies, which are the product of the joint ventures between PNCC and its chosen partners.

Petitioners Francisco and Hizon's assertions about the TRB awarding the tollway projects to favored companies, unsubstantiated as they are, need no belaboring. Suffice it to state that the discretion to choose who shall stand as critical JV partners remained all along with PNCC, at least theoretically. Needless to say, the records do not show that the TRB committed an oversight as an administrative body over any aspect of tollway operations with regard to PNCC's selection of partners.

The foregoing disquisitions considered, there is no more point in passing upon the propriety of prohibiting or enjoining, on the ground of unconstitutionality or grave abuse of discretion, the implementation of the initial toll rates and/or the adjusted toll rates for the SMSS, expanded NLEX and SLEX, as authorized by the separate TRB resolutions, subject of and originally challenged in these proceedings.

These TRB resolutions and the STOAs upon which they are predicated have long been in effect. The parties have acted on these issuances and contracts whose existence, as an operative fact, cannot be ignored, let alone erased, even if the charge of unconstitutionality is given currency.

While not exactly of governing applicability in this case, what the Court wrote in De Agbayani v. Philippine National Bank,[152] on the operative fact doctrine is apropos:

> x x x When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." ....
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in

> all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of constitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration x x x." (Emphasis in the original.)

The petitioners in the first three (3) petitions and the respondent in the fourth have not so said explicitly, but their brief is against the issuance of P.D. Nos. 1112, 1113 and 1894, which conferred a package of express and implied powers and discretion to the TRB and the President resulting in the execution of what is perceived to be offending STOAs and the runaway collection of illegal toll fees. And they have come to the Court to strike down all these issuances, agreements and exactions. While the Court is not insensitive to their concerns, the rule is that all reasonable doubts should be resolved in favor of the constitutionality of a statute,[153] and the validity of the acts taken in pursuant thereof. It follows, therefore, that the Court will not set aside a law as violative of the Constitution except in a clear case of breach[154] and only as a last resort.[155] And as the theory of separation of powers prescribes, the Court does not pass upon questions of wisdom, expediency and justice of legislation. To Us, petitioners and respondent YPES in the fourth petition have not discharged the heavy burden of demonstrating in a clear and convincing manner the unconstitutionality of the decrees challenged or the invalidity of assailed acts of the President and the TRB. Because they failed to do so, the Court must uphold the presumptive constitutionality and validity of the provisions of the three decrees in question, and the subject contracts and TOCs.

Regarding petitioner Francisco's Supplemental Petition, the toll rates, the collection of which in the amount based on the formula and assumptions set forth in the law, and the adverted STOA dated February 1, 2006 and subject of the TRO issued on August 13, 2010, has been duly published[156] and approved by the TRB, as required by Section 5 of P.D. 1112.[157] And the party-concessionaires have adequately demonstrated, and the TRB has virtually acknowledged[158] that the said rates subject of the TRO partake of the nature of opening or initial toll rates, which have not yet been implemented since the time the SLTC STOA took effect.[159] To note, the toll rates subject of the TRO were approved and are to be implemented in connection with the new facility, such as Project Toll Roads 1 and 2 pursuant to the new SLTC STOA and the expanded and rehabilitated SLEX.[160] As earlier discussed, public hearing is not required in the fixing and implementation of initial toll rates. But an interested party aggrieved by the initial rates imposed is not without any resource as he may, within the time frame provided by Section 8 (b) of P.D. 1894, repair to the TRB for review and thereafter to the OP.[161] As expressly provided in the same section, however, the pendency of the petition for review, if there be any, shall not suspend the enforceability and collection of the toll in question. In net effect, the challenge before the Court of the SLEX toll rate imposition is premature. However, the Court treats this Supplemental Petition assailing the toll rates covered by the TRB Notice of Toll Rates published on June 6, 2010 as a petition for review filed under P.D. 1894, and hereby remands the same to the TRB for a review of the questioned rates to determine the propriety thereof.

WHEREFORE, the petitions in G.R. Nos. 166910 and 173630 are hereby DENIED for lack of merit. Accordingly, We declare as VALID AND CONSTITUTIONAL the following:

- the Supplemental Toll Operation Agreement dated April 30, 1998 covering the North Luzon Tollway Project and the TRB Board Resolution No. 2005-4 issued pursuant thereto;

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- the Supplemental Toll Operation Agreement dated November 27, 1995 covering the South Metro Manila Skyway and the TRB Board Resolution No. 2004-53 and previous TRB resolutions issued pursuant thereto;

- the Supplemental Toll Operation Agreement covering the South Luzon Tollway Project or South Luzon Expressway and the TRB Board resolutions issued pursuant to the said agreement, particularly the TRB Board resolutions allowing the toll rate increases that are supposed to have been implemented on June 30, 2010;

- Section 3, paragraph (a) of Presidential Decree No. 1112, otherwise known as the "Toll Operation Decree," in relation to Section 3, paragraph (d) thereof and Section 8, paragraph (b) of Presidential Decree No. 1894; and

- Section 3, paragraph (e) 3 of P.D. No. 1112 and Section 13 of P.D. No. 1894.

We however declare Clause 11.7 of the Supplemental Toll Operation Agreement between the Republic of the Philippines, represented by respondent TRB, as grantor, the Philippine National Construction Corporation, as franchisee, and the Manila North Tollways Corporation ("MNTC") dated April 30, 1998; and the clause "including if necessary an extension of the CONCESSION PERIOD which in no case shall exceed a maximum period of fifty (50) years" in Clause 17.5 of the same STOA, as VOID and UNCONSTITUTIONAL for being contrary to Section 2, Article XII of the 1987 Constitution. We likewise declare Clauses 8.08 (2) & (3) of the Supplemental Toll Operation Agreement between the Republic of the Philippines, represented by respondent TRB, as grantor, the Philippine National Construction Corporation as franchisee, the South Luzon Tollway Corporation as investor, and the Manila Toll Expressway Systems, Inc. as operator, dated February 1, 2006, as VOID and UNCONSTITUTIONAL.

The petition in G.R. No. 169917 is likewise hereby DENIED for lack of merit. We declare as VALID and CONSTITUTIONAL the following:

- Notice of Approval dated May 16, 1995 by former President Fidel V. Ramos on the assignment of PNCC's usufructuary rights;

- the Joint Venture Agreement dated August 29, 1995;

- the Joint Investment Proposal, etc. dated June 16, 1996;

- the Supplemental Toll Operation Agreement ("STOA") dated April 30, 1998 and the Notice of Approval of said STOA dated June 15, 1998 by former President Fidel V. Ramos; and

- the provisional toll rate increases published February 9, 2005, granted by the TRB.

The petition in G.R. No. 183599 is GRANTED. Accordingly, the Decision dated June 23, 2008 of the Regional Trial Court, Branch 155 in Pasig City, docketed as SCA No. 3138-PSG, annulling the TOC covering the SLEX, enjoining the original toll operating franchisee from collecting toll fees in the SLEX, and ordering the turnover of related assets to the Government, is hereby REVERSED and SET ASIDE, and the petition filed therein by the Young Professionals and Entrepreneurs of San Pedro, Laguna with the RTC of Pasig is DISMISSED for lack of merit.

In view of the foregoing dispositions in the petitions at bar, the TRO issued by the Court on August 13, 2010 is hereby ordered lifted, with respect to the petitions in G.R. Nos. 166910, 169917, 173630 and 183599.

The challenge contained in the Supplemental Petition in G.R. No. 166910 against the toll rates subject of the TRB Notice of Toll Rates published on June 6, 2010, for the SLEX projects, Toll Road Projects 1 and 2 of the new SLTC STOA, and the expanded and rehabilitated SLEX, is remanded to the TRB for a review of the assailed toll rates to determine whether SLTC and MATES are entitled to the toll fees.

No Cost.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.
Carpio-Morales and Abad, JJ., on leave.
Nachura, J., no part. Sol. Gen.

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[1] Authorizing the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation thereof and for other Purposes, P.D. 1112 [Toll Operation Decree], whereas clause (March 31, 1977).

[2] See P.D. 1113, § 3.

[3] Amending the Franchise of the [PNCC] to Construct, Maintain and Operate Toll Facilities in the North Luzon and South Luzon Expressways to Include the Metro Manila Expressway to Serve as an Additional Artery in the Transportation of Trade and Commerce in the Metro Manila Area, P.D. 1894, § 1.

[4] What is involved when the usufruct is ceded are, inter alia, the right to collect and keep toll; operate, repair or replace the toll collection system for the project toll roads; and provide continuing operation and maintenance during the concession period.

[5] P.D. 1113, § 8; P.D. 1894, § 13.

[6] P.D. 1112, § 3 (e) (3).

[7] PHILIPPINE CONSTITUTION, ART. XII, § 11.

> Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall belimited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[8] Rollo (G.R. No. 166910), pp. 152-160.

[9] Id. at 166-171; DOJ Opinion No. 79, s. 1994.

[10] In the same way that the improvement of the SLEX would also be referred to as the South Luzon Tollway project.

[11] Rollo (G.R. No. 169917), pp. 194-196; MNTC STOA, clause 3.1.

[12] Initial focus of the MOA are the full rehabilitation and construction of the Alabang viaduct and full rehabilitation and expansion of the Alabang-Calamba Santo Tomas stretch.

[13] Annex 14, SLTC's and MATES' Consolidated Comment/Opposition to the Supplemental Petition of petitioner Francisco.

[14] Sections 2.01 of the STOA.

[15] Article VI, Section 1 of the Constitution provides that legislative power shall be vested in the Congress of the Philippines x x x.

[16] Annex 16, Consolidated Comment/Opposition to petitioner Francisco's Supplemental Petition.

[17] Annex 17, Consolidated Comment/Opposition to petitioner Francisco's Supplemental Petition.

[18] Id.

[19] Rollo (G.R. No. 183599), pp. 58-70.

[20] Rollo (G.R. No. 183599), p. 70.

[21] Dumlao v. COMELEC, G.R. No. L-52245, January 22, 1980, 95 SCRA 392, 401.

[22] Muskrat v. U.S., 219 U.S. 346 (1913).

[23] See Flast v. Cohen, 392 U.S. 83, 20 E Ed 2d 947, 88 S. Ct. 1942, 1950 (1968).

[24] G.R. Nos. 183591, 183752, 183893 & 183591, October 14, 2008, 568 SCRA 402, 405 [citations omitted]; see also PACU v. Secretary of Education, 97 Phil. 806, 810 (1955).

[25] Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary 939 (2003).

[26] Id. at 939-40; citing People v. Vera, 65 Phil. 56, 89 (1937); Macasiano v. National Housing Authority, G.R. No. 107921, July 1, 1993, 224 SCRA 236.

[27] Gonzales v. Narvasa, G.R. No. 140835, August 14, 2000, 337 SCRA 733, 740.

[28] See Tañada v. Angara, G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[29] Angara v. Electoral Commission, 63 Phil. 139, 158 (1936).

[30] Chavez v. Public Estates Authority, G.R. No. 133250, July 9, 2002, 384 SCRA 152; Lim v. Executive Secretary, G.R. No. 151445, April 11, 2002, 380 SCRA 739; IBP v. Zamora, G.R. No. 141284, August 15, 2000; Tatad v. Secretary of the Department of Energy [DOE], G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330; Kilosbayan v. Guingona, Jr., G.R. No. 113375, May 5, 1994, 232 SCRA 110, 137-38.

[31] Tatad v. DOE, id. at 349; De Guia v. COMELEC, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

[32] Severino v. Governor General,16 Phil. 366, 371 (1910).

[33] Del Mar v. PAGCOR, G.R. No. 138298, November 29, 2000, 346 SCRA 485, 503.

[34] Metropolitan Cebu Water District v. Adala, G.R. No. 168914, July 4, 2007, 526 SCRA 465, 466.

[35] Albano v. Reyes, G.R. No. 83561, July 11, 1989, 175 SCRA 264.

[36] Id. at 264.

[37] DOJ Opinion No. 1, s. 2006; Annex 15, Consolidated Comment/Opposition to supplemental petition.

[38] Kilusang Mayo Uno Labor Center v. Garcia, Jr., G.R. No. 115381, Dec. 23, 1994, 239 SCRA 386, 405.

[39] Id.

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[40] P.D. 1112, § 3, ¶ e.

[41] Philippine Airlines, Inc. v. Civil Aeronautics Board, G.R. No. 119528, March 26, 1997, 270 SCRA 538.

[42] Philippine Airlines, Inc., id. at 551.

[43] Philippine Airlines, Inc., id. at 549-50.

[44] See Tatad v. DOE, supra note 30, 349; De Guia v. COMELEC, supra note 31, at 422.

[45] Philippine Airlines, Inc., supra note 41, at 550; citing Dyer v. Tuskaloosa Bridge Co., 2 Port. 296, 27 Am. D. 655; Christian Toda Tel. Co. v. Commonwealth, 161 S.W. 543, 156 Ky. 557, 37 C.J.S. 158.

[46] Philippine Airlines, Inc., id.; citing Ynchausti Steamship Co. v. Public Utility Commissioner, 42 Phil. 642 (1923).

[47] G.R. No. 178158, December 4, 2009, 607 SCRA 413, 492-94.

[48] See STOA (Covering the South Metro Manila Skyway) among the Republic, PNCC and Citra Metro Manila Tollways Corporation, November 27, 1995, Rollo (G.R. No. 166910), pp. 329-397; STOA (Covering the Manila-North Expressway) among the Republic, PNCC and Manila North Tollways Corporation, April 1998, Rollo (G.R. No. 169917), pp. 177-242.

[49] See P.D. 1112, whereas clauses; P.D. 1113, whereas clauses; P.D. 1894, whereas clauses.

[50] See e.g. Rollo (G.R. No. 169917), p. 243; see also Rollo (G.R. No. 169917), p. 106.

[51] P.D. 1894, amending P.D. 1113.

[52] P.D. 1113, § 3; P.D. 1894, § 6.

[53] P.D. 1894, § 6. (Emphasis ours.)

[54] 16.06 Supplemental Effect - "This Agreement [STOA] is intended as a supplement to the [TRB-PNCC] TOA. Accordingly, to the extent possible, both agreements should be regarded as one integrated instrument whose provisions are fully consistent with each other; provided however, that in respect of the Project or any of the Project Toll Roads, the provisions of this Agreement shall have primacy of application and shall be deemed to have modified or replaced provisions of the TOA that is contrary or inconsistent with any provision of this Agreement."

[55] Strategic Alliance Development Corporation v. Radstock Securities Limited, supra note 47, at 494. (Emphasis in the original.)

[56] Id. at 495.

[57] DOJ Opinion No. 122, s. 1995; Rollo (G.R. No. 169917), p. 363.

[58] DOJ Opinion No. 1, s. 2006.

[59] Strategic Alliance Development Corporation v. Radstock Securities Limited, supra note 47, at 495.

[60] Id. at 494.

[61] Id.

[62] See supra.

[63] Dated Aug. 20, 1990; reported in 188 SCRA 775.

[64] The DPWH had jurisdiction over the TRB pursuant to E.O. No. 644 (July 30, 2007).

[65] PNCC v. Republic, G.R. No. 89557, August 20, 1990, 188 SCRA 775, 790-91.

[66] PNCC v. Court of Appeals, G.R. No. 104437, December 17, 1993, 228 SCRA 565.

[67] Id. at 572.

[68] Id. at 567 & 570.

[69] Martir v. Verano, 497 SCRA 120, 126-27 (2006); citing Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals, G.R. No. 126745, July 26, 1999, 311 SCRA 143, 154-55.

[70] In relation to G.R. No. 183599.

[71] G.R. No. 166785, July 28, 2008, 560 SCRA 197, 198, 208-209.

[72] Eastern Assurance & Surety Corporation (EASCO) v. Land Transportation and Franchising Regulatory Board (LTFRB), G.R. No. 149717, October 7, 2003, 413 SCRA 75, 90.

[73] Drilon v. Lim, 235 SCRA 135 (1994).

[74] Entitled "Creating The Land Transportation Franchising And Regulatory Board."

[75] Sec. 5. Powers and Functions of the [LTFRB].--The Board shall have the following powers and functions:

a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles xxxx;

b. To issue x x x or cancel x x x or permits authorizing the operation of public land transportation services x x x and to prescribe the appropriate terms and conditions therefor;

c. To determine, prescribe and approve xxx reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles;

....

g. To conduct investigations and hearings of complaints for violation of the public service laws on land transportation and of the Board's rules and regulations, orders, decisions and/or rulings and to impose fines and/or penalties for such violations;

[76] Entitled "Creating A Ministry Of Public Works And A Ministry Of Transportation And Communications."

x x x x

Sec. 15. Functions of the Commission.--The Commission shall exercise the following functions:

a. Issue [CPC] for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;

b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases x x x;

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c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;

x x x x

g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;

x x x x

[77] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes, R.A. 9136 [Electric Power Industry Reform Act of 2001], §§ 4 (w), 6, 8, 34, 38 & 43 (f).

[78] Chamber of Real Estate and Builders' Association, Inc. v. ERC and MERALCO, G.R. No. 174697, July 8, 2010.

[79] C.T. Torres Enterprises, Inc. v. Hibionada, et al., G.R. No. 80916, November 9, 1990.

[80] Sec. 8 of P.D. 1113 and Sec. 13 of P.D. 1894 each contains a similar provision but use the word "grantee" instead of "toll operator" found in Sec. 3 of P.D. 1112, thus:

> The grantee shall not lease, transfer, grant the usufruct of, sell or assign the franchise nor the rights or privileges acquired thereby, x x x nor merge with any other company or corporation without the prior approval of the President of the Philippines. x x x

[81] G.R. No. 113375, May 5, 1994, 232 SCRA 110; citing 36 Am. Jur. 2D, Franchises, §63.

[82] National Federation of Labor v. National Labor Relations Commission, G.R. No 127718, March 2, 2000, 327 SCRA 158, 165.

[83] Padua v. Ranada, G.R. No. 141949, 390 SCRA 663, 679.

[84] Padua v. Ranada, id. at 679; citing Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 175 SCRA 343 (1989).

[85] Rollo (G.R. No. 169917), p. 217.

[86] Id. at 46-47.

[87] See supra; see e.g. Albano v. Reyes, supra note 35, at 264; Philippine Airlines, Inc., supra note 41, at 538, 549-551.

[88] See supra.

[89] Albano v. Reyes, supra note 35, at 264.

[90] Kilusang Mayo Uno, supra note 38, at 405.

[91] Philippine Airlines, Inc., supra note 41, at 549-550.

[92] P.D. 1112, § 3 (e).

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[93] P.D. 1113, § 3; P.D. 1894, § 6.

[94] See supra; see also P.D. 1894, §§ 1 & 2.

SECTION 1. Any provision of law to the contrary notwithstanding, there is hereby granted to the Philippine National Construction Corporation, a corporation duly organized and existing under by the virtue of Philippine laws (hereinafter called the "GRANTEE"), the right, privilege and authority to construct, maintain and operate the following expressways (hereinafter collectively called "the Expressways"), together with the toll facilities appurtenant thereto:

(a) the North Luzon Expressway from Balintawak (Station 9 + 563) to Carmen, Rosales, Pangasinan;

(b) the South Luzon Expressway from Nichols, Pasay City (Station 10 + 540) to Lucena, Quezon;

(c) the Metro Manila Expressway, from Bicutan, Parañaque, Metro Manila (Station 18 +720) to Meycauayan, Bulacan (approximate Station 63 + 290) with an approximate length of 44.570 km., to serve as an artery in the transportation of trade and commerce in the Metropolitan Manila area.

The GRANTEE is hereby further granted the right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the North Luzon Expressway and/or South Luzon Expressway as may be approved by the Toll Regulatory Board (any and all such extensions, linkages, stretches and diversions hereinafter deemed included in the term "Expressways").

SECTION 2. The term of the franchise provided under Presidential Decree No. 1113 for the North Luzon Expressway and the South Luzon Expressway which is thirty (30) years from 1 May 1977 shall remain the same; provided that, the franchise granted for the Metro Manila Expressway and all extensions linkages, stretches and diversions that may be constructed after the date of approval of this decree shall likewise have a term of thirty (30) years commencing from the date of completion of the project.

[95] P.D. 1112, § 3 (e) (6).

[96] 17.4.1 The PARTIES acknowledge that following a Notice of Substitution under clauses 17.2 or 17.3 the LENDERS have, subject to the provisions of Clause 17.4.3, the unrestricted right to appoint a SUBSTITUTED ENTITY in place of MNTC following the declaration of the occurrence of a MNTC DEFAULT prior to full repayment of the LOANS or of an event of default in respect of the LOANS. GRANTOR shall extend all reasonable assistance to the AGENT to put in place a SUBSTITUTED ENTITY. MNTC shall make available all necessary information to potential SUBSTITUTED ENTITY to enable such entity to evaluate the Project.

[97] Rollo (G.R. No. 169917), pp. 227-228.

[98] Id. at 228.

[99] MNTC STOA, Clause 17.5, id. Rollo, G.R. No. 166917, at 228.

[100] Id. at 184. Clause 1.1.1 "AGENT" - shall mean the authorized representative/s appointed by the LENDERS to act and negotiate on their behalf with respect to the LOANS and to this AGREEMENT and notified to GRANTOR by MNTC. Id. at 184.

[101] Supra note 99.

[102] P.D. 1112, § 3, ¶ e, P.D. 1113, § 3; P.D. 1894, § 6.

[103] Phil. Const., Art. XII, § 11.

[104] Rollo (G.R. No. 166917), p. 192.

[105] Phil. Const., Art. XII, § 11.

[106] Rollo (G.R. No. 169971), p. 507.

[107] Phil. Const., Art. VI, § 29 (1).

[108] Strategic Alliance Development Corporation v. Radstock Securities Limited, supra note 47, at 498.

[109] Id. at 498-500.

[110] SLTC STOA, 8.08 (2) & (3).

[111] See e.g. MNTC STOA, 11.4 & 11.5; SLTC STOA, 8.06 & 8.08.

11.4 Periodic Adjustment.

11.4.1 The AUTHORIZED TOLL RATE shall be adjusted as provided in this Clause every two calendar years, the first such adjustment to occur on the OPERATION DATE; Provided, However, that in the event that a delay in completion of any relevant PHASE is attributable to MNTC, MNTC shall not be entitled to an additional adjustment of the Initial AUTHORIZED TOLL RATE at the actual OPERATION DATE of the delayed phase.

11.4.2 The adjustment formula will be as follows:

- Until the time the LOANS have been fully repaid but not later than 31 December 2013, the projected final repayment date as per the PROJECT IMPLEMENTATION SCHEDULE and the FINANCIAL PROJECTIONS:

ATRp = ATR0 x Ip

where:

ATRp = AUTHORIZED TOLL RATE for year p

TR0 = Initial Reference AUTHORIZED TOLL RATE as defined in Clause 11.3.

Ip = Toll adjustment index for year p

= PCPIp Ep/E0_____
PCPI0 x (1 + Fc)[p] x [Ap + Bp x (Dp/D0)]

PCPIp = Philippine Consumer Price Index for the month prior to filing the request for adjustment in year p (or the last index available at that time)

USCPIp = USA Consumer Price Index for the month prior to filing the request for adjustment in year p (or the last index available at that time)

PCPI0 = Base Philippine Consumer Price Index as defined in the FINANCIAL PROJECTIONS as published by the Bangko Sentral ng Pilipinas as of 30 June 1995

USCPI0 = Base USA Consumer Price Index as defined in the FINANCIAL PROJECTIONS as of 30 June 1995

Ap = Percentage of total debt service (or debt outstanding if there is no debt service in that period) in PESO during the period of six (6) months prior to filing the request for adjustment in year p

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Bp = Percentage of total debt service (or debt outstanding if there is no debt service in that period) in US$ during the period of six (6) months prior to filing the request for adjustment in year p. Bp shall not exceet Fifty percent (50%) after the first adjustment of the AUTHORIZED TOLL RATE made on OPERATION DATE.

Ep = Rolling average of US$ selling rate against PESO, as published by the Bangko Sentral ng Pilipinas, for the period of six (6) months prior to filing the request for adjustment in year p

Dp = Consumer Price Index differential between Philippines and USA calculated as PCPIp / USCPIp

E0 = Base average of US$ selling rate against PESO, as published by the Bangko Sentral ng Pilipinas as stated in the FINANCIAL PROJECTIONS as of 30 June 1995

D0 = Base Consumer Price Index differential between Philippines and USA calculated as PCPI0 / USCPI0

Fc = One percent (1%) for the period up to the OPERATION DATE of the first PHASE including the first adjustment of the TOLL RATE.

= One and one fourth of a percent (1.25%) for the period following the OPERATION DATE of PHASE 1

- 2. From the time when the LOANS have been fully repaid not later than 31 December 2013:

PCPIp__
ATRp = ATRp-1 x [1 + (PCPIp-1 - 1) x 50%]

where:

ATRp-1 = AUTHORIZED TOLL RATE for year p-1

If, for any reason, the Philippine Consumer Price Index as published by the National Statistics Office ceases to be published or is not available in the month in question, the PARTIES shall use the index published by the Bangko Sentral ng Pilipinas as substitute index for the purpose of effecting the above calculation or, in case the latter index is also not published or available, another index agreed mutually by the GRANTOR and MNTC.

11.4.3 Any such notice for adjustment to the AUTHORIZED TOLL RATE which results in the increase of the existing AUTHORIZED TOLL RATE shall be published in a newspaper of general circulation no later than 30 November of the year in which it is calculated and shall become enforceable and be collected by MNTC on the first day of January of the immediately succeeding year.

11.5 Interim Adjustment.

11.5.1 In addition to the Periodic Adjustment, (a) in the circumstances contemplated in Clauses 15 and 16, MNTC shall be entitled to Interim Adjustment of the Initial Reference AUTHORIZED TOLL RATE provided under Clause 11.3 or the AUTHORIZED TOLL RATE provided under Clause 11.4, as compensation under such provisions, or (b) when the rolling average over two months of either the Bangko Sentral ng Pilipinas foreign exchange selling rate (PESO/US$) (`Ep' as defined below) has varied by ten percent (10%) as long as the Toll Rate Adjustment Formula described in Clause 11.4.2.1 applies or the Consumer Price Index for the Philippines (`PCPIp' as defined below) has varied by fifteen percent (15%) compared to the level of this rate and/or index to the level of Ep-1 and PCPIp-1, respectively, MNTC shall be entitled to an adjustment of the Initial Reference AUTHORIZED TOLL RATE or AUTHORIZED TOLL RATE after the first Periodic Adjustment.

11.5.2 Any proposal for an adjustment of the Initial Reference AUTHORIZED TOLL RATE or AUTHORIZED TOLL RATE, as the case may be, pursuant to Clauses 15, 16 or 11.5.1 (b) hereof shall be submitted to GRANTOR, with a supporting calculation. Such calculation shall be subject to verification and approval by

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GRANTOR.

11.5.3 Any such proposal for an interim adjustment in the Initial Reference AUTHORIZED TOLL RATE or AUTHORIZED TOLL RATE as the case may be, which results in the increase of the existing AUTHORIZED TOLL RATE shall be published in a newspaper of general circulation no later than 30 November of the year in which it is calculated and shall become enforceable and be collected by MNTC on the first day of January of the immediately succeeding year.

11.5.4 An Interim Adjustment shall, other than those made by reason of the occurrence of circumstances specified under Clause 15 and 16, be considered as an advance to MNTC to be set off against future TOLL RATE Periodic Adjustment; Provided, However, that in computing the amount to be set off against the foregoing advance, the time value thereof shall be considered as recognized in the FINANCIAL PROJECTIONS.

[112] P.D. 1112, § 3, ¶ d.

[113] Padua v. Ranada, G.R. Nos. 141949 & 151108, October 14, 2002, 390 SCRA 663, 678-83.

[114] Manila International Airport Authority v. Blancaflor, G.R. No. 157581, December 1, 2004, 445 SCRA 471, 479.

[115] Manila International Airport Authority, id. at 479.

[116] Manila International Airport Authority, id. at 479-480.

[117] Executive Order No. 686 (December 19, 2007).

[118] See P.D. 1894, § 8, ¶ b.

[119] Within the period of 90 days after the date of publication of the initial toll rate.

[120] Instituting the Administrative Code of 1987 [Administrative Code], Executive Order No. 292, book V, title 1, subtitle B, chapter 4, § 22 (1) (1987).

> Section 22. Authority to Examine Accounts of Public Utilities. -
>
> (1) The [COA] shall examine and audit the books, records and accounts of public utilities in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise taxes;

[121] G.R. Nos. 166769 & 166818, December 6, 2006, 510 SCRA 455.

[122] Heirs of Severina San Miguel v. Court of Appeals, et al., G.R. No. 136054, September 5, 2001.

[123] Administrative Code, Book V, Title 1, subtitle B, Chapter 4, § 22 (3).

[124] Administrative Code, Book V, Title 1, subtitle B, Chapter 4, § 22 (2).

[125] See Manila Electric Company, Inc. v. Lualhati, 510 SCRA at 478.

[126] MNTC STOA, Clause 11; CITRA STOA, Clause 7; SLTC STOA, Clauses 7-8.

[127] P.D. 1112, § 3, ¶ d.

[128] G.R. No. 84818, December 18, 1989, 180 SCRA 218.

[129] P.D. 1112, § 3, ¶ d.

[130] Rollo (G.R. No. 169971), pp. 214-217.

[131] North Negros Sugar Co., Inc. v. Hidalgo, G.R. No. L-42334, October 31, 1936, 63 Phil. 664.

[132] Ibid, citing City of St. Louis v. Creen, 7 Mo. App., 468, 476.

[133] Id., citing Virginia Cañon Toll Road Co. v. People, 45 Pac., 396, 399; 22 Colo., 429; 37 L. R. A., 711.

[134] North Negros Sugar Co., Inc., 63 Phil. 664; citing Board of Shelby County Commissioners v. Castetter, 33 N. E., 986, 987; 7 Ind. App., 309.

[135] Sec. 2 (o) - Reasonable rate of return on investments and operating and maintenance cost - The rate of return that reflects the prevailing cost of capital in the domestic and international markets x x x Provided further that for negotiated contracts for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).

[136] Rollo (G.R. No. 166910), pp. 275-285.

[137] Id. at 88. Petitioners quoted:

> 1. 17 August 1995 Board Meeting
>
> The Board resolved that "(i)n the event that the Board decides on a hearing before the TOA approval, this will mean delay in the start of the construction and considering that the President has given instructions to accelerate the implementation of this project, the issue of the delay should be raised to the President. If the Board conducts the hearing after the approval of the TOA, this will allow construction to start soon and would eventually result in time savings. However, if the rates are rejected in public hearing, then government may be considered in default."

[138] Id. at 219-226.

[139] Id. at 225. The discussion went like this:

> The representative of ADG Santos brought to the attention of the Board the latter's position that if the parametric formula is adopted, there shall be no default on the part of government in case no toll rate adjustment is given. He further stated that if default is insisted by the proponent, ADG Santos is recommending for the conduct of a public hearing before approval. ADG Santos further suggested that before the contract is signed, the Board shall conduct a public hearing or solicit the indorsement of MMDA. In the event that the Board decides on a hearing before the TOA approval, this will mean delay in the start of construction and considering that the President has given instructions to accelerate the implementation of this project, the issue of the delay should be addressed to the President. If the Board conducts the hearing after the approval of the TOA, this will allow construction to start soon and would eventually result in time savings. However, if rates are rejected in the public hearing, then government may be considered in default.

[140] Cuyegkeng v. Cruz, G.R. No. L-16263, July 26, 1960, 108 Phil. 1147.

[141] Simon v. Civil Service Commission, G.R. No. 101251, November 5, 1992, 215 SCRA 410, 418.

[142] Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizens, subject to such limitations as may be provided by law.

[143] 14.04 CONFIDENTIALITY. 1. None of the parties shall xxx without the consent of the other, divulge x x x any of the contents of this Agreement or any information relating to the negotiation concerning the operations,

contracts, commercial or financial arrangements or affairs of the other parties hereto x x x.

[144]Rollo (G.R. No. 166910), p. 392.

[145] Joaquin G. Bernas, S.J., The Constitution of the Republic of the Philippines 337 (1996).

[146] See Baldoza v. Judge Dimaano, A.M. No. 1120-MTJ, May 5, 1976, 17 SCRA 14.

[147] See Tañada v. Tuvera, G.R. No. 63915, April 24, 1985, 136 SCRA 27; Legaspi v. Civil Service Commission, G.R. No. 72119, May 29, 1987, 150 SCRA 530.

[148] 432 Phil. 7 (2002).

[149] Dated June 11, 1978 entitled, "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts"; Expressly repealed by R.A. 9184.

[150] Rollo (G.R. No. 166910), pp. 820-821.

[151] Choice of persons; the selection of persons satisfactory to one's self for a position involving trust and confidence in the other's character.

[152] De Agbayani, v. Philippine National Bank, G.R. No. L-23127, April 29, 1971, 38 SCRA 429-430.

[153] Basco v. PAGCOR, G.R. Nos. 138298, November 29, 2000, 346 SCRA 485.

[154] Angara v. Electoral Commission, G.R. No. 45081, July 15, 1936, 63 Phil. 139.

[155] 16 Am. Jur. 2d, Constitutional Law, Sec. 115, citing cases.

[156] Annex 18-A-2, Consolidated Comment/Opposition to Supplemental Petition.

[157] P.D. 1112, § 5.

[158] See Annexes 18-A-2 & 18-C-2, supra wherein the TRB gave notice that any interested expressway user shall have the right to file, within a period of ninety (90) days from the date of publication of the toll rate matrix, a petition for review.

[159] See Supplemental Petition of petitioner Francisco, at 18, Annex C.

[160] Consolidated Comment/Opposition to petitioner Francisco's Supplemental Petition, at 43-50, Annex 16.

[161] See also Annex 18-C-2, Consolidated Comment/Opposition to petitioner Francisco's Supplemental Petition.

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